

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

CRAA No.15/2008

Date of Order:31.01.2019

State of J&K

v.

Subash Singh and another.

Coram:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE

Appearance:

For the Appellant/Applicant (s) : Mr. Suneel Malhotra, GA.
For the Respondent(s) : Mr. R.S.Thakur, Sr. Advocate with
Mr. Ashwani Thakur, Advocate.

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|-----|--|---|----------|
| i) | Whether to be reported in Digest/Journal/Media | : | Yes / No |
| ii) | Whether to be reported in Press/Media | : | Yes / No |

(Oral)

Gita Mittal-CJ

1. The instant appeal lays challenge to the judgment dated 29th November, 2007, whereby the respondents were acquitted of the charges of commission of offences under Sections 302/498-A RPC read with Section 3/5 of Dowry Restraint Act. The respondents in the instant case are the husband and mother-in-law of the deceased Madhu Kumari.

2. Police intervention in the matter commenced on 9th August, 2003 when a telephonic communication was received in Police Station, Akhnoor at 1605 hours from Akhnoor Hospital that a dead body has been brought to the hospital and immediate action was needed.

3. Head Constable, Mohd. Iqbal was deputed to the hospital for undertaking the necessary action. It appears that the dead body was lying in the hospital mortuary without anyone to attend her and cause of death could not be

ascertained. In this background, inquest proceedings in terms of Section 174 Cr.P.C. were initiated. The dead body was identified as that of Madhu Kumari and on the request of the parents of the deceased, post mortem was conducted at the Government Medical College, Jammu. A Board of three doctors conducted the autopsy on 11th August, 2003. The wearing apparels of the deceased were seized and the dead body was handed over to the legal heirs for last rites. It appears that Board of doctors concluded the cause of death as being “*asphyxia as a result of strangulation*”. Two injuries on the dead body i.e. a ligature mark of 1 cm placed horizontally over neck and swelling around left shoulder joint with fracture, dislocation of left shoulder joint present were noticed as being recent and ante mortem.

4. On the basis of the post mortem report, the police registered FIR No.145/2003 under Section 302 RPC. During investigation, the police took possession of the documents seized during inquest proceedings and collected the other evidence. The Investigating Officer concluded the complicity of the husband and mother-in-law, respondents herein, for commission of the offence under Sections 302/34 RPC. It appears that the investigation was also handed over to the Crime Branch.

5. During the investigation, it was found that the deceased was married to respondent No.1 on 11th November, 2002 and that on 9th August, 2003 when she died, she was eight months’ pregnant. The suggestion of an extra marital relationship of respondent No.1 was brought on record during investigation as also demand of costly luxury items from the deceased on the part of the respondents. The allegation of the deceased having been neglected by respondent No.1 was also taken on record by the Investigating Officer. During the investigation, the prosecution also seized a letter written in Hindi purported to be in the hands of the deceased. The respondent No.2 was subjected to a polygraph test during the investigation.

6. The police filed the charge sheet against the respondent No.1 under Section 302/498A of the RPC and Section 3/5 of the Dowry Restraint Act and sought leave to present supplementary charge sheet against respondent No.2 in terms of Sections 173(8) Cr.P.C., which was laid before the Court and both the charges were clubbed together.

7. Vide its order 15th of May, 2004, the trial court charged respondent No.1 with commission of offences under Sections 302/498A RPC read with Section 3/5 Dowry Restraint Act whereas respondent No.2 was charged with offences under Sections 302/498A/34 RPC read with Section 3/5 Dowry Restraint Act on 8th of May, 2004.

8. The respondents pleaded not guilty and claimed trial. During the trial, the prosecution examined as many as 37 witnesses.

9. After a careful consideration of the entire evidence led on the record, the trial court came to the conclusion that the prosecution had failed to bring home the guilt of the respondents and consequently vide judgment dated 29th November, 2007 acquitted them of the charges with which they were charged. This judgment of acquittal has been assailed by way of the instant appeal.

10. The record of the trial Court has been placed before us as also the paper book. We have carefully taken through the record of the trial Court by Mr. Suneel Malhotra, learned GA and Mr. R.S.Thakur, learned Senior Advocate appearing for the respondents. We have also perused the impugned judgment dated 29th November, 2007 and given our considered thought to the entire matter.

11. The case of the prosecution primarily rests on the testimony of the prosecution witness, namely, Nitu Jamwal, who was sister of the deceased and was expected to give truthful version of the incident. She was projected as an eye witness before the trial court. In this background, the trial court has given immense importance to the testimony of this witness.

