

Mala Ram Vs. State and ors

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Court : Rajasthan Jodhpur

Decided On : Jul-02-2014

Appellant : Mala Ram

Respondent : State and ors

Judgement :

D.B.Cr.

Appeal No.1029/2013 1 IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN AT JODHPUR

JUDGMENT

Mala Ram versus The State of Raj.

D.B.Criminal Appeal No.1029/2013 under Section 372, Criminal Procedure Code against the judgment dated 23.10.2013 passed by Addl Sessions Judge Sujangarh, District Churu in Sessions Case No.16/2006(20/2007).Date of Judgment : 02.7.2014.

PRESENT HON'BLE Mr.GOVIND MATHUR,J.

HON'BLE Mr.ATUL KUMAR JAIN, J.

Mr.G.R.Punia, Sr.Advocate assisted by Mr.Dinesh Gyani for the appellant.

Mr.J.P.Bhardwaj, Public Prosecutor for the State.

REPORTABLE BY THE COURT(Per Hon'ble Mr.Jain,J.).In this appeal, which has been filed by Mala Ram, who is brother of deceased Ram Narain, against the judgment dated 23.10.2013 passed by Addl.

Sessions Judge, Sujangarh, District Churu in Sessions Case No.16/2006(20/2007) titled as State of Rajasthan versus Bheeka Ram & ors., whereby that court has acquitted all the three accused- respondents from the charges of Sections 302, 302/34, 436, 436/34, 201 and 201/34, Indian Penal Code.

Accused-respondent Smt.

Lichhma Devi wife of deceased Ram Narain and accused-respondent Bheeka Ram and Nanu Ram are real brothers of Smt.

Lichhma Devi.

As per the prosecution story, there was a dispute regarding registry of sale-deed D.B.Cr.

Appeal No.1029/2013 2 of a Well (a source of irrigation) and in the charge-sheet it was mentioned that the deceased Ram Narain was interested to get the sale-deed of Well registered in the name of his mother, while both of his brothers-in-laws were pressing him to get the registry executed in the name of his wife Smt.

Lichhma Devi and it was further mentioned in the charge-sheet that because of this dispute, Smt.

Lichhma Devi wife of Ram Narain and her two brothers had burnt the hut of Ram Narain in which he was sleeping and so he expired because of the burn injuries.

The trial court has not relied upon the prosecution story and on the other hand, the defence story was held plausible in which it was mentioned that during the fits of insanity of Ram Narain, he himself negligently, caught fire from a kerosene lamp lying in his hut and then he succumbed because of the burn injuries.

In the appeal, complainant Mala Ram, who was examined as PW-9 before the trial court, has alleged that Ram Narain was not suffering from any psychiatric disorder and he could not have burn his hut (Jhopara).The memo of appeal further mentions that benefit of doubt should not have been extended to the accused-respondents and it has further been argued that Khima Ram, Shrawan and Kamal Dara etc.were the eye-witnesses of the incident and so the accused- respondents should be punished for the charges of murder of Ram Narain.

D.B.Cr.

Appeal No.1029/2013 3 The State has not filed any appeal against the impugned judgment of acquittal passed by the trial court and so in this appeal, the learned Public Prosecutor has said nothing for or against the impugned judgment.

We have heard the arguments of the appellant in detail, but we are not convinced with the arguments submitted on behalf of the appellant.

He states that all the three accused-respondents along with two or three unknown persons were involved in the incident of causing fire to the hut at about 3 a.m.in the morning.

He states that Khinva Ram had sent Lichhman Ram to him who told him about the incident.

He admits that he had not seen any of the accused- respondents causing fire in the hut of his brother.

He says that Khinva Ram had told him that all the three accused-respondents have burnt the hut of Ram Narain causing his death.

He says that it is wrong to say that Ram Narain in a drunken state had forgotten to switch off the kerosene lamp and because of that kerosene lamp, the hut was burnt causing death of Ram Narain.

He has given no explanation about the fact that why the report under Section 174, Cr.P.C.lodged with the police contains the fact of suicide only and not a case of murder and why the FIR was lodged with a delay of one and half months.

