

State of Orissa Vs. Attar Khan

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Court : Orissa

Decided On : Apr-09-2007

Reported in : 104(2007)CLT111; 2007CriLJ3832; II(2007)DMC781; 2007(1)OLR735

Judge : Sanju Panda, J.

Appellant : State of Orissa

Respondent : Attar Khan

Disposition : Appeal dismissed

Judgement :

Sanju Panda, J.

1. This is an Appeal against an order of acquittal from the charges Under Sections 498A/304B of the Indian Penal Code in Sessions Trial No. 25/51 of 1990 passed by the learned Asst. Sessions Judge, Mayurbhanj, Baripada.

2. The case of the prosecution proceeds as follows:

Madina Bibi, the daughter of Sk. Abdul Sakur (P.W. 3, the informant) was given in marriage to the respondent in the year 1984. It was alleged that after their marriage, the respondent demanded money from the in-laws'. Sometimes deceased father had fulfilled the alleged demand. In the year 1988 the respondent

again demanded Rs. 3000/-to start umbrella business. Since the said demand could not be fulfilled he started ill-treatment to his wife Madina and on one occasion she had left the house of her husband and stayed with her parents. After some days, the father of Madina left his daughter in her in-laws' house. While she was staying there, the brother and father of Madina had received an information that Madina was missing. Thus they went to the house of the respondent in village Nuapada and found the dead body of Madina floating in a water tank. Further it was alleged that on 4.8.1988 there was a quarrel between the respondent and deceased. Thereafter she was found missing and the brother of respondent Asraft Khan had lodged a report at Suliapada P.S. and UD Case No. 7/88 was registered and during inquiry the O.I.C. (P.W. 8) of Suliapada P.S. examined the father and brother of the deceased, visited the spot, held inquest over the dead body and sent the dead body to the District Headquarter Hospital, Baripada for post mortem examination and thereafter P.W. 8 handed over the inquiry to A.S.I. (P.W. 9) on the event of his transfer on 21.11.1988. The ASI made some further inquiry and closed the U.D. Case on receipt of post mortem report. A plain paper F.I.R. drafted wofeExt.6 which was submitted to the OIC, Suliapada and the same was registered as Suliapada P.S. Case No. 20 of 1989 and on his direction further investigation was carried out by P.W. 9 and during such investigation P.W. 9 examined the witnesses afresh, seized two letters alleged to have been written by the deceased and the accused. After completion of investigation he submitted charge sheet against the accused.

3. The plea of the accused was one of complete denial and false implication with the case and the further plea of the accused that he had never demanded dowry from P.W. 3 through his wife Madina (the deceased) and his wife was never subjected to cruelty for demand of dowry.

4. To bring home the charge against the accused, prosecution has examined nine witnesses. P.W. 1 is the co-villager of accused. P.Ws. 2 and 3 are the brothers and father of the deceased and P.Ws. 4 and 7 are the doctors who conducted post mortem examination and P.Ws. 5,6,8 and 9 are I.Os. in the U.D. case and the Suliapada P.S. Case. One witness has been examined in support of the defence.

5. The learned trial Court has held that as the prosecution failed to prove the document Ext. 1, the letter written by the deceased, in the manner requiring to prove a document as envisaged under Section 67 of the Evidence Act. The plea of prosecution was that deceased had written letter complaining about the ill-treatment towards her by the accused who had demanded dowry. P.W. 3 did not produce the letter when the U.D. Case was registered initially. P.W. 3 in his cross-examination stated that though he disclosed before the police about writing of a letter by the deceased to him the police did not seize the same, but on perusal of the seizure list Ext.11 it reveals that the letters were seized by P.W. 9 on 1.6.1989 the same being produced by P.W. 3. P.W. 8 who had first conducted the inquiry in the U.D. Case stated that P.W. 3 did not state before him about the existence of the letter written by the deceased nor had he shown that letter to P.W. 8. P.W. 2 has stated nothing about ill-treatment or cruelty. From the above, it is clear that the letters were made available to police after more than ten months from the date of occurrence and as the same was not proved in accordance with Section 67 of the Evidence Act which creates a reasonable suspicion to the mind of the Court about the genuineness of those letters.

