

Patiya Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-25-1998

Reported in : 1998(3)WLC176; 1998(1)WLN291

Judge : B.J. Shethna, J.

Appeal No. : S.B. Cr. Appeal No. 424 of 1981

Appellant : Patiya

Respondent : State of Rajasthan

Judgement :

B.J. Shethna, J.

1. The appellant accused has been convicted for the offence punishable under Section 304 Part II IPC for committing murder of his wife. The trial court has not convicted the accused under Section 302 IPC but has convicted him under Section 304 Part II IPC as he was of the opinion that the accused had no intention to kill his wife. For convicting the accused under Section 304 Part II IPC he relied upon the extra judicial confession made by the accused before the P.W. 2, Dala and PW 3, Kansa who are the brothers of the deceased wife. Except this there was no other evidence. The trial court clearly held that there was no eye witness to the incident. It would be very risky and hazardous to base the conviction on the extra judicial confession made by the accused, which itself is a very weak piece of

evidence. The same can be used for the purpose of corroboration to the other evidence on record, which is lacking in this case. There are series of judgments of the Hon'ble Supreme Court, wherein, it has been held that it would be unsafe to base the conviction on the basis of extra judicial confession made by the accused. In a given case it creates doubt in the mind of the court about the accused making extra judicial confession to P.W. 2, Dal and P.W. 3 Kansa, who were the most interest witnesses, the brothers of the deceased Indri.

2. When the learned trial Judge himself has found that the evidence of these witnesses was not reliable and they were the interested witnesses for other purposes then for the purpose of extra judicial confession their evidence cannot be relied upon.

3. In view of the above discussion, this appeal is partly (Sic) allowed. The impugned order of conviction and sentence passed by the learned trial Judge convicting the accused under Section 304 Part II IPC is set aside. The accused is on bail, therefore, his bail bonds stands cancelled.

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