Khinva Ram had been examined as PW-5 by the prosecution in the court below.

Khinva Ram states that he is relative of deceased Ram Narain and Lichhman Ram is also relative of deceased Ram Narain.

He states that Hari Ram and Mala Ram were real brothers of D.B.Cr.

Appeal No.1029/2013 4 deceased Ram Narain.

He admits that Ram Narain used to have a kerosene lamp in his hut.

He has not been able to give any reason that why the factum of offence allegedly committed by accused- respondents was not narrated in his police statement Ex.D.1.

FIR No.73/2006(Ex.P.23) was lodged at Police Station, Sandwa, District Churu on 27.9.2006 by Mala Ram, though Ram Narain had expired on 14.8.2006 and it means that there was a delay of one and half months in lodging of FIR.

This delay has not been explained by the police before us and this delay was not explained by the prosecution witnesses in the trial court also.

Ex.P.23 has been registered on the basis of a type-written report Ex.P.18 submitted by Mala Ram before the police and this report prima facie appears to be a report which has been prepared after legal consultation and it does not inspire truth.

Had Khinva Ram reached on the spot when Ram Narain was being burnt in his hut and if Khinva Ram had come to know that because Bheeka Ram and Nanu Ram were responsible for the fire, then he could have lodged an FIR charging the accused-persons with the offence of murder, but he kept mum for a long period of one and half months and even in the report Ex.D.4 lodged under Section 174, Criminal Procedure Code with the Police Station, Sandwa, it was nowhere mentioned that offence of murder was committed by wife and two brothers-in-law of deceased Ram Narain and in this report, only accidental burning of hut causing death of Ram Narain was mentioned which was not disputed by Khinva Ram or Lichhaman Ram D.B.Cr.

Appeal No.1029/2013 5 or Kamal.

In her statement under Section 313, Criminal Procedure Code, accused-respondent Smt.

Lichhma Devi had stated that during the fits of insanity, her husband earlier also caused fire in the crop lying in the agricultural field and Khinva am, Lichhaman , Shrawan and Kamal used to consume liquor in that hut in the company of her husband and when they were not allowed to do so by her, they used to get annoyed with her.

She has stated that these persons had committed theft also on an earlier occasion in her hut for which she was compelled to lodge an FIR also.

She says that the hut caught fire either by accident or by her husband's negligence because in the fits of insanity and during intoxication, he might have mis-handled the kerosene lamp lying in the hut causing fire in the hut.

Other two accused-respondents had stated in their statements under Section 313, Criminal Procedure Code that in the night of the incident, they were not present on the spot.

PW-1 Om Prakash is son of deceased Ram Narain and he says that in the previous night of the incident, Khinva Ram, Lichhaman Ram and Kamal and one other person were consuming liquor with his father in the hut and he does not say that his father was burnt by his maternal uncles or his mother.

PW-2 Jagdish is also son of deceased Ram Narain and he also supports the statement of his brother and says that his father had taken liquor in that night in the company of Khinva Ram and others and he also does not state any thing indicating the D.B.Cr.

Appeal No.1029/2013 6 fact that his father has been murdered by his mother or his maternal uncles.

PW-8 Lichhaman Ram says that after the incident he had reached the spot when he was informed about the fire at 3 a.m.by Khinva Ram.

He does not say that he had seen any of the accused- respondents causing fire in the hut of Ram Narain.

Similarly, PW-9 Shrawan Ram has also not stated anything about any offence committed by the accused-respondents.

He says that he had reached the spot and he also tried to extinguish the fire.

He says that wife of Ram Narain was found on the spot and she was saying that Ram Narain himself has caused fire in the hut and after causing fire, he must have run away from the place.

PW-10 Kamal also states the same thing.

Kamal says that he had not seen any one causing fire or killing Ram Narain and he states that only Khinva Ram and Lichhaman Ram were levelling the charge of murder against brothers-in-laws of deceased Ram Narain.

PW-7 Dr.

Yogendra had conducted the post-mortem of the body of Ram Narain and he states that Ram Narain had expired because of burn injuries and asphyxia caused by smoke of fire.

