

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Criminal Appeal No. 165/2021

Rupi W/o Lt. Sh. Jeewa Ram, Aged About 56 Years, Pratapgarh Sadari, Teh. Desuri, Dist. Pali At Present Residing At Bhuti Kawla, Teh. Ahore, Dist. Jalore.

----Appellant

Versus

1. State Of Rajasthan, Through PP
2. Dudiya @ Duda Ram S/o Sh. Puna Ram, Pratapgarh Sadari, Teh. Desuri, Dist. Pali.

----Respondents

For Appellant(s)	:	Mr. Raju Ram Panwar
For Respondent(s)	:	Mr. M.A. Siddiqui, GA-cum-AAG with Mr. B.R. Bishnoi, AGC Mr. S.K. Maru

**HON'BLE MR. JUSTICE SANDEEP MEHTA
HON'BLE MR. JUSTICE VINOD KUMAR BHARWANI**

J U D G M E N T

Judgment pronounced on ::: **30/06/2022**

Judgment reserved on ::: **04/05/2022**

BY THE COURT : (PER HON'BLE MEHTA, J.)

The appellant Smt. Rupi in capacity of the victim has filed the instant appeal under Section 378 Cr.P.C. against the judgment of acquittal dated 30.06.1999 passed by learned Addl. Sessions Judge, Bali, District Pali in Sessions Case No.28/1999 as the victim of the case.

Brief facts relevant and essential for the disposal of the appeal are noted hereinbelow:-

The prosecution case involves murder of Jeewa, husband of the appellant herein. The incident took place on 09.12.1992 in the village Pratapgarh Jhupa Sadri, District Pali. The FIR No.95/1992 came to be lodged on 11.12.1992 by Rataram S/o Shri Punaji Baori, brother of the deceased, alleging *inter alia* that on 09.12.1992 at 10:00 AM, he and his brother Jeewa (the deceased) were sitting at their home. His brother Dudiya arrived there with a lathi and started hurling abuses insinuating that his (the informant's) cattle were entering the fields and were causing damage to the crops. He also raised a grievance that he was not being allowed to irrigate his field from the well and thus, he would kill the informant. The informant came out of the house and tried to appease Dudiya but he inflicted a lathi blow on his head. Jeewa rushed to save him on which, Dudiya gave two blows of the lathi, one on the neck and one on the back due to which, Jeewa fell down, unconscious. Jeewa's wife, Jeewa's son Heera, wives of informant's brothers Vena & Lala and his mother came there and intervened to save them. The incident was also witnessed by Jassa S/o Shri Roda Baori. They took Jeewa inside the house. No external bleeding was visible and thus, they thought that Jeewa would recover but he did not regain consciousness upon which he was taken to Sadri Hospital. There, they told the doctor that Jeewa had been hit by a bull because the incident was their internal family affair. Jeewa was treated in the hospital for two days but he did not recover and passed away at night. Thereafter, Rataram approached the Police Station and lodged the FIR with

the above allegations. The accused Dudiya absconded immediately after the incident. The dead body of Shri Jeewa was subjected to postmortem at the Primary Health Centre, Bali and the medical jurist issued a postmortem report opining that cause of death of Shri Jeewa Ram was coma as a result of head injury. On opening the scalp, the doctor noticed extradural haematoma on left fronto parietal lobe of the brain with fracture of right parietal bone admeasuring 5 x 1/2 inches long starting middle (top) coming towards right ear, both the tables of bone fractured.

Statement of the appellant herein was recorded under Section 161 Cr.P.C. during the course of investigation and she gave positive evidence to the effect that she saw her brother-in-law Dudiya assaulting her husband with a lathi. Her husband became unconscious and fell down on the spot. His mother-in-law and other family members convinced her that it was a family affair and that Jeewa would recover and thus, they should not file a report. Jeewa was taken to the hospital and there too, a false information was given that he had been hit by a bull. However, her husband expired because of the injuries whereafter, she persuaded her brother-in-law to go to the police station for lodging the report.

Since the accused Dudiya had absconded, charge-sheet was filed against him in abscondance by virtue of Sections 82 & 83 Cr.P.C. The accused could be apprehended after nearly seven years of the incident i.e., 05.05.1999. In the meantime, the appellant herein had shifted to her father's village.

