

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CRML LEAVE TO APPEAL No. 216 of 2007

STATE
V/S
SHANKER LAL & ORS.

Mr. OP BOOB, PP, for the appellant / petitioner

Date of Order : 20.12.2007

HON'BLE SHRI N P GUPTA, J.
HON'BLE SHRI MUNISHWAR NATH BHANDARI, J.

ORDER

We have heard learned Public Prosecutor, and gone through the impugned judgment, so also the entire record of the learned trial Court.

Learned trial Court has acquitted the four accused respondents of the charges under Section 302, 302/34, 201, 201/34 IPC.

True it is that this petition for leave to appeal is in the nature of a first appeal, and the prosecution is entitled to reappraisal of evidence. However, at the same time, it is also true that simply because it is first appeal, it does not always require to be admitted, unless some arguable case is made out, as admission of such appeal has far-reaching adverse consequences on family and on pocket of the accused persons keeping the sword hanging on them for notoriously long delays of the appeal remaining

pending. Therefore, some amount of care and caution is required to be borne in mind before admitting the appeal, as to whether there are any farthest or remote chances of appeal being allowed. It is also to be borne in mind, that unlike appeal against conviction, it is established law by Hon'ble the Supreme Court, that in appeal against acquittal, the Appellate Court is not entitled to interfere with the acquittal, simply because on the same evidence, the Appellate Court is inclined to arrive at a different conclusion, rather acquittal can be reversed, only if, the Appellate Court finds, that the conclusions arrived at by the learned trial Court could not be arrived at on the evidence available on record.

Keeping in mind, these established parameters, we have gone through the entire record, with the assistance of the learned Public Prosecutor, very closely.

At the outset, it is to be noticed, that the case rests solely on circumstantial evidence, as nobody had seen the occurrence being caused, much less by anybody. The law in regard to the prosecution, resting on circumstantial evidence, is also no more res-integra. It is again established law, that in case resting on circumstantial evidence, each circumstance relied upon by the prosecution should be established by reliable evidence, each circumstance should point towards the guilt of the accused.

Then all circumstances so established should form a complete chain, not only establishing the guilt of the accused, but also negating the innocence of the accused on all reasonable hypothesis. Considering the case from that standpoint, in our view, the prosecution has utterly failed to bring home guilt of any of the accused persons.

As the prosecution story goes, the story propounded at the inception, not only in the First Report, but also in the Court after two weeks of the incident, being Ex.25, also does not help the prosecution in bringing home the guilt. Ex.25 is a complaint lodged by nobody else than the wife of the deceased, and the First Information Report is lodged by the brother of the deceased, who claims to be in the field alongwith the deceased and irrigating the fields, being Ex.P.9, FIR only alleges, that at about 4 AM the deceased went telling to be going to fetch bulb of the battery, as the bulb has fused, and thereafter did not return. Thereafter he found the battery lying near the boundary, then he called for the deceased, with no response. Then search was made near the well, in vein. Then he searched him, and in that process, went to home, there also, deceased was not found. Then again he returned, and found the foot-wears in the Dabda of well, named Barala. Then he peeped in the well, but could not find as there was dark in the well. Then he went to village, and narrated all this to Jagdish, Prabhu Lal, Bhopal, Rameshwar Lal, etc.,

and all came to well at 9 AM in the morning, and found that Gopal has fallen in the well, who was taken out, and was found dead. Significantly, it is mentioned in this Ex.P.9, that while irrigating, the deceased accidentally fell in the well, and died, and he does not suspect anybody to be responsible for it. Then in Ex.25 also, which is a private complaint lodged against 6 accused persons on 17.2.2006, it is pleaded, that the accused persons forming an unlawful assembly and in furtherance of the conspiracy, have killed the deceased, and have concealed the offence, and have thrown the body in the well. The motive was pleaded to be, that Asha D/o Rameshwar Lal Jat and Leela, had illicit relations with accused persons, Satyanarayan, Shankerlal and other Satyanarayan S/o Rameshwar Lal etc., and that Leela had conceived from the loins of Rameshwar Lal Jat, which was got aborted, and this fact was in the knowledge of Gopal deceased, and therefore, apprehending Gopal to be likely to disclose the secret, the offence was committed. It was then pleaded that on 2.1.2006 the family members of the complainant lodged report in the Police Station, thereupon site was inspected and dead body was recovered, autopsy was got conducted, but proper investigation is not done, and case is not being registered, therefore, complaint is being lodged. Thus, it is after more than 2 weeks, that a story of motive is cooked up or developed, to the effect that Leela and Asha had illicit relations with the accused persons, consequently, she had conceived, which