6. The learned trial Court further discussed on the post mortem report wherein the doctors had opined that they did not find any external injury, but on dissection internal injury was found as the dead body was completely decomposed. The doctors further opined that on the query made by I.O. that there was complete absence of features of dried drowning and possibility of throwing the dead body inside water tank after death could not be ruled out and the doctors' reports Exts.4 and 5 revealed that the skeleton of the deceased was intact and ante mortem and post mortem injury can be determined by presence of blood clot and discolourisation of bones but in this case no blood clot was found and cause of death was reserved pending chemical examination of viscera. There is no convincing evidence on record that soon before the death, deceased was subjected to cruelty and harassment by the accused in connection with demand for dowry.

7. The learned trial Court on a consideration of the oral and documentary evidence found that the charges against the accused under Sections 498A/304B of the

Indian Penal Code had not been established and accordingly acquitted the respondent from all charges.

8. The Government has preferred the appeal against the order of acquittal passed by the learned trial Court. While dealing with an appeal against acquittal in respect criminal charges, it may be kept in mind that when two views on the evidence are reasonably possible and the evaluation of evidence by the trial Court does not suffer from illegality, manifest error or perversity, the order of acquittal is not to be reversed. Although in an appeal from an order of acquittal, the power of the High Court to reassess the evidence and reach its own conclusions are as extensive as in an appeal against an order of conviction, yet, as a rule of prudence, it should always give proper weight and consideration to matters.

9. In this connection, reference may be made to a decision of the Supreme Court in the case of *The State of U.P. v. Samman Dass* reported in : 1972 CriLJ487 , wherein the Apex Court has held that;

- i. The views of the trial Judge as to credibility of the witnesses;
- ii. The presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he had been acquitted at the trial Court;
- iii. The right of accused to the benefit of any doubt; and
- iv. 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.

In other words, if the main grounds on which the Court below has based its order acquitting the accused are reasonable and plausible and may not be entirely and effectively dislodged or demolished, the High Court should not disturb the order of acquittal.

Tested by the touchstone of the aforesaid principles, the reasonings given by the learned Asst. Sessions Judge are not unreasonable or perverse, on the contrary view given is plausible one.

10. At the time of hearing learned Addl. Government Advocate submitted that the order of acquittal passed by the learned trial Court was not legal and correct and need interference by this Court.

11. It is argued by the learned Addl. Government Advocate that the learned trial Court has not properly considered the two letters Exts. 1 and 2 alleged to have been written by the deceased and accused in proper perspective. Since those documents were marked as exhibits without objection, the genuineness of those documents should not be questioned. The law is well settled that if a document is marked without objection, at best the execution of that document need not be proved but the contents of the document are to be proved. In this case P.W. 3 who is the father of the deceased have not whispered a word regarding that the handwriting of the deceased nor its content. Hence, no weightage could be given to these letters to prove the charge under Sections 498A/304-IPC.

12. It is further argued that there was an extra judicial confession made by the accused which had not been taken into consideration by the trial Court. On perusal of the records, it reveals that there was no extra judicial confession made by the accused nor had the prosecution put this question to the accused while recording his statement under Section 313 Cr.P.C. Since prosecution had not made out a case of extra judicial confession made by the accused, the trial Court had not considered the same. This Court has also thoroughly examined the records and nothing was brought out from the records that accused had made any extra judicial confession at any point of time which needs to be considered in this case.

13. Both the grounds raised by the learned Addl. Government Advocate fails and no other submissions made by him to unsettle the findings recorded by the learned trial Court. Hence, the Government Appeal stands dismissed.

The bail bond furnished by the respondent in pursuance of the warrant issued against him stands discharged. LCR be sent forthwith.