



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Criminal Appeal No. 64/2020

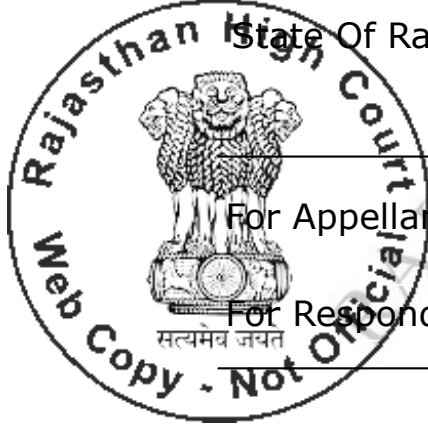
Vijay Singh S/o Balcharan, R/o Dhobideh Bhadrawati Nadi, PS
Kotwali, Karauli Distt. Karauli Raj. (Presently In Central Jail
Bharatpur)

----Appellant

Versus

State Of Rajasthan, Through P.p.

----Respondent



For Appellant(s)

: Mr. Anurag Sharma Advocate through
Video Conferencing.

For Respondent(s)

: Mr. Fateh Ram Meena, for the State.

HON'BLE MRS. JUSTICE SABINA

HON'BLE MR. JUSTICE CHANDRA KUMAR SONGARA

Judgment / Order

01/12/2020

Appellant has filed the appeal challenging his conviction and sentence ordered by the trial Court vide judgment/order dated 20.01.2020 under Section 302 of Indian Penal Code, 1860 (hereinafter referred to as 'IPC').

Learned counsel for the appellant has submitted that all the material witnesses had not supported the prosecution case, during trial. Trial court has ordered the conviction and sentence of the appellant only on the basis of presumptions.

Learned State counsel, on the other hand, has opposed the appeal.

Prosecution story, in brief, is that appellant had committed the murder of his wife. FIR No.261/2017 dated 30.07.2017 was



registered on the basis of statement of Sher Singh under Section 302 IPC at Police Station Kotwali, District Karauli.

After thorough investigation of the case and necessary formalities, challan was presented against the appellant.

Charge was framed against the appellant under Section 302 IPC by the trial court. Appellant did not plead guilty to the charge framed against him and claimed trial.

In order to prove its case, prosecution examined 24 witnesses during trial. Appellant when examined under Section 313 of Code of Criminal Procedure, 1973, prayed that he was innocent and had been falsely involved in this case. He further stated that he was not present at the spot.

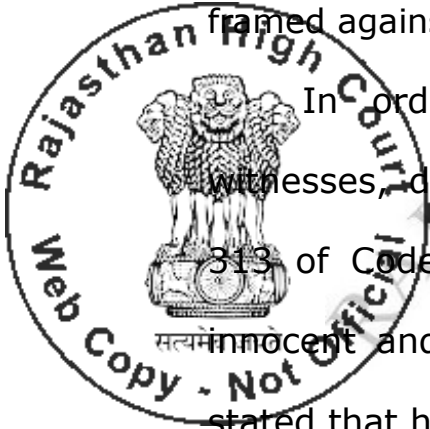
Appellant did not examine any witness in his defence.

PW-1 Sher Singh (son of the deceased), PW-2 Rameshwar (brother of the appellant), PW-3 Suman Kumari (daughter of the deceased), PW-4 Pooran, PW-5 Prabhu, PW-7 Chotiya, PW-8 Ramcharan, PW-9 Girraj, PW-10 Gannu and PW-24 Dimple (son of the deceased) have not supported the prosecution case, during trial. Children of the deceased have stated during trial that they could not tell as to how their mother had died.

PW-3 Suman Kumari (daughter of the deceased) had stated that her father had gone out to do labour work at the time of incident and her mother was alone at home.

Thus, all the material witnesses including children of the deceased had not supported the prosecution case, during trial with regard to participation of the appellant in the crime.

PW-6 Prem Singh deposed that he had been told by Vishnu that appellant had murdered his wife. However, in his cross-

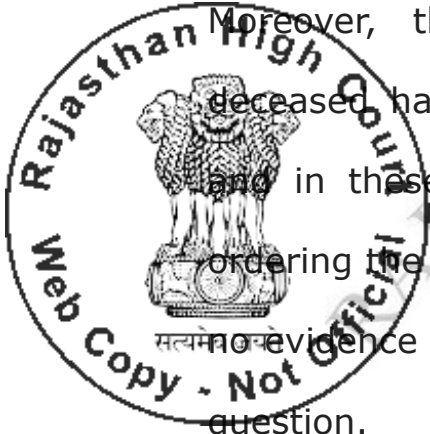




examination, he deposed that he had not himself witnessed the incident.

So far as Vishnu is concerned, he had not been examined, during investigation, nor was cited as a witness at the time of trial. Hence, the statement of PW-6 can be said to be merely hearsay and no reliance can be placed on the said statement.

Moreover, the material witnesses including children of the deceased have not supported the prosecution case, during trial and in these circumstances, learned trial Court fell in error in ordering the conviction and sentence of the appellant as there was no evidence on record connecting the appellant with the crime-in-question.



Although, as per the prosecution story, one blood stained knife and stone as well as one trouser of the appellant were recovered at his instance. However, independent witnesses PW-4 Pooran and PW-11 Man Singh have not supported the prosecution case, during trial and have stated that no recovery has effected in their presence.

It is the settled proposition of law that prosecution has to prove its case beyond the shadow of reasonable doubt. Whenever, doubt occurs in prosecution case, benefit of the same has to be extended to the appellant.

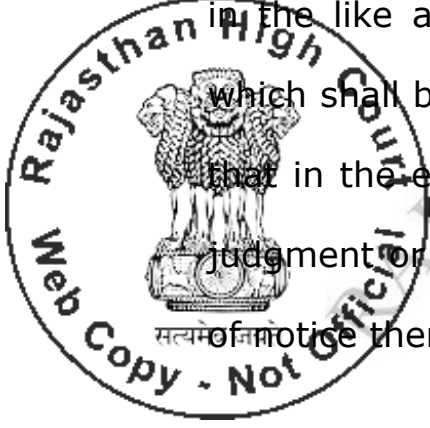
In the present case, prosecution had failed to establish its case against the appellant as all the material witnesses had not supported the prosecution case, during trial. Hence, we are of the opinion that conviction and sentence of the appellant are liable to be set aside.

Accordingly, appeal is allowed. Appellant is acquitted of the charge framed against him. Impugned judgment/order passed by



the trial court dated 20.01.2020 are set aside. Appellant who is in custody, be set at liberty forthwith, if not required in any other criminal case.

In view of the provisions of Section 437-A Code of Criminal Procedure, 1973, appellant-Vijay Singh S/o Balcharan is directed to furnish a personal bond in the sum of Rs.25,000/-, and a surety in the like amount, before the Registrar (Judicial) of this Court, which shall be effective for a period of six months, with stipulation that in the event of Special Leave Petition being filed against this judgment or on grant of leave, the appellant aforesaid, on receipt of notice thereof, shall appear before the Supreme Court.



(CHANDRA KUMAR SONGARA),J

(SABINA),J

Sanjay Kumawat-18

