

(2017) 06 RAJ CK 0037
In the Rajasthan High Court
Case No : 123 of 1995

The State of Rajasthan

APPELLANT

Vs

Vinod Kumar son of Ram Mohan, by caste Brahmin

RESPONDENT

Date of Decision : 08-06-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#), [Section 378\(1\)](#), [Section 378\(3\)](#) - Power to examine the accused - Appeal in case of acquittal - Appeal in case of acquittal<BR

Citation : (2017) 06 RAJ CK 0037

Hon'ble Judges : Vijay Bishnoi

Bench : SINGLE BENCH

Advocate : K.V. Vyas, ?S.G. Ojha

Final Decision : Dismissed

Judgement

1. This Criminal Appeal under Section 378(3) & (1) Cr.P.C . has been filed on behalf of the appellant - State of Rajasthan being aggrieved with the judgment dated 25.11.1994 passed by the learned Judge, Special Court, SC/ST (Prevention of Atrocities), Udaipur (hereinafter to be referred as "the trial Court") in Sessions Case No. 5/1993 titled as "State of Rajsthan through Special Public Prosecutor Vs. Vinod Kumar" whereby, the learned trial Court has acquitted the accused/respondent for the offences punishable under Section 498-A and 307 IPC.

2. The brief facts of the case are that PW-1 Rameshwar Lal Joshi has submitted a written report to the Superintendent of

Police, Udaipur stating therein that marriage of her daughter (Alka Sharma) was solemnized with the accused/respondent (Vinod Kumar) on 29.04.1992 and after that, she is residing in her in-laws house. It was alleged that the accused/respondent (Vinod Kumar Sharma) and his mother used to harass his daughter regularly while stating that you are not serving in any Government service and, therefore, you should live at your father's house and prepare for entering into any service. The accused/respondent used to say that as he is not earning enough money and you (Alka) have not brought anything in dowry, therefore, you should remain live with you father. It was further stated in the FIR that on 09.10.1992, the accused/respondent (Vinod Kumar) has hatched a conspiracy with his mother and has tried to kill his daughter by strangulating her. It was further stated that his daughter was taken to the hospital at Udaipur in an unconscious position and after receiving this information, he went to the hospital where he saw that his daughter is admitted and her treatment is going on.

3. On receiving this report, the Police Station Surajpole, Udiapur has registered Case No. 384/1992 for the offences punishable under Sections 498-A and 307 IPC (FIR Ex. P/7).

4. After investigation, the Police has filed the charge-sheet against the accused/respondent for the aforesaid offences and the learned trial Court has also framed charges for the offences punishable under Sections 498-A and 307 IPC on 28.07.1993.

5. To prove the charges against the accused/respondent, the prosecution has got examined as many as 15 witnesses and has also got exhibited 9 documents.

6. Statements of the accused/respondent were recorded under Section 313 Cr.P.C. However, no evidence was produced in

defence.

7. The learned trial Court, after taking into consideration the entire evidence available on record and after appreciating the same, has acquitted the accused/respondent from the charges for which he was charged while giving benefit of doubt vide judgment dated 25.11.1994 under appeal.

8. Being aggrieved with the judgment impugned dated 25.11.1994 passed by the learned trial Court, the appellant - State of Rajasthan has preferred the instant criminal appeal.

9. Learned Public Prosecutor Mr. K.V. Vyas appearing for the appellant State of Rajasthan has submitted that from the statements of PW-1 Rameshwar Lal Joshi, PW-4 Alka Sharma, PW-2 Sushila, PW-3 Bhatrat Kumar, PW-5 Ashok and PW-10 Rajesh Sharma, it is proved that the accused/respondent (Vinod Kumar Sharma) has treated PW-4 Alka Sharma with cruelty for the purpose of dowry and has strangled her on 09.10.1992 with the intention to kill her. It is contended that the learned trial Court, without appreciating the prosecution evidence in right perspective, has illegally acquitted the accused/respondent from the charges for which he has been charged though the allegations for the aforesaid charges have been proved by the prosecution by producing cogent and reliable evidence. Learned Public Prosecutor has, therefore, prayed that this criminal appeal may kindly be allowed and the impugned judgment may kindly be set aside and the accused/respondent may be convicted for the offences for which he was charged and may kindly be suitably sentenced.

