

State of Rajasthan Vs. Rohitash Kumar

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Court : Rajasthan

Decided On : Nov-01-1991

Reported in : 1992(3)WLC560; 1991(2)WLN371

Judge : Farooq Hasan, J.

Appeal No. : S.B. Criminal Appeal Nos. 394, 395 and 396 of 1983

Appellant : State of Rajasthan

Respondent : Rohitash Kumar

Disposition : Appeal dismissed

Judgement :

Farooq Hasan, J.

1. The State has filed these three criminal appeals after grant of leave to appeal by this court. These appeals arise out of three separate judgments delivered by the Sessions Judge, Bharatpur, in three different Sessions cases which arose out of three first information reports lodged by three victims, namely, Meena Kumari, Sindoori Bai & Fatima with the allegations that Rohitash Kumar (respondent in these appeals) had committed sexual intercourse forcibly upon their persons while they were residing in the rescue home situated at Bharatpur & maintained by the Social Welfare Department of Rajasthan, in between July 27 and September 27,

1981.

2. At joint request of both the parties, since the grounds of acquittal assigned by the trial Court under impugned judgments are similar and identical in favour of the respondent who was accused in the three cases out of which the present appeals arise, these three appeals are being disposed of by this common judgment.

3. In Sessions Case No. 129/81, according to the charge framed against the respondent, he is alleged to have committed sexual intercourse on the person of Mst. Fatima on or about or in between 27.7.81 & 27.9.81. In Sessions Case No. 128/81, respondent, Rohitash Kumar, is alleged to have committed sexual intercourse on or about 27.7.1981, on the person of Mst. Sindoori. And, in Sessions case No. 130/81, the respondent is alleged to have committed sexual intercourse on or about 27.6.1981 on the person of Meena Kumari.

4. First information reports were lodged by the victims, named above, on 27.9.1981. the victims were medically examined on 28.9.1981.

5. Before I dwell on the merits of the case, I feel it necessary to summarise legal position emerging from decisions of the Apex Court on the principles for interference with the orders of acquittal.

6. In *Salim Zia v. State of U.P.* : 1979 CriLJ323 , making reference of the cases in *Sanwant Singh v. State of Rajasthan* : 1961 CriLJ766 , *Ramabhupla Reddy v. State of U.P.* : 1971 CriLJ422 , *Lekha Yadav v. State of Bihar* : AIR 1973 SC2441 , and *Barati v. State of U.P.* : 1974 CriLJ709 besides others, their Lordships of the Supreme Court held that the High Court in an appeal against an order of acquittal has full power to review at large the evidence on which the order of acquittal was founded and to reach the conclusion that upon the evidence, the order of acquittal should be reversed. According to the decision in *Salim Zia v. State of U.P.* (supra), the different phraseology used in the judgments of which reference has been made therein, such as:

(a) substantial and compelling reasons;

(b) good and sufficiently cogent reasons;

(c) strong reasons;

are not intended to curtail or place any limitation on the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion but, in doing so, it should give proper consideration to such matters as

(i) the views of the trial Judge as to the credibility of the witnesses

(ii) 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;

(iii) the right of the accused to the benefit of any real and reasonable 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.

7. Again, their Lordships of the Supreme Court in *Lalit Kumar Sharma v. Supdt. & Rememberancer of Legal Affairs, Govt. of West Bengal* : 1989 CriLJ2297 while following one of the decisions on the context in *Mathai Mathews v. State of Maharashtra* 1989 (3) SCC 772 pointed out that the power of an appellate Court to review evidence in appeals against acquittal is not extensive as its powers in appeals against convictions, but that power is with a note of caution that the appellate Court should be slow in interfering with the orders of acquittal unless there are compelling reasons to do so. According to the decision in *Mathai Mathews v. State of Maharashtra* (supra), if a finding reached by the trial Judge cannot be said to be an unreasonable finding, then the appellate court should not disturb that finding even if it is possible to reach a different conclusion on the basis of the material on record.

8. In *Lalit Kumar Sharma's* case (supra) the acquittal was set aside even on the ground that the appellate Court has gone wrong in setting aside the order of acquittal on the reappraisal of the available evidence. Further, in *Dinanath Singh v. State of Bihar* : 1980 CriLJ921a , it has been held that where the view taken by the trial Court in acquitting the accused is reasonably possible, even if the High Court were to take a different view on the evidence, that would be no ground for

reversing the order of acquittal.

9. Having benefitted by the enlightments derived from the decisions cited above, though there are no curtailment on the undoubted power of an appellate court in an appeal against acquittal, rather such powers are as extensive as it are in appeal against conviction, but only rider is of giving proper considerations that too cautiously to matters (i) to (iv) quoted above after wringing out from the decision in *Salim Zia v. State of U.P.* (supra).

10. Now, advertng to the facts and circumstances of the cases at hand, in which the trial Judge acquitted the appellant, I may say that there is no dispute that the respondent was working in the rescue care home wherein a large number of female rescues were residing. The respondent was working as a Clerk under the Social Welfare Department. The entire case against the respondent rested on the sole testimony of the victims. The trial Judge found it difficult to accept the testimony of the victims and acquitted the respondent.