12. This witness claims to have visited the matrimonial house of the deceased on 5th August, 2003 with some gifts when she found the respondents not interested in anything less than a car. After visiting the matrimonial house of the deceased, the witness visited her uncle's house at Domana, Jammu. Before returning to her father's house on 9th August, 2003, she decided to again visit the matrimonial house of the deceased in Akhnoor. She reached the house of the accused at about 10.30 a.m., when she found the doors open. Upon hearing screams of the deceased from inside, she claims to have rushed hurriedly and found the door of the respondent No.1 closed. She pushed the door and found that while respondent No.2 had caught the legs of the deceased and respondent No.1 was pressing her throat. She claims to have run out of the house to save her life as respondents wanted to kill her as well. She has testified all details of her return journey to her uncle's house. She admits that she did not tell her uncle anything about the incident and that she remained in her uncle's house till 10th August, 2003, maintaining complete silence about the incident.

13. Before examining the prosecution evidence, let us dwell upon the journey taken by PW Nitu Jamwal on 9th August, 2003, between Akhnoor to her uncle's house at Domana. This witness testified that she waited for about one hour at Akhnoor Bridge before undertaking the journey to her uncle's house at Domana. Shockingly, the witness claims to have witnessed the incident in which her real sister was killed/murdered but she neither raised any alarm nor she tried to save her sister. Even if, she fled from the house of the respondents, she did not make any effort to bring help for her sister.

14. The witness does not disclose to any person that her sister's life is in danger nor she bothered to telephone her parents or uncle to seek help for her sister. It has also come on record that on 10th August, 2003, she told her parents that her sister has been killed without revealing that who had killed her. The said details

are alleged to have been disclosed by her on 11th or 12th August, 2003. The next revelation by Nitu Jamwal was on 29th August, 2003 when her statement was recorded by the police under Section 161 Cr.P.C.

15. The conclusion of the trial court in so far as the testimony of Nitu Jamwal is concerned, is supported by analysis of the remaining evidence before the trial court. When Nitu Jamwal's statement is read against the testimony of her uncle-Dhananter Singh, in whose house she resided between 5th August, 2003 to 10th August, 2003, Mr. Dhanater Singh was the first person in whose contact Nitu Jamwal came after witnessing the incident. Dhananter Singh was a close relative and there is no explanation at all as to why the witness did not reveal to him what she had seen. Even if, she fell unconscious as claimed, but upon recovery of consciousness nothing stopped her from revealing the incident which was actually a serious criminal offence in which her sister allegedly lost her life.

16. It is in the evidence that the family members of the deceased including Dhananter Singh came to know about her death on the same day before 6 p.m. from the police authorities. Nitu Jamwal maintained silence throughout this period. It is also in the evidence that the parents of the deceased and Nitu Jamwal had reached Akhnoor Hospital on 9th August, 2003 itself. If Nitu Jamwal had witnessed the incident, her silence till 11th or 12th August, 2003 becomes even more ominous.

17. Sh. Dev. Raj Singh, father of Nitu Jamwal and deceased has also stated in his evidence that Nitu Jamwal revealed the entire episode on 12th August, 2003.

18. The learned trial judge has analyzed the testimony of Nitu Jamwal in great detail in paras 42 to 45 of the judgment impugned and found it completely unbelievable.

Clearly, if Nitu Jamwal had actually witnessed the respondents murdering her real sister, it is unbelievable that she would have reacted in the manner in

which she had reacted without raising any alarm and maintaining complete silence, even from her parents for more than two days. The learned trial judge has also analysed the testimony of this witness and taken note of the improvements in material particulars vis-a-vis her statement recorded by the police under Section 161 Cr.P.C. is concerned.

19. Perusal of the record would show that other than the testimony of Nitu Jamwal, there is not a bit of evidence to connect the respondents to the incident in which Madhu Kumari lost her life.

20. It has been pointed out by Mr. R.S.Thakur, learned senior counsel appearing for the respondents that the record contains a suggestion of recovery of nylon rope which was used to strangle the deceased.

21. We may also note that the prosecution story propounded before the trial court that the respondents strangled the deceased with a nylon rope, which claims to have been recovered from the room of the deceased. This recovery was effected from the room without any effort and concealment by the respondents long after the alleged incident. Further this theory was belied by the prosecution witness Nitu Jamwal, cited as lone eye witness, who claimed that respondent No.1 had pressed throat of the deceased with one hand and gagged her mouth with the other hand.

22. The nature of the ligature mark of 1 cm placed horizontally as noted in the postmortem report suggests that it is a case of suicide and not homicidal death of the deceased Madhu Kumari. However, given the fact that no evidence of commission of offence with which the respondents were charged has been pointed out to us, it is unnecessary for us to dwell on this aspect of the matter in this appeal against acquittal.

