

Sudha Rani Vs. State and anr.

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Court : Delhi

Decided On : Jan-21-2014

Judge : Indermeet Kaur

Appellant : Sudha Rani

Respondent : State and anr.

Judgement :

* % + IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Judgment:21.01.2014. CRL.A. 900/2013 SUDHA RANI Through Appellant Mr.Suresh Chander Jha, Adv. along with Mr. Amit Rao, brother of the appellant. versus STATE & ANR. Through Respondents Ms. Kusum Dhalla, APP along with SI Khajuri Khas. CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

(Oral) 1 The appellant is aggrieved by the acquittal order passed by the learned Sessions Judge dated 18.03.2013 acquitting the accused Rupesh Kumar of the charge under Section 376 of the IPC. 2 The story as unfolded is that the prosecutrix was married to the accused on 11.02.2004. On 15.03.2007, they were granted a divorce by a decree of mutual consent. This is also an admitted fact. This document was signed by both the parties. The contention of the prosecutrix was that this document had been obtained by her husband by fraud. Further submission of the prosecutrix being that after the date of divorce, she was forced to live in her husbands house wherein he committed rape upon her against her

wishes. It was on 28.06.2007 that she went to her parents home she was in a position to inform her parents about this unfortunate incident. Charge-sheet was filed in the aforementioned terms. 3 The trial Court noting the evidence which had come on record which primarily was the statement of the prosecutrix (examined as PW-1) as also the deposition on oath of her brother (examined as PW-4) had held that this is not a case where the conviction of the accused can be ordered as the prosecution has faulted in proving its case to the hilt. The reasons drawn up by the Court for arriving at this conclusion read herein as under:

The reasons which support my conclusion are firstly, that testimony of prosecutrix is not consistent, reliable and trustworthy. Conversely, I find that she avoided to answer most relevant questions for example, in cross examination she stated that she did not know if she had taken Rs.50,000/- from the accused on 15.02.2007 in the presence of her brother and Sh. V.K. Azad Advocate. She could not reply that after taking that amount of Rs.50,000/- from the accused she appeared in the court of Sh. Deepak Jagotra, Ld. ADJ, and made her statement at the time of first motion in her petition for divorce by mutual consent. She could not reply that after 15.02.2007 she went to her parental home with her brother Sh. ____Y____. She further could not reply that on 15.03.2007 she again came to the court alongwith her brother and a sum of Rs.20,000/- were handed over to her brother by the accused in presence of Sh. N.K. Chaudhary, Advocate, or the statement recorded in the court on 15.02.2007 and 15.03.2007 were read over to her and she signed the same voluntarily in her full consciousness or that she did not file any appeal against the decree of divorce obtained by the accused. She could not tell the date, month or year when she came to know first time as to when accused had taken divorce from her. On the basis of such type of evidence, it would be highly unsafe to hold that prosecution has proved its case beyond reasonable suspicion and shadow of doubt.

16. Secondly, she admitted almost defence of the accused in her statement for example, she admitted her signatures on documents Ex.PW1/DA and that her brother ____Y____ was an advocate and that the matter was compromised in the office of ACP, North East and that it was settled due to the efforts made by Advocate Chaman Singh and that she did not tell any neighbour that she was

forcibly confined at the matrimonial home and that she was threatened not to disclose the same. She admitted that she did not file any appeal against the decree of divorce. This has further created reasonable suspicion and shadow of doubt in the truthfulness of the prosecution case.

17. Thirdly, brother of prosecutrix, namely PW4 ____Y____ also admitted some of the facts which create doubt about the truthfulness of the prosecution case. For example, he did not dispute the decree of divorce Mark 4-C/Ex.PA which bears signatures of counsel Sh. V.K. Azad and Sh. Harswaroop. He also admitted that Mark A, i.e. delivery receipt was signed by him at point A. He further admitted that during a period a notice u/s 107/150 of the Code was obtained and on 13.08.2007 during compromise, Rs.70,000/- alongwith the dowry articles were returned on 13.08.2007, vide receipts Ex.PW1/DA and Mark D was signed by him at point B. He also admitted his signatures on Ex.PW1/DA at point B. He further stated that this document was not correct but he could not tell as how this document was not correct. He also admitted that, that document was signed by Sh. V.K. Azad in his presence. He also identified signature of his sister, the prosecutrix, at point A on the document. He further stated that no separate complaint was filed on 13.10.2007. He came to know about obtaining divorce by accused from his sister by cheating on 28.06.2007 but he did not challenge it. No reason or explanation has been given as to why the decree of divorce which was allegedly obtained by playing fraud was not challenged. He could not deny the suggestion that his sister appeared in the court at the time of first motion and second motion of the divorce. Thus, the testimony of PW4 brother of the prosecutrix, instead of supporting the case of the prosecutrix, to some extent supported the case of the defence. It has further created doubt in the truthfulness of the prosecution case.