10. Per contra, learned counsel appearing for the accused/respondent has argued that there is no illegality in the judgment dated 25.11.1994 passed by the learned trial Court whereby, the accused/respondent was acquitted as the

prosecution has failed to prove the allegations levelled against the accused/respondent beyond reasonable doubt and, therefore, the learned trial Court has not committed any error or illegality in acquitting the accused/respondent. Learned counsel for the accused/respondent has invited the attention of this Court towards the statements of PW-4 Alka Sharma i.e., Ex.D/4 and Ex. D/5 recorded respectively by the Police and Tehsildar concerned, just after the incident and has argued that in the said statements, PW-4 Alka Sharma has not complained for the ill-treatment by the accused/respondent and she has specifically stated that she has tried to commit suicide at her own.

11. Learned counsel for the accused/respondent has further submitted that the learned trial Court has taken into consideration the contradictions in the Police statements as well the Court statements of the other witnesses and has rightly held that the prosecution witnesses, who are relatives of PW-4 Alka Sharma have improved a lot during the Court statements only with the intention to falsely implicate the accused/respondent (Vinod Kumar Sharma) and to save her from the criminal proceedings to be initiated against her for attempting to commit suicide. Learned counsel for the accused/respondent submitted that there is no force in the present appeal and the same is liable to be dismissed and the impugned judgment passed by the learned trial Court is not liable to be interfered with.

12. I have heard the learned counsel for the parties and after carefully scrutinizing the record of the case, this Court is of the opinion that the present criminal appeal preferred on behalf of the State of Rajasthan deserves to be dismissed.

13. The incident, for which the FIR (Ex. P/1) was lodged by the PW-1 Rameshwar Lal Joshi (father of PW-4 Alka Sharma), took

place on 09.10.1992. The First Information Report for the said incident was lodged at the instance of PW-1 Rameshwar Lal Joshi on 13.10.1992. On 13.10.1992, statements of PW-4 Alka Sharma were recorded by the Police at 1:20 pm wherein, she has not levelled any allegations regarding dowry or attempt to murder by the accused/respondent (Vinod Kumar Sharma). On the other hand, she has stated that she was disturbed on account of ignorance of her husband towards her and his illness. Later on, on the very same day, i.e., 13.10.1992, her statements were recorded by the Tehsildar, Girwa at 5:00 pm wherein also, she has not levelled any allegations against the accused/respondent or his family members and has simply said that she do not know what happened to her. However, later on, in her Court statements, she has completely changed the story and has levelled allegations of demand of dowry and attempt to murder against the accused/respondent (Vinod Kumar Sharma).

14. The learned trial Court has taken into the consideration the said facts of the case and has opined that the allegations levelled by PW-4 Alka Sharma in her Court statements cannot be believed as she has improved a lot in her statements and has stated such things which she has not stated during the police statements.

15. The learned trial Court has also taken into consideration the contradictions in the Police statements and the Court statements of PW-1 Rameshwar Lal Joshi (father of PW-4 Alka Sharma), PW-2 Smt. Sushila (mother of PW-4 Alka Sharma), PW-3 Bharat Kumar (brother of PW-4 Alka Sharma), PW-5 Ashok and PW-10 Rajesh Sharma (maternal uncle of PW-4 Alka Sharma). The learned trial Court has also taken into consideration that apart from contradictions in the Police statements and the Court statements of all the above witnesses, the evidence of all the above named

witnesses has not been corroborated with each other and all the witnesses have given contradictory statements.

16. The learned trial Court has also taken into consideration the fact of recovery of Saree at the instance of the accused/respondent on 28.10.1992 whereas the incident took place on 09.10.1992 and in between this period, on 17.10.1992, the Police has inspected the site where the alleged incident took place. The learned trial Court has, therefore, not relied upon the said recovery of Saree alleged to have been used for strangulating PW-4 Alka Sharma.

17. The learned trial Court has also taken into consideration the fact that as per statement of PW-4 Alka Sharma at the time of incident, she and accused/respondent (Vinod Kumar Sharma) were alone in the house and looking to this fact, it is not believed that though the accused/respondent wants to kill his wife (Alka Sharma) but despite having opportunity, has not killed her and has taken her to the hospital after the alleged incident. The learned trial Court, after taking into consideration the above facts and circumstances, has held that the prosecution has failed to prove the charges against the accused/ respondent, for which he was charged, beyond reasonable doubt and, therefore, the accused/respondent is liable to be acquitted from the said charges while giving benefit of doubt.

18. After hearing learned counsel for the parties and after having pondering over the entire record and evidence of the case available on record, I am not inclined to interfere with the judgment dated 25.11.1994 passed by the learned trial Court. Hence, this criminal appeal is dismissed.