23. An important piece of evidence which has been discussed at length in the impugned judgment is a letter in Hindi written by the deceased, which was seized

by the Investigating Officer through seizure memo EXPWMI/8, wherein the deceased had written that she was happy in her matrimonial home and was loved by the respondents. The trial Judge has observed that this letter shows that the deceased was loved by her in-laws, however, she was unable to adjust. The deceased did not have any grievance at all against the respondents. This letter has been treated as evidence of the cordial atmosphere in the house of the respondents.

24. In this background, the learned trial judge has rightly concluded that the prosecution has failed to bring home the guilt of the accused/respondents.

25. So far as evidence led by the prosecution in support of the charge of demand of dowry is concerned, the trial judge has concluded that the witnesses have not made disclosure of any such demand in their statement before the police. No complaint was ever made either by the deceased or her relatives at any point of time prior thereto. The demand of dowry by the respondents was projected for the first time before the Court.

26. In the pronouncement of Supreme Court in **Ram Swaroop and others Vs. State of Rajasthan**, (2004) 13 SCC 134, the Supreme Court observed thus:-

“25
.....It is well settled that if two views are reasonably possible on the basis of the evidence on record, the view which favours the accused must be preferred. Similarly it is well settled that if the view taken by the trial court while acquitting the accused is a possible, reasonable view of the evidence on record, the High Court ought not to interfere with such an order of acquittal merely because it is possible to take the contrary view. It is not as if the power of the High Court in any way is curtailed in appreciating the evidence on record in an appeal against acquittal, but having done so, the High Court ought not to interfere with an order of acquittal if the view taken by the trial court is also a reasonable view of the evidence on record and the findings recorded by the trial court are not

manifestly erroneous, contrary to the evidence on record or perverse.”

(Emphasis supplied)

27. The above principle was reiterated in ***State of Rajasthan Vs. Raja Ram***, (2003) 8 SCC 180, the Supreme Court has held as follows:-

“11. The decision taken by this Court in the aforementioned case, has been further reiterated in State of Rajasthan v. Raja Ram, (2003) 8 SCC 180, wherein this Court observed thus:

*“Generally the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence in a case where the accused has been acquitted, or the purpose of ascertaining as to whether any of the accused committed any offence or not. (see *Bhagwan Singh v. State of M.P.*) **The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference.**”*

(Emphasis supplied)

28. Again in (2009) 12 SCC 629, ***Vijay Kumar Vs. State by Inspector of Police, Madras and another***, the Supreme Court summed up the legal position as follows:-

“12. The principles which have been set out in innumerable cases have been reiterated as under:-

(1) In an appeal against an order of acquittal, the High Court possesses all the powers, and nothing less than the powers, it possesses while hearing an appeal against an order of conviction.

(2) The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and finding in place of the findings recorded by the trial court, if the said findings are against the weight of the evidence on record, or in other words, perverse.

(3) Before reversing the findings of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reason for not accepting those grounds and not subscribing to the view expressed by the trial court that the accused is entitled to acquittal.

(4) In reversing the finding of acquittal, the High Court has to keep in view the fact that the presumption of innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favour by the trial court.

(5) If the High Court, on a fresh scrutiny and reappraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted.

(6) The High Court has also to keep in mind that the trial court had the advantage of looking at the demeanour of witnesses and observing their conduct in the Court especially in the witness- box.

(7) The High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the accused.”

29. It is thus well settled law that this Court while hearing an acquittal appeal can re-appreciate the evidence, however, it should not interfere with the order of acquittal if the view taken by the trial court is also a reasonable view of the

evidence on record and the findings recorded by the trial court are not manifestly erroneous, contrary to the evidence on record or perverse.

30. The judgment of the trial court and the present appeal has to be tested on these principles.

31. It is trite that in cases where the evidence is of circumstantial nature, the circumstances from which the conclusion is to be drawn should in the first instance be fully established and circumstances should be of conclusive nature wherein the possibility of any person other than the accused being the author of the crime becomes impossible.

32. A heinous and serious crime has been committed in this matter in which a lady has lost her life. But the prosecution in the present case has failed to lead any reliable and credible evidence to establish chain of circumstances, let alone unbroken, in which she lost her life or that the accused-respondents are responsible for the commission of the offences. Nothing at all is pointed out to us from the trial court record which would enable us to hold that the findings and the conclusion of the trial court judgment to the effect that the prosecution had failed to bring home the guilt of the respondents for the commission of offences were erroneous, overlooked material evidence, were contrary to the record or perverse on any count.

For all these reasons we do not find any reason to interfere with the findings rendered in the judgment of the learned trial Judge.

This appeal is, accordingly, dismissed.

(Tashi Rabstan)
Judge

(Gita Mittal)
Chief Justice

Jammu
31.01.2019
Vinod.