DW-1 Kana Ram, DW-2 Smt.

Nema Devi, DW-3 Babu Lal, DW-4 Shriram, DW-5 Khet Singh and DW-6 Purakhnath have also supported the defence story and they had been able to bring out a plausible defence story and by their statements, it appears that brothers-in-law of deceased Ram Narain were not present on the spot when the hut D.B.Cr.

Appeal No.1029/2013 7 had caught fire and further Smt.

Lichhma Devi wife of Ram Narain was also under the impression that in the fits of insanity, her husband had burnt her hut and had run away from the spot in the darkness of night.

Thus, it can be said that there is no substance in this appeal.

The judgment of the trial court cannot be said to be against the facts or against the law.

This Court agrees with the appreciation of evidence done by the trial court and it is also settled position of law that in a criminal even if two views are possible from the evidence produced by the parties, the view taken by the trial court should not lightly be disturbed when the appeal is against the acquittal order.

Lord Russell in Sheo Swarup V.

Kind Emperor (AIR 1934 PC227, highlighted the approach of the High Court as an appellate court hearing the appeal against acquittal.

Lord Russell said, ...the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.

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The opinion of the Lord Russell has been followed over the years. D.B.Cr.

Appeal No.1029/2013 8 In 1952, Hon'ble Apex Court in Surajpal Singh V.

State (Air 1952 SC52 while dealing with the powers of the High Court in an appeal against acquittal under Section 417 of the old Code of Criminal Procedure also observed,the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.

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The approach of the appellate court in the appeal against acquittal has been dealt with by the Apex Court in *Tulsiram Kanu V.*

State (AIR 1954 SC1, *Madan Mohan Singh V.*

State of U.P.(AIR 1954 SC637, *Atley V.*

State of U.P.(AIR 1955 SC807, *Aher Raja Khima versus State of Saurashtra* (AIR 1956 SC217, *Balbir Singh versus State of Punjab* (AIR 1957 SC216, *M.G.Agarwal V.*

State of Maharashtra (AIR 1963 SC200, *Noor Khan versus State of Rajasthan* (AIR 1964 SC286, *Khedu Mohton versus State of Bihar* {(1970) 2 SCC450}, *Shivaji Sahabrao Bobade versus State of Maharashtra* {(1973) 2 SCC793, *Lekha Yadav versus State of Bihar* {(1973) 2 SCC424, *Khem Karan versus State of U.P.*{(1974) 4 SCC603, *Bishan Singh versus State of Punjab* {(1974) 3 SCC288, *Umedbhai Jadavbhai versus State of Gujarat* {(1978) 1 SCC228, *K.*

Gopal Reddy versus State of A.P.{(1979) 1 SCC355, *Tota Singh versus State of Punjab* {(1987) 2 SCC529, *Ram Kumar versus State of Haryana* { *D.B.Cr.*

Appeal No.1029/2013 9 1995 Supp (1) SCC248, *Madan Lal versus State of J & K* {(1997) 7 SCC677, *Sambasivan versus State of Kerala* {(1998) 5 SCC412, *Bhagwan Singh versus State of M.P.*{(2002) 4 SCC85, *Harijana Thirupala versus Public Prosecutor, High Court of A.P.*{(2002) 6 SCC470, *C.*

Antony versus K.G.Raghavan Nair {(2003) 1 SCC1, *State of Karnataka Vs.K.Gopalakrishna* {(2005) 9 SCC291, *State of Goa versus Sanjay Thakran* {(2007) 3 SCC755, and *Chandrappa versus State of Karnataka* {(2007) 4 SCC415 also.

It is not necessary for us to deal with these cases individually.

Suffice it to say that the Apex Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the

trial court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court.

It is so because the trial court had an advantage of seeing the demeanor of the witnesses.

If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if D.B.Cr.

Appeal No.1029/2013 10 such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and (iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view.

The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.

Hence it can be said that the appeal filed by appellant Mala Ram is devoid of any force and it deserves dismissal, which is hereby dismissed.

Record of the lower court be sent back with a copy of this judgment within a week.

(ATUL KUMAR JAIN),J.

(GOVIND MATHUR),J.

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