After committal, the learned Addl. Sessions Judge, Bali framed charge for the offence punishable under Section 302 IPC against the accused Dudiya @ Duda Ram. He pleaded not guilty and claimed trial. The trial court seems to have proceeded with trial just as an empty formality. Charge was framed on 09.06.1999 and on the very same day, witnesses were summoned through bailable warrants. On 14.06.1999, Rambha (PW.1), Dariya (PW.2) and Heera (PW.3) were examined and all were declared hostile as they did not support the prosecution case. Report was received on summon issued to Rataram, that he had passed away. On 15.06.1999, statements of the witnesses Bheraram (PW.4) and Mohan (PW.4) were recorded who also did not support the prosecution case and were declared hostile. The trial court noted that report received on the bailable warrant issued against Rupī, wife of deceased Jeewa indicated that she was not available at the given address. Jassaram appeared on 15.06.1999 and his statement was recorded as PW.6 on the same day. He too did not support the prosecution case and was declared hostile. On 28.06.1999, the trial court recorded an ordersheet and issued a bailable warrant to the SHO Police Station Sadri instructing him to get the same served on the witness and a note was appended that if warrant was not executed, the prosecution evidence would be closed and the matter was posted on 30.06.1999. On that date, the trial court recorded that ample efforts had been made to summon the remaining witnesses and thus, the prosecution evidence was closed. Statement of accused Dudiya was recorded under Section 313 Cr.P.C. on 30.06.1999 and he was acquitted by judgment delivered on the very same day. The appellant herein being the victim of the case having lost her husband owing to the

brutal assault, came to know about the fact of acquittal of Duda Ram @ Dudiya almost 21 years later upon which, she has approached this Court by way of this appeal under Section 378 Cr.P.C. with an application for condonation of delay. Notice of the application under Section 5 of the Limitation Act was issued to the respondent accused Duda Ram @ Dudiya which was received after due service but no one appeared on his behalf and thus, vide order dated 22.03.2022, delay was condoned. Final arguments were heard on 04.05.2022.

Shri Raju Ram Panwar, counsel representing the appellant advanced various arguments to assail the impugned judgment. He urged that the respondent No.2 was a politically powerful man and was having strong influence on the police officials. He murdered his own brother Jeewa, husband of the appellant in the year 1992 and absconded immediately thereafter and could be apprehended after nearly seven years of the incident. In the meantime and faced with hostilities after the brutal murder of her husband, the appellant herein was compelled to leave the matrimonial home and started living at her parental home in the village Bhuti Kawla, Tehsil Ahore and District Jalore. The accused-respondent was arrested on 05.05.1999. The case was committed to the Court of Addl. Sessions Judge, Bali on 26.05.1999 and the accused was directed to remain present in the Court of Addl. District & Sessions Judge, Bali on 09.06.1999. On that date, the trial court framed charge against the respondent accused and directed summoning of the witnesses. The entire procedure of summoning witnesses and recording their evidence was completed in a slipshod and hasty manner and the evidence of prosecution was closed on

30.06.1999 within a period of 23 days from the date on which, the case was received after committal. The trial court made an empty formality of trying to summon the appellant for giving evidence. The appellant herein was twice summoned throughailable warrants. The trial court did not even care to wait for the report of the police officers on theailable warrants. Neither the medical jurist who conducted postmortem nor the SHO, Police Station Sadri who conducted investigation were summoned even once for recording their evidence. The trial court made no effort to get the FIR proved and acting in an absolutely hasty and unjust manner, the trial court proceeded to acquit the accused respondent without giving proper opportunity to the prosecution for leading evidence. The influence of the accused is writ large on the face of the record because despite these glaring facts, the learned Public Prosecutor did not give any opinion for challenging the judgment of acquittal. The trial court acted with undue haste and acquitted the accused without taking care to record the statements of the material witnesses. The prosecution evidence was closed for absolutely unfounded reasons. He relied upon the Supreme Court judgments in the case of **Zahira Habibullah Sheikh and Ors. vs State of Gujarat & Ors.** reported in **AIR 2006 SC 1367** and **State of Haryana vs. Ram Mehar & Ors.** reported in **AIR 2016 SC 3942** and urged that the impugned judgment be set aside and the matter be remanded to the trial court for recording the evidence of all the material witnesses including the appellant, medical jurist and investigating officer and to pass a fresh judgment in accordance with law.

E converso, learned counsel Shri S.K. Maru representing the respondent accused opposed the submissions advanced by the appellant's counsel and urged that the trial court made all possible efforts to summon the prosecution witnesses. However, when no information was forthcoming regarding whereabouts of the appellant and other prosecution witnesses, the trial court was left with no option but to close the prosecution evidence and to proceed with the trial. Since the material prosecution witnesses including the eyewitnesses did not support the prosecution case, there was no reason for the trial court to have indulged in an empty formality by summoning the investigating officer and the medical jurist because even if the FIR, Charge-sheet and the postmortem report were to be proved, the accused could not have been convicted on account of lack of substantive evidence so as to prove his involvement in the crime. On these grounds, learned counsel Shri Maru implored the court to dismiss the appeal.