11. The question which is similar in the cases at hand, is whether the view taken by the trial Judge was so unreasonable and perverse as to merit interference by this Court in appeal against acquittal. The trial Judge acquitted the respondent because there was no corroboration of the testimony of the victims from any source though it was possible in view of the circumstances given out by her in evidence on record. In the cases at hand, all the victims kept silence not only for a day but also for a long period of 2-3 months, and they never disclosed the act of the respondent in the perpetration of the crime in question. All the victims in their evidence conceded that they lodged in a written complaint to the concerned authorities higher than the respondent but, surprisingly enough, no such complaint has been brought on record by the prosecution. According to trial Court and rightly so, non-production of significant document made the prosecution case doubtful raising an adverse inference that that document contained the facts which were prone to raise presumption of innocence in favour of the respondent about the alleged commission of rape and further that if that document would have been produced, it would have falsified the witness. Reliance can be placed on the decision in *Ram Das v. State of Maharashtra* : 1977 CriLJ955 .

12. The victims in their statements admitted that the incident of the perpetration of the crime in question at the instance of the respondent was narrated to the peon of the care home so also its warden officer who used to reside in the premises itself at one of the floors. But, neither that warden officer or a peon of the care home has been produced in the witness box so as to affirm the version of the victims, and it raised reasonable inference against the prosecution case. Santo-peon in the care home deposed that the victims were also taken to the hospital for her medical examination but, she never disclosed the incident in question to the doctor or anybody in the way. According to the trial Judge, in the facts and circumstances of the case wrung out from the evidence on record, even if there had been any perpetration of the crime in question at the instance of the respondent, then it had been with consent of the victims as was apparent from their behaviour and conduct.

13. The trial Judge found no evidence ocular or medical to indicate marks of violence on the body of the prosecutrices so as establish that the. respondent had perpetrated the crime in question without their consent. While considering the site plan, the trial Judge found that in the room where the respondent had allegedly perpetrated the crime in question, and where the articles used for day to day purpose in the care home of inmates, were being stored and apart from keeping big boxes therein, as per the evidence on record, itself, it was not feasible for an accused to have perpetrated such a crime in question that too in a thickly space on the day of incident, when the accused proved to have been suffering from a severe disease such as tuberculosis.

14. The conduct of the victims as rightly pointed out by the trial Judge, were quite unnatural because they did not put any resistance nor disclosed of such an incident of their outraging modesty either to the hostel superintendent who was admittedly, as stated earlier, available all the time being resided at one of the floors of the care home in question, or to their co-inmates in the care home. None of them have been produced by the prosecution. A large number of women inmate of the care home were available inasmuch as even according to the version given out by the victims, when they were being dragged or taken to the store, room for being raped by the accused, other women inmate of the care home were also

moving together with her and from among them, they were taken to the scene of occurrence. But, none of those co-inmates have been produced and if some of them produced in the cases at hand, did not support them nor they deposed that the victims raised hulla while being taken by the accused so as to perpetrate the crime in question upon them, nor there is any medical evidence to the marks of violence if any, so as to establish that any resistance was put by the victims either before or after or during the perpetration of the crime in question upon the victims by the accused, without their consent.

15. The evidence of the victims is all the more totally unbelievable. As noticed above, she admitted that there were lot of persons in the care home inasmuch as lady peon's version, they were taken out of the care home for hospital and other places in between the spell of time from the day of perpetration of the crime in question and the lodging of the written complaint (i.e. for 2 or 3 months), therefore, one can take judicial notice of such a fact, as also there were people present at all the places around the hospital and the care home rather in between them at the road and that being so, the victims had obviously all the opportunity and means to get out of the clutches by putting resistance and to complain of the conduct of the accused to higher body, immediately after the rape with her during those days. Any person with a bit of intelligence and common sense and more so a judicial mind should find no difficulty in the appraisal of the statement of the victims. A careful reading of the evidence of the victims would straightway show that whatever has been deposed by the victims implicating the accused in the perpetration of the crime in question is nothing but a total falsehood and that the respondent having been involved in the case she was made to given the statement as given by her. Their version that they were taken by the respondent forcibly and subjected to sexual intercourse a number of times during the spell of 2 or 3 months under threat of the accused that either they or their kid would be bodily harmed if they did not agree to his demand, is nothing but a canard which deserved to be thrown out as rightly done by the trial Judge. As noticed above, the medical evidence also belies the version of the prosecution. There is no evidence of any sign of injury on the private parts of either the victims of the alleged rape, nor is there any evidence of any visible marks of injury on the person of either of them. The complete absence of evidence of any injury on the private parts of

either of them and the absence of any visible mark of injury on their person clearly went to belie the prosecution version that the respondent had committed rape with the victims.

16. In defence, the respondent has proved by preponderance of probabilities which tends to raise presumption of innocence in favour of the accused, as has rightly been done by the trial Judge, that he was falsely implicated in a calculated manner in the perpetration of the crime in question at the instance of Vrindavan Behari Sharma & his subordinates with whom he had no cordial relations as they bore animosity against him on account of his style of functioning in the office. Even one of the Victims, Suit. Sindoori sworn in an affidavit which has been produced by the accused in his defence to support the defence plea.

17. The circumstances wrung out from the evidence on record and pointed out by the trial Judge, certainly throw considerable doubt on the veracity of the prosecution story and it cannot be said that the trial Judge was in error in rejecting it. On a consideration of the evidence and the circumstances referred to in the impugned judgments and above, in my view, it is a case in which the circumstantial evidence did not prove the case against the accused conclusively unerringly, and at any rate, two reasonable views were possible. But, there can be no doubt that in these tell-tale circumstances the trial Judge was fully justified in entertaining serious doubt about the truth of the case of the prosecution and that being so, in these circumstances, the view taken by him was doubtless reasonably possible. Therefore, these cases at hand are surely not fit ones in which this Court should interfere with the orders of acquittal of the respondent passed by the trial Judge.

18. In the result, these appeals must failed and are hereby dismissed. The records be sent back.