

Ravi Kumar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Aug-20-2007

Reported in : RLW2008(1)Raj647

Judge : Shiv Kumar Sharma and; Guman Singh, JJ.

Appellant : Ravi Kumar

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

Shiv Kumar Sharma, J.

1.This appeal stem from the judgment dated May 27, 2003 of the learned Additional Sessions Judge (Fast Track) No. 2 Jhunjhunu where by the appellant Ravi Kumar was convicted and sentenced under Section 302 IPC to suffer imprisonment for life and fine of Rs. 100/-, in default to further suffer simple imprisonment for one month.

2. A report was lodged on October 31, 2001 by Rudmal Sarpanch of Village Thathwadi against the appellant to the effect that the appellant committed murder of his wife. A case Under Section 302 IPC was registered and investigation commenced. On completion of investigation charge sheet was filed. In due course

the case came up for trial before the learned Additional Sessions Judge (Fast Track) No. 2, Jhunjhunu. Charges under Section 302 IPC was framed against the appellant, who denied the charge and claimed trial. The prosecution in support of its case examined as may as 12 witnesses. In the explanation under Section 313 Cr PC, the appellant admitted the allegation made against him. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated above.

3. Having considered the rival submissions and on careful scrutiny of the material on record we notice that the appellant at the trial was of unsound mind and incapable to defend himself. It appears that application under Section 329 Cr PC was filed on behalf of the appellant and pursuant to the direction of learned trial Judge the appellant was medically examined and sent to Mental Hospital Jaipur where it was noticed that the appellant was a patient of Psychosis NOS. Dr. Paramjeet Singh Psychiatrist SMS Hospital Jaipur deposed before the learned Trial Judge that the appellant was suffering from mental disease and further three months were required to completely eradicate the disease. There after learned Counsel for the appellant on April 19, 2003 moved two applications under Sections 329 and 330 Cr PC. Learned trial Judge however vide order dated April 26, 2003 dismissed both the applications with the observation that the appellant was behaving like a normal person.

4. We have heard rival submissions and scanned the material on record. At this juncture we deem it appropriate to consider the relevant statutory provisions.

Section 329 Cr PC lays down the procedure in case of unsound mind of the accused. It provides that if at the trial it appears that the accused is incapable of making his defence, the court in the first instance, shall try the fact of such unsoundness and incapacity, and the Court, after considering such medical and other evidence, comes to the conclusion that the accused is of unsound mind the court shall record a finding to that effect and shall postpone further proceedings in the case. The trial of the fact of unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.

5. In *Sarfu Khan v. State of Jharkhand* (2004)¹³ SCC 460, the Apex Court observed that in case, the appellant is lunatic, the procedure as laid down in Chapter 25 Cr PC has to be followed. It would be for the appellant to make an appropriate motion before the trial court. On such a motion being made, the matter would be decided, keeping in view the provisions of the said chapter of Cr PC and, of course, if the trial court comes to the conclusion that the appellant is insane, the order in terms of Section 330 Cr PC would be passed.

6. Evidently mandate of Section 329 Cr PC is that where the court comes to the conclusion that the accused is of unsound mind and incapable of making his defence the trial should be postponed. Subsequently, the trial should be commenced only after recording medical evidence about fitness of the accused. Flouting of the mandate of Section 329 Cr PC would vitiate the trial. But in the instant case, as already noticed, learned trial Judge completely overlooked the mandate of Section 329 Cr PC. Despite the fact that the appellant was of unsound mind and he had been admitted in Mental Hospital Jaipur, the trial court did not wait till the appellant was completely treated for his mental disease. It was incumbent on learned trial court to call for the report of Mental Hospital Jaipur about the fitness of the appellant. Learned trial court without the evidence of Psychiatrist could not have observed that the appellant was fit and normal from his mental disease. We find no material on record which could establish that the appellant was completely treated before the trial commenced. Learned trial Judge was required to follow the mandate of Section 329 Cr PC. It thus vitiates the trial and the impugned judgment of learned trial Judge is liable to be set aside.

7. For the reasons aforementioned, the appeal stands allowed and the impugned judgment dated May 27, 2003 of learned Additional Sessions Judge (Fast Track) No. 2, Jhunjhunu is set aside and the case is remanded back to learned Additional Sessions Judge (Fast Track) No. 2 Jhunjhunu for de-novo trial in accordance with Section 329 and other relevant provisions of Cr.P.C.

Record of the case be sent back forthwith.