



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

D.B. Criminal Leave To Appeal No. 551/2019

State Of Rajasthan, Through P.P.

----Appellant

Versus

Meena W/o Late Shri Mohar Singh, R/o Seva Ka Pura, Police
Station Saipau Distt. Dholpur.

----Respondent



For Appellant(s) : Mr. N.S. Gurjar, for the State.

For Respondent(s) : Mr. Sudhindra Kumawat Advocate
through Video Conferencing.

**HON'BLE MRS. JUSTICE SABINA
HON'BLE MR. JUSTICE CHANDRA KUMAR SONGARA**

Judgment / Order

04/12/2020

Respondent had faced trial in FIR No.227/2015 registered at police Station Saipau, District Dholpur under Section 302/34 of Indian Penal Code, 1860 (hereinafter referred to as 'IPC').

After completion of investigation and necessary formalities, challan was presented against the respondent under Section 302 I.P.C.

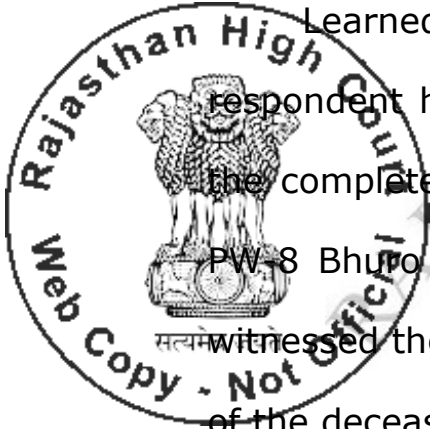
Charge was framed against the respondent under Section 302 I.P.C. vide order dated 24.05.2016. Respondent did not plead guilty to the charge framed against her and claimed trial.

In order to prove its case, prosecution examined fifteen witnesses.

Trial court vide judgment dated 28.05.2019 ordered the acquittal of the respondent. Hence, the present leave to appeal by the State.



Learned State counsel has submitted that the trial court has erred in ordering acquittal of the respondent. Case rests on eye-witness account. Daughters of the deceased had seen the respondent committing murder of her husband. Learned trial court has erred in disbelieving the statements of PW-8 Bhuro and PW-9 Versha.



Learned *Amicus Curiae* appearing on behalf of the respondent has opposed the appeal and has submitted that from the complete reading of the statements of alleged eye-witnesses PW-8 Bhuro and PW-9 Versha, it was evident that they had not witnessed the occurrence. There was no injury mark on the person of the deceased to corroborate the alleged eye-witness account.

Present case relates to murder of Mohar Singh, husband of the respondent. It was the prosecution story that respondent was having illicit relations with Hakim Singh and she had committed murder of her husband alongwith her *paramour*. However, after investigation, challan was presented against the respondent.

To prove its case, prosecution has placed reliance on the testimonies of PW-8 Bhuro and PW-9 Versha.

PW-8 Bhuro and PW-9 Versha in their examination-in-chief have stated that they had gone to sleep after eating dinner. On hearing alarm raised by their father, they had got up and saw that their mother was strangulating their father. They informed their uncle about the incident in the morning. Respondent had told them that their father had died on account of consumption of liquor. However, PW-8 Bhuro in her cross-examination deposed that she had got up after half an hour of her father's death. She had not seen any injury on her father at night, but had seen injury mark in the morning. She also admitted that she had told her



brothers after her father had died, but nobody had seen dead body as it was dark. PW-9 Versha in her cross-examination deposed that everybody had seen dead body in the morning and till then nobody knew as to how her father had died.

Learned trial court after going through the cross-examination of PW-8 Bhuro and PW-9 Versha rightly held that their statements did not inspire confidence and were rendered doubtful. No reliance could be placed on their statements.

PW-5 Doctor Narendra Kumar Agarwal deposed that there were no strangulation marks on the neck of the deceased.

So far as PW-3 Dwarika is concerned, he has stated that he had been told by PW-8 Bhuro and PW-9 Versha that Hakim Singh had given them some tablets and they had slept. At night, their mother had told them that their father had died. However, the said part of the statement of PW-3 Dwarika is not corroborated by PW-8 Bhuro and PW-9 Versha.

PW-4 Satyaprakash, son of the deceased deposed that his father had been murdered by his mother and Hakim Singh. He had been informed by his sister Bhuro regarding the death of his father at 9.00 P.M.. Then he reached the spot and saw that his father was lying on the floor. In the morning, his uncle and others had seen the dead body and found that there were strangulation marks on the neck of the deceased. Statement of PW-4 Satyaprakash is *hearsay*. He had narrated the incident as disclosed to him by his sister Bhuro. However, Bhuro has not deposed to the effect that her father had been murdered by Hakim Singh also. Medical evidence does not corroborate his version that there were strangulation marks on the neck of the deceased.



Keeping in view the material discrepancies in the statements of the witnesses, learned Trial Court rightly came to the conclusion that the prosecution has failed to establish its case beyond the shadow of reasonable doubt.

Hon'ble the Supreme Court in **Allarakha K.Mansuri v. State of Gujarat, 2002(1) RCR (Criminal) 748**, has held that

where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court.

Similarly, in **Mrinal Das & others v. The State of Tripura, 2011 (9) Supreme Court Cases 479**, the Hon'ble Supreme Court after looking into various judgments, has laid down parameters, in which interference can be made in a judgment of acquittal, by observing as under:

"8) It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to re-appreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal



against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons", for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed"

Hence, no ground for grant of leave to appeal is made out.
Dismissed.



(CHANDRA KUMAR SONGARA),J

(SABINA),J

Sanjay Kumawat-8