pregnancy was got terminated and that fact was within the knowledge of Gopal, and therefore, apprehending unveiling of the story, he was done to death. If the record is scanned from that standpoint, what is found is, that it is not established by the prosecution either that Leela and or Asha were carrying pregnancy, or that pregnancy was got terminated. Leela has clearly disowned her signatures on Ex.P.4, which is the report of the Medical Board about her medical examination, and even the doctors constituting Medical Board have not positively deposed that any medical termination of pregnancy was undertaken, or that Leela had sustained any premature termination of pregnancy. Then so far the injuries found on the person of deceased are concerned, even the version of the witnesses deposing about the injuries is not corroborated by the medical evidence, including post mortem report. The post mortem report shows the cause of death to be comma, consequent upon injury and congestion of the brain, resulting from the corresponding injury, being fissured fracture of left temporal bone, travelling to left parietal bone, and the doctor conducting post mortem examination being P.W.4 has clearly deposed, that this injury can be caused, by the person sustaining fall in the dry well from a height. From the site inspection report, Ex.10 it is clear that the well, from where the body was recovered, is a dry well, and the depth is mentioned to be 80 ft. It is also mentioned in Ex.10, that in the bottom of the well, debris, stones etc., are lying.

It is also significant to note, that it is not shown in the site inspection note that there were any protectives around the well, so as to prevent the accidental fall in the well. Then in inquest report, Ex.P.1, which was prepared on 2.1.2006 itself, in the presence of the respectable persons, it is clearly mentioned at point X to Y, that on being asked, all the Panchas in a unanimous way expressed, that while irrigating, the deceased accidentally fell in the well and died.

True it is that some witnesses have tried to depose about enmity (animus), then some witnesses including close relations of the deceased have also tried to depose as if about 1-1.30 in the night, there was some scuffle between the deceased and the accused persons, and then such other circumstances are attempted to be brought on record, but then firstly that evidence does not inspire any confidence for variety of reasons, including the fact that even according to real brother Satyanarayan, deceased was with him at about 4 AM, thus they could not stand in the cross-examination on being contradicted by their previous versions.

Then, it is significant to note, that the motive of the animus for the offence has also been altogether shifted during trial, inasmuch as, initially the motive alleged was about Gopal being aware of the illicit

relations of Asha and Leela with the accused persons, and to be likely to disclose this fact to other persons, so as to bring bad name, as against which, the motive projected during trial was, that Leela was pregnant from the loins of Gopal, the deceased, and when Leela was taken for medical termination of pregnancy, a dispute arose there as Gopal was not prepared to bear the medical expenses for the termination, and therefore, he was killed. Suffice it to say that the two motives are diametrically opposite, and only gives an impression, that prosecution was out and out to attempt to somehow implicate and rope in the accused. It is a different story that this Asha had been arrayed as accused and has been arrested vide P.23.

Thus, in our view, there is absolutely no material on record to connect any of the accused persons with the death of the deceased, Gopal, much less to establish, that it is these accused-respondent persons, who are the accused for the homicidal death of deceased, Gopal, and/or disposal of the body, to conceal the offences. We find that the learned trial Court has considered the entire material on record threadbare, and we are at one with the findings recorded by the learned trial Court.

In view of the above, the petition for leave to appeal has no force and the same is, therefore, dismissed.

(MUNISHWAR NATH BHANDARI), J.

(N P GUPTA), J.