

Manphool @ Phoolia Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-06-2006

Reported in : RLW2006(3)Raj1929; 2006(2)WLC471

Judge : Shiv Kumar Sharma and; Shashi Kant Sharma, JJ.

Acts : Indian Penal Code (IPC) - Sections 302 and 379; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : D.B. Criminal Appeal No. 611 of 2001

Appellant : Manphool @ Phoolia

Respondent : State of Rajasthan

Advocate for Def. : R.P. Kuldeep, Public Prosecutor

Advocate for Pet/Ap. : Suresh Chand Sharma, Amicus Curiea

Disposition : Appeal allowed

Judgement :

Shashi Kant Sharma, J.

1. Instant appeal has been filed by accused appellant Manphool @ Phoolia against the judgment dated 10.8.2001 passed by Addl. Sessions Judge (Fast Track), Baran whereby the accused appellant was convicted for the offence under

Section 302 IPC and acquitted for the offence under Section 379 IPC and was sentenced for life imprisonment and Rs. 2000/- fine, in default to further suffer imprisonment of three month's RI for the offence under Section 302 IPC.

2. The relevant facts which are essential for the disposal of the appeal are as under;

3. PW3 Tejmal lodged an oral report to Police Station, Mangrol, Baran wherein it was stated that on 22.9.1991 he came back in the evening to his home, his wife told that their daughter Sita is missing. It was also stated that he was searching for her with the help of other co-villagers. It was also stated that on 24.9.1991 at about 7 pm Hardayal informed him that some foul smell is coming from the drain of field of Nathya. He and other villagers reached there and saw the dead body of his daughter lying there. Her both legs were cut and her ornaments were taken away by miscreants. Police registered a case under Section 302 IPC. Investigating Officer reached on the spot and prepared a site plan Ex. P. 3, Autopsy was done on the body of deceased Sita and after completion of investigation a challan was filed before the concerned Magistrate, wherefrom case was committed to the court of Sessions Judge, Baran. After hearing the charge argument, learned Sessions Judge framed the charges for the offences punishable under Sections 302 and 379 IPC. Accused appellant denied the charges and claimed trial. Prosecution examined as many as 10 witnesses namely Gulab Chand PW. 1, Umrao Singh PW. 2, Tejmal PW. 3, Chhotabai PW. 4, Murtibail PW. 5, Rampyari W. 6, Hajarilal PW. 7, Kalyani PW. 8, Dr. Ghanshyam Bardania and Gopal PW. 10. Then the case was transferred to Addl. Sessions Judge (Fast Track), Baran where the statement of accused was recorded under Section 313 Cr.P.C. The accused did not examine any witness in defence. Arguments were heard and the learned Addl. Sessions Judge convicted and sentenced the appellant as mentioned herein above.

4. Mr. Suresh Chand Sharma was appointed Amicus Curiae on behalf of appellant.

5. Learned Amicus Curiae has argued that in this case, appellant Manphool @ Phoolia has been falsely implicated by the police. It is also argued that learned trial

Court has convicted him only on the basis of statement of PW. 5 Murtibai. It is also contended that according to prosecution case the accused appellant has also stolen the ornaments from the body of deceased Sita but no such ornament has been recovered from him. It is also contended that according to prosecution, the incident took place on 22.9.91 and FIR was lodged on 24.9.1991. In this way this FIR was lodged after two days from date of occurrence. It is also contended that FIR has been lodged' in detail but even then it has not been mentioned that her daughter went with Murtibai. It is also contended that in this FIR name of Murtibai does not find place. It is contended that FIR was lodged after two days of the occurrence and even then in that FIR case of the prosecution was different than the case which was developed by the prosecution before the trial Court. It was argued that according to FIR even after two days of occurrence nobody knew where Sita went away. In the trial court, statement of PW. 3 Tejmal father of the deceased was recorded in which he stated that on the day of occurrence when he came back to his home in the evening than his wife told that Murtibai came and Sita went with Murtibai. It is also contended that if this statement of Tejmal would have been correct then this fact must have been mentioned in the FIR and the name of Murtibai must have been there in that FIR. It is also contended that conviction is based only on the statement of Murtibai and statement of Murtibai is totally unreliable. It is also contended that there is no corroboration of the statement of Murtibai. It is also contended that Murtibai has stated in her cross examination in her statement before the trial Court that police has beaten her and put her under confinement for three days and then her statement was recorded. It is further urged that in this case investigating officer has not been examined by the prosecution. It is also argued that the accused appellant has wrongly been convicted by the trial court, therefore appeal should be allowed and the judgment of the trial court should be set aside.

6. The learned PP has submitted that the trial Court has rightly convicted the accused appellant for the offence under Section 302 IPC.

7. We have considered the rival contentions of the both the sides and examined the entire evidence available on record. We are in full agreement with the arguments advanced by the learned Amicus Curiae that the trial Court has

convicted the accused appellant on the basis of statement of sole eye witness Murtibai. We are of the view that if the conviction is based only on the statement of sole eye witness then evidence of such sole eye witness should be scrutinized with caution and circumspection. If on such scrutiny the evidence is acceptable accused can be convicted on the basis statement of such sole eye witness. We are also of the view that when the prosecution case rests mainly on sole testimony of an eye witness then it should be wholly reliable. The case in hand is based on sole statement of eye witness Murtibai. We should examine her statement with caution and circumspection. When we examine her statement with caution we find that her name does not find place in first information report which was lodged to police after two days of the occurrence. After reading the statement of PW. 3 Tejmal father of the deceased and lodger of the report, it becomes clear that even on the day of occurrence he was told by his wife that deceased Sita went with Murtibai if this was true then positively Tejmal must have mentioned this fact in his first information report. When this question was asked in cross examination he stated that he has not mentioned this fact in the FIR that his daughter went with Murtibai. If deceased Sitabai would have gone with Murtibai and this fact came in the knowledge of Tejmal before lodging the FIR, certainly this fact should have been there in FIR. When we examine first information report in detail, Tejmal has not mentioned that deceased went with Murtibai, it creates doubt in our mind about presence of Murtibai at the time of occurrence.

8. We have also examined the statement of Murtibai in detail. In cross examination she has clearly stated that police has beaten her and has kept her for three days and then her statement was recorded. This position also creates doubt in our mind. In this case no ornaments have been recovered by police. In our considered opinion the statements of Murtibai are not of sterling worth. In this case Investigating Officer has also not been examined by the prosecution. We do not find any other linking evidence against the accused appellant except the statement of Murtibai, After examining entire evidence available on record we are of the view that the prosecution has not proved this case against appellant beyond reasonable doubt.

9. As a result of above discussion, we allow the appeal and set aside the judgment dated 10.8.2001 of the learned Addl. Sessions Judge (Fast Tack), Baran. We acquit the appellant Manphool @ Phulia of the charge under Section 302 IPC. The appellant who is in jail shall be set at liberty forthwith if not required to be detained in any other case.

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