18. Fourthly, the accused has examined Sh. Vipin Kumar as DW1. He is a practicing lawyer at Karkardooma Courts who filed first and second motion of petition of divorce on mutual consent. He proved each and every document and stated that on 15.02.2007, Rs.50,000/- were paid by accused Rupesh to his wife __X__ against a receipt Ex.PW1/DA which was also signed by him at point C and brother of prosecutrix ____Y____ Advocate at point B in his presence. He also stated that __X__ received all the dowry articles from the accused. On

15.03.2007, brother of Smt. ___X___ namely ___Y___ received Rs.20,000/- in his presence as well as in the presence of Sh. N.K. Chaudhary at the time of second motion against receipt Ex.PW1/Mark X and Sh. ___X___ signed it at point B. The said receipt was prepared and signed with free will and consent. Prosecutrix and accused appeared before the Court and their statements were recorded by Sh. Deepak Jagotra Ld. ADJ and thereafter, petition for mutual consent was granted. In cross examination of this witness nothing has come out which could create doubt in the truthfulness of the testimony of DW1. Besides, the evidentiary value of DW1 is equivalent to testimony of PW1 as per principles of law laid down in case Pradeep Saini & Anr. v. State, 2010 IV AD (Delhi) 232, wherein the Delhi High Court observed that:

51. Depositions of witnesses, whether they are examined on the prosecution side or defence side or as court witnesses, are oral evidence in the case and hence the scrutiny thereof has to be without any predilection or bias. No witness is entitled to get better treatment merely because he was examined as a prosecution witness or even as a court witness. It is judicial scrutiny which is warranted in respect of the depositions of all witnesses for which different yardsticks cannot be prescribed. As observed by Supreme Court in the decision reported as Dudh Nath Pandey Vs. State of UP AIR 1981 SC911.....Defence witnesses are entitled to equal treatment with those of the prosecution; and courts ought to overcome their traditional instinctive disbelief in defence witnesses.....

19. Fifthly, the testimony of PW6 mother of prosecutrix, is of hearsay in nature. Nothing was happened in her presence. In cross examination, she stated that her daughter did not disclose that she had taken Rs.70,000/- in lieu of divorce. She explained that she might have told this fact to his son i.e. PW4. Subsequently, she stated that her daughter disclosed the incident in the evening before all the family members. This statement is quite contradiction of testimony of PW4 who stated that on 28.06.2007 his sister came to his house and at that time she was very will. She was crying on reaching his house and they asked her as to what had happened. For sometime she remained silent and thereafter, his mother made inquiries from the prosecutrix and she replied that accused had fraudulently obtained divorce from her. Thus, testimony of PW6 also could not prove the case

of the prosecution beyond reasonable suspicion and shadow of doubt.

20. Sixthly, the testimony of remaining witnesses are formal in nature. For example, PW2 proved only copy of FIR as Ex.PW2/A and copy of rukka as Ex.PW2/B. PW5 is doctor who proved the MLC of the prosecutrix who was examined by another Dr. Upasana. PW7 is the Head Constable in whose presence accused was arrested and his medical examination was conducted. Arrest memo Ex.PW7/B, seizure memo Ex.PW7/C and personal search memo Ex.PW7/D and divorce paper seized vide seizure memo Ex.PW7/E. PW2 is I.O. Thus in the absence of incriminating, reliable and trustworthy testimonies of eye and material witnesses, the testimonies of these formal witnesses will not be helpful in proving the case of the prosecution.

21. Seventhly, my attention goes to a case reported as Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984 SC1622 wherein it was inter alia held by Apex court that:

It is well settled that where on the evidence two possibilities are available or open, one which goes in favour of the prosecution and the other which benefits an accused, the accused is undoubtedly entitled to the benefit of doubt.

