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Court : Rajasthan

Decided On : Jul-21-2011

Judge : Narendra Kumar Jain, J.

Acts : Indian Penal Code (IPC) - Sections 376, 457

Appeal No. : Case No. CRLLA 90 of 2011

Appellant : The State of Rajasthan

Respondent : Manoj Kumar

Advocate for Pet/Ap. : Ms. Rekha Madnani, Adv

Judgement :

1. Heard learned counsel for the appellant.
2. This leave to appeal has been preferred against the order of acquittal of accused-respondent of charge under Sections 376, 457 IPC by Additional Sessions Judge No.1, Kishangarh Bas, Alwar vide its judgment dated 21.05.2008.
3. Learned trial Court, in para 10 of the impugned judgment, has discussed the entire relevant evidence including the statement of PW1 Dayawati, the prosecutrix, and Exhibit-D2, a letter written by prosecutrix Dayawati to accused Manoj Kumar. The contents of letter have also been reproduced. Learned trial Court has also observed that she (prosecutrix) was having two children of age of 4 and 8 years.

After referring the entire prosecution evidence, the learned trial Court recorded a finding that it is a case of consent and not forceful sexual intercourse.

4. Learned counsel for appellant has unable to point out any discrepancy in the order passed by the trial court so as to interfere with the same, particularly in view of finding based on Exhibit-D2 and the statement of prosecutrix PW1. No illegality or perversity in the finding of the trial Court has been pointed out by the learned counsel for appellant.

5. Hon'ble Apex Court in State of Madhya Pradesh vs. Bacchudas alias Balaram & Ors. (AIR 2007 SC 1236) observed 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. Hon'ble Apex Court further observed that the order of acquittal should not be interfered with unless there are some compelling and substantial reason or circumstances for doing so. Para 9 of the judgment(supra) is reproduced as under:

“9. 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 view 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 injustice which may arise from acquittal of the guilt 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 reappraise the evidence where the accused has been acquitted for the purpose of ascertaining as

to whether any of the accused really committed any offences or not.

The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there is 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 this Court in **Shivaji Sahabrao Bobade v. State of Maharashtra(1973(2)SCC 793)**; **Ramesh Babulal Doshi v. State of Gujarat(1996(9)SCC 225)**; **Jaswant v. State of Harayana(2000(4)SCC 484)**; **Rajkishore Jha v. State of Bihar(2003(11)SCC 519)**; **State of Punjab v. Karnail Singh(2003(11)SCC 271)**; **State of Punjab v. Phola Singh(2003(11)SCC 58)**; **Suchand Pal v. Phani Pal(2003(11)SCC 527)** and **Sachchey Lal Tiwari v. State of U.P.(2004(11)SCC 410.**”

6. In view of above discussions, I do not find any illegality or perversity in the impugned order so as to grant leave to appeal in the present case.

7. Leave to appeal is, accordingly, rejected.

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