We have given our thoughtful consideration to the submissions advanced at bar and have gone through the impugned judgment and the original record.

A few glaring facts need to be noted for decision of this appeal. The incident involving assault on appellant's husband Jeewa took place on 09.12.1992. Since the assailant was none other than Dudiya, the real brother of the deceased, the family members avoided to report the matter at the initial stage thinking that Jeewa would recover. However, when Jeewa did not regain consciousness, the appellant herein persuaded the family members to take Shri Jeewa to the hospital. There also, the family

relations came to fore and wrong information was given that Shri Jeewa had been hit by a bull. Nonetheless, as Jeewa did not survive the assault and passed away, the appellant's pleas were finally heard and Rataram, another brother of Jeewa and Dudiya, proceeded to lodge the report (not marked) at the Police Station Sadri on 11.12.1992. After the assault, the accused absconded from the village. The investigating agency made formal efforts to arrest him. Finally, he could be apprehended on 05.05.1999 i.e., after nearly seven years of the incident. The case was committed to the Court of Addl. Sessions Judge, Bali where absolutely lackadaisical proceedings were undertaken by the learned Addl. Sessions Judge, Bali as discussed hereinabove which by itself makes it clear that the manner in which the trial was undertaken was absolutely perfunctory and it seems that that the trial court was pre-determined to acquit the accused after undertaking an empty formality of farcical proceedings. Neither the investigating officer was summoned nor the medical jurist. The eyewitnesses Rambha (PW.1), Dariya (PW.2) and Heera (PW.3) who were close family members naturally did not support the prosecution case and were declared hostile. A charade was made of summoning the appellant herein being a material eyewitness and bailable warrants were issued to secure her presence. Initially, by order dated 15.06.1999, the trial court issued the bailable warrant to the SHO Police Station Ahore for summoning the appellant whereas the incident took place within the jurisdiction of Police Station Sadri. This fact by itself fortifies the contention of the appellant's counsel that the appellant had shifted to her parental home in Bhuti Kawla, Tehsil Ahore after the incident and that the Public Prosecutor was aware of this fact. However, the trial court did not

make any effort to procure a proper report regarding execution of bailable warrant forwarded to the SHO PS Ahore for securing presence of the appellant. The bailable warrants were neither received back nor any report was summoned from the SHO Police Station Ahore. On the next date i.e., 28.06.1999, bailable warrant was issued through the SHO PS Sadri for summoning the appellant herein. The time given for execution of the bailable warrant was just two days. The trial court did not even wait to receive a report of the bailable warrant and closed the prosecution evidence on 30.06.1999 and proceeded to acquit the accused for lack of evidence by judgment dated 30.06.1999.

On a bare consideration of the facts narrated above, it becomes apparent that the manner in which, the trial was undertaken by the trial court was absolutely a sham and capricious. In a case involving grave charge of murder, the trial court made a sheer empty formality of securing presence of the material eyewitness Rupi being the wife of the deceased Jeewa. The accused respondent had remained absconding for almost seven years. We are of the firm view that the approach of the learned Presiding Officer in acting with rank hot haste and acquitting the accused without making sincere endeavour to summon the material prosecution witnesses was atrocious and borders on the fringe of being a collusive proceeding. Hon'ble the Supreme Court, has time and again held that the trial court should not act as mute spectator and if the parties fail to lead proper evidence, it should exercise its judicial discretion and record material evidence so as to ensure that true justice is done. The Presiding Officer in this case, acted totally contrary to the norms

of fair trial and was hell-bent upon acquitting the accused at any cost.

The impugned judgment dated 30.06.1999 is perverse and arbitrary on the face of the record and hence, is hereby reversed and set aside and the case is remanded to the trial court for conducting *de novo* trial by examining all material witnesses including the appellant. The accused Dudiya @ Duda Ram shall be forthwith taken into custody and shall be presented in the trial court within next fifteen days. The original record shall be returned to the court of Addl. Sessions Judge, Bali who shall conduct day to day proceedings and conclude the *de novo* trial against the accused as directed above within a period of two months from the date of recommencement of the trial.

The appeal is allowed accordingly.

(VINOD KUMAR BHARWANI),J

Sudhir Asopa/-

(SANDEEP MEHTA),J

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