The principles of law laid down in above case are applicable on the facts of present case and therefore, it is held that accused is entitled to get benefit of doubt as in the present case two views, one, leads to his innocence and another leads to his involvement in the crime are possible.

22. Eighthly, the accused has succeeded in creating doubt in prosecution case so, he is entitled to get benefit of doubt.

23. My decision finds support by the case Ajmer Singh and another v. State of Haryana, II-1989(1) Crimes 424, it was held by P&H High Court that:

It is not necessary for the accused to substantially prove their plea. Suffice it to say that if the accused succeeds in creating a doubt, they would be entitled to benefit of it.

24. Lastly, it is one of the basic principles of criminal jurisprudence that let hundreds of criminal may go unpunished but one innocent person should not be punished. It would be just fair and appropriate, if accused is given benefit of doubt as the prosecution has failed to prove its case against him beyond any reasonable suspicion or shadow of doubt.

4 Today also before this Court a specific query has been put to the learned counsel for the appellant who has been assisted by the brother of the accused (in person) as to when they were notified about the divorce between his sister and accused. His submission is that they learnt about this divorce on 28.06.2007 from his sister; thereafter admittedly the motor-cycle which had been given in the wedding had been transferred in the name of the brother of the prosecutrix. Testimony of PW-4 in this regard is also relevant. In his deposition he stated that he does not know/remember when his sister was divorced; since the dowry articles had not been received back, they approached an Advocate who had stated that they will work out a solution; complete dowry articles were thereafter returned on 13.08.2007 and a compromise was arrived at vide which Rs.70,000/- had also been paid; the kalandra proceedings which were pending between the parties under Sections 107/150 of the Cr.PC had also been compromised. He admitted that his sister did not meet him since 15.03.2007 (date of alleged divorce) up to 28.06.2007. He also could not tell whether his sister had taken divorce by mutual consent or not. 5 The documents on record clearly show that the proceedings sheets of the first motion and second motion under Sections 13-B (1) and 13-B (2) of the Hindu Marriage Act had been signed by the prosecutrix. On a specific query as to whether she had taken Rs.50,000/- at the time of divorce, PW-1 had given evasive answer. She had stated that she is not sure. Apart from Rs.70,000/-, another sum of Rs.50,000/- (as per the version of PW-4) had also been paid over to them on 13.08.2007. 6 It would also be difficult to imagine that the parents of the victim who were otherwise well versed with the welfare of the prosecutrix (rightly so) had not met their daughter between March, 2007 up to 28.06.2007 especially when parties were living close by; the matrimonial home of the parties was at Tukmirpur Extension and the parental home of the prosecutrix was at Karawal Nagar. 7 The parameters for interference in the order of acquittal are confined. It is only if there is a total illegality or perversity pointed out that the

fact findings returned by the acquitting Court can be interfered with. The following guidelines are useful and are extracted herein as under:

It is obvious that appeal against acquittal is considered on slightly different parameters compared to an ordinary appeal preferred to this Court. When an accused is acquitted of a criminal charge, a right vests in him to be a free citizen and this Court is very cautious in taking away that right. The presumption of innocence of the accused is further strengthened by the fact of acquittal of the accused under our criminal jurisprudence. The courts have held that if two views are possible on the evidence adduced in the case, then the one favourable to the accused, may be adopted by the Court. However, this principle must be applied keeping in view the facts and circumstances of a case and the thumb rule is whether the prosecution has proved its case beyond reasonable doubt. If the prosecution has succeeded in discharging its onus, and the error in appreciation of evidence is apparent on the face of the record then the Court can interfere in the judgment of acquittal to ensure that the ends of justice are met. This is the linchpin around which the administration of criminal justice revolves. It is a settled principle of criminal jurisprudence that the burden of proof lies on the prosecution and it has to prove a charge beyond reasonable doubt. The presumption of innocence and the right to fair trial are twin safeguards available to the accused under our criminal justice system but once the prosecution has proved its case and the evidence led by the prosecution, in conjunction with the chain of events as are stated to have occurred, if, points irresistibly to the conclusion that accused is guilty then the Court can interfere even with the judgment of acquittal. The judgment of acquittal might be based upon misappreciation of evidence or apparent violation of settled canons of criminal jurisprudence.

8 Tested on this touchstone, the impugned order calls for no interference. Appeal is without any merit. Dismissed. **INDERMEET KAUR**, J JANUARY21 2014 A

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