

State Vs. Ashok Singh

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Court : Jammu and Kashmir

Decided On : Dec-05-2007

Reported in : 2008(2)JKJ651

Judge : Virender Singh, J.

Appellant : State

Respondent : Ashok Singh

Judgement :

Virender Singh, J.

1. Vide impugned judgment of learned Sessions Judge, Udhampur dated 31-03-2003 respondent, Ashok Singh (here in after referred to be as the accused) has earned acquittal. Aggrieved by the same, the State has preferred the instant appeal which stands admitted vide order dated 07-07-2003. Records have also been received.

2. With the assistance of the learned Counsel for both the sides, I have gone through the impugned judgment and trial court records.

3. Satya Devi was the deceased in this case who was married with the accused 20/21 years prior to the occurrence. The prosecution case is that the accused often used to consume liquor which he did not give up despite her forbiddings with

the result, she got frustrated and poured k.oil and set herself on fire. Initially the prosecution case was registered under Section 309 R.P.C which was subsequently converted to Section 306 RPC. The accused has been charged for Section 306 RPC.

4. With the assistance of the learned Counsel for both the sides, I have gone through the material evidence and find that the prosecution has not been able to bring any evidence much less convincing with regard to the charge of Section 306 RPC. The prosecution case primarily hinges upon the statement of the deceased which turned out the dying declaration and that statement is also shrouded under thick clouds of doubt. The learned trial court while disbelieving the dying declaration has observed, thus:

There is a certificate of PW Dr. NK Gupta on the application of IO, regarding the fitness of the deceased to make a statement. It has been proved as EXPWNK. The timing of the examination of the injured, recorded by the doctor and in the statement made by the deceased, reveals a intriguing circumstance. In his certificate EXPWNK, doctor says he examined the deceased on 11.2.2000 at 5.50 PM and opined that the patient was in a state of giving a statement. While her dying declaration has been recorded at 1300 Hours i.e. 1 PM on the same day. This means that the statement of the deceased had already been recorded well before the certificate of fitness to make statement was obtained, from the said doctor. In these circumstances the certificate of the fitness given by the doctor is an after thought event carrying no meaning. If we believe the other witnesses some of them were present in the hospital where deceased was lying admitted in Tikri hospital. Therefore, it was the duty of the IO to have associated some of them with the recording of the statement. On the contrary the only witness i.e. Mohan Singh, who has said something about deceased having made statement in the hospital, that goes in contradiction to what the IO has stated. He has stated that Satya Devi said that her husband poured kerosene oil on her body and then set her on fire. Besides that he is emphatic in stating that deceased made no statement before police or a doctor. This statement contradicts EXPWNK/1 which reveal that deceased herself poured kerosene oil on her body, after being fed up with the behavior of her husband. Under these circumstances the so called dying

declaration gets shrouded in mystery.

5. Even otherwise, the learned Counsel for the accused submits that even if the statement of Satya Devi deceased is read as it is, it does not bring the case of the accused within the mischief of Section 306 RPC, and, therefore, the impugned judgment of acquittal does not deserve to be disturbed.

6. Scope of interference by the appellate court in the judgment of acquittal is very limited. Principles governing the interference in the judgment of acquittal are highlighted in *Bhim Singh v. State of Haryana* : 2003 CriLJ857 . In a very recent judgment of Hon'ble Apex Court rendered in *State of Madhya Pradesh v. Bacchudas* : 2007 CriLJ1661 . In para 9 of the said judgment, their Lordships have observed, thus:

There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. (See *Bhagwan Singh v. State of M.P.* : 2003 CriLJ1262). The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. These aspects were highlighted by the Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* : 1973 CriLJ1783 ; *Ramesh Babulal*

Doshi v. State of Gujrat : 1996 CriLJ2867 ; Jaswant Singh v. State of Haryana : 2000 CriLJ2212); Raj Kishore Jha v. State of Bihar : 2003 CriLJ5040 ; State of Punjab v. Karnail Singh : 2003 CriLJ3892 ; State of Punjab v. Phola Singh : 2003 CriLJ5010 ; Suchand Pal v. Phani Pal 2003 (1) SCC 527 and Sachchey Lal Tiwari v. State of U.P. : 2004 CriLJ4660 .

After having re-scanned the prosecution case afresh on the basis of the material from trial court record and following the ratio of the aforesaid judgments, in my view, there is no substance in the instant appeal and, therefore, the same deserves to be dismissed.

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