

State Vs. Rehana

State Vs. Rehana

SooperKanoon Citation : sooperkanoon.com/1171216

Court : Delhi

Decided On : Sep-05-2014

Judge : Pradeep Nandrajog

Appellant : State

Respondent : Rehana

Judgement :

§~13 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.L.P. 539/2014
STATE Represented by: Petitioner Mr.Sanjeev Bhandari, Additional Standing
Counsel for the State with Inspector Rakesh Kumar, PS GTB Enclave. versus
REHANA Respondent Represented by: None. CORAM: HON'BLE MR.
JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

0509.2014 % Crl.M.A.No.13478/2014 (Exemption) Allowed.
Crl.M.A.No.13479/2014 (Delay in refiling) For the reasons stated in the application
the delay of 16 days in refiling the leave to appeal petition is condoned. CRL.L.P.
539/2014 1. The State is aggrieved of the respondent being acquitted for the
offence punishable under Sections 302/34 IPC in case FIR No.204/2011
registered at PS GTB Enclave, Delhi. The impugned judgment is dated April 23,
2014.

2. The case of the prosecution is that an information was received through PCR at GTB Enclave Police Station on August 10, 2011, recorded vide DD No.28A, informing that a person was lying in burnt condition in front of Rajiv Gandhi Hospital. SI S.P.Gautam reached the spot. He did not find anyone there and was informed that the injured was removed to the GTB Hospital. [Head Constable Vijay Kumar PW-8 had removed him to the hospital.]. He reached the hospital and collected the MLC of injured Sanjay. Since the injured could not specify the reason of burns, therefore, the DD entry was kept pending. On August 15, 2011 statement of injured was recorded before the SDM, Seelampur wherein he alleged that he was in love with a girl namely Rehana, who was married and having children. She used to extort money from him. The injured proposed to marry her but she did not agree. On August 10, 2011 at around 8.00/9.00 PM he along with Rehana and Kajol @ Akeela had consumed liquor on rickshaw. Thereafter Rehana, Kajol @ Akeela and one more girl asked him to accompany them to the house of Muskan. On the way all three of them pushed him down, poured kerosene oil upon him and set him ablaze. He clarified that he had not burnt himself. On the basis of this statement FIR under Sections 307/34 IPC was registered on August 15, 2011. On August 16, 2011 Sanjay expired and a charge sheet for offence punishable under Sections 302/34 IPC was filed.

3. Thus the prosecution case rests on the dying declaration of the deceased which was made to the SDM PW-4. However, this dying declaration has been disbelieved and in our opinion rightly. The deceased was admitted to GTB hospital on August 10, 2011 at 10.25 PM and the MLC Ex.PW-2/A notices that he was conscious, well-oriented and he gave history of burning himself for suicide.

4. Besides the dying declaration recorded by the SDM, i.e. Ex.PW-4/A, the prosecution has also relied upon the dying declaration made by the deceased Sanjay to the HC Vijay Kumar who got him admitted in the GTB Hospital. Head Constable Vijay Kumar PW-8 deposed that on August 10, 2011 he was at PCR duty. At about 10.00 PM an information was received from Police Control Room that one person in burnt condition was lying near Bijli Ghar, in front of Rajiv Gandhi Hospital, Tahirpur Village. He reached there and found one person, who gave his name as Sanjay, lying in burnt condition. He was removed to GTB Hospital in PCR

van. HC Vijay Kumar further deposed that on inquiry the injured Sanajy told him that he was burnt by a girl namely Rehana. This dying declaration to PW-8 cannot be believed for the reason that though this dying declaration was purportedly made to him on August 10, 2011, however, his statement was not recorded on the same day nor on the basis of this statement FIR was registered. Further whenever a PCR van reaches the spot it gives the details back to the Control Room informing the facts revealed on the spot. HC Vijay Kumar has admitted that his statement was not recorded till August 16, 2011. Thus, this dying declaration to HC Vijay Kumar cannot be relied on.

5. Further the dying declaration made by the deceased to the SDM Ex.PW-4/A was clearly an after thought and contrary to the history given by the deceased to the doctor immediately after the incident wherein the deceased informed the doctor that he had burn himself. Moreover the version of the deceased himself exhibited as Ex.PW-4/A was that he was going after Rehana and Rehana did not want to marry him. In such a situation it is highly unlikely that Rehana would be sitting with him on a rickshaw with two other ladies and drinking.

6. Thus the view taken by the learned Trial Court being a probable view, we find no reason to interfere in the same.

7. Leave to appeal petition is dismissed. PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

SEPTEMBER05 2014 vn

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com