

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 2077 OF 2011

KHUMBHA RAM

..Appellant

Versus

STATE OF RAJASTHAN & ORS.

..Respondents

J U D G M E N T

R. BANUMATHI, J.

This appeal by special leave has been filed against the common order dated 03.02.2010 passed by the Jodhpur Bench of the Rajasthan High Court in Leave to Appeal Application No.294/2009 and Criminal Revision Petition No.584/2009 whereby the High Court dismissed both leave to appeal as well as the revision petition thereby confirmed the order of acquittal dated 24.03.2009 passed by the Additional Sessions Judge (Fast Track), Balotara in Sessions Case No.71/2008 whereby the accused-respondents were acquitted of the charges punishable under Sections 498A, 304B IPC alternatively under Section 302 IPC.

2. The factual background which led to the filing of this appeal are as under:- Marriage of second respondent-Bhanwara Ram and the appellant's daughter Kamla (since deceased) was solemnized on 27.05.2007 and Kamla remained peacefully in her in-laws house for sometime. It is alleged that within short while thereafter, her in-laws started to treat her with cruelty in connection with demand of dowry. On 27.07.2008, appellant sent his son Jetha Ram (PW-5) to bring back his daughter and Kamla was brought back to her parents house. Within two weeks thereafter i.e. on 09.08.2008, respondent No.2 came to the house of the appellant to take back his wife (Kamla). Deceased told second respondent that she is preparing for Patwari examination and as such she was not prepared to return quickly. Angered over the same, respondent No. 2 is said to have beaten Kamla and the appellant was compelled to send his daughter Kamla with respondent No.2 on 10.08.2008. On 11.08.2008, Kamla died in her matrimonial house and her body was found in a tank there and the parents of Kamla came to know about death of their daughter.

3. On the complaint filed by the second respondent before Police Station Gida, a case No.5/08 was registered in Gida Police Station as death of Kamla was within seven years of marriage. Investigation into the cause of death was initiated by Assistant Collector and Executive Magistrate, Bayatu and investigation report

was submitted stating that deceased-Kamla has not died due to drowning in the water. On the basis of the said report, a case under Sections 498A and 304B IPC was registered and investigation was taken up. After completion of the investigation, chargesheet under Sections 302, 304B and 498A IPC was filed against the accused persons viz. Bhanwara Ram, Deshraj Ram, Dhupudevi and Kamla daughter of Deshraj Ram.

4. Before the trial court prosecution has examined fifteen witnesses. The trial court vide its judgment dated 24.03.2009 held that the prosecution has failed to prove that the accused persons harassed the deceased in connection with demand of dowry prior to her death and that there was no medical evidence as to how deceased Kamla died. The trial court thus acquitted all the accused/respondents of all the charges under Sections 498A, 304B IPC in the alternate under Section 302 IPC giving them benefit of doubt. Aggrieved by the order of acquittal, the State and Khumbha Ram, father of the deceased preferred leave to appeal and the criminal revision before the High Court which vide the impugned order dismissed State's leave to appeal and appellant's criminal revision petition. Being aggrieved, the father of the deceased has preferred this appeal.

5. Ms. Aishwarya Bhati, learned counsel for the appellant submitted that the High Court erred in dismissing the appeal without properly appreciating the evidence and the fact that the trial court completed the trial in a fast track within six months of the incident without even waiting for the FSL Report from the Forensic Science Laboratory, Jodhpur which came nearly twenty days after the judgment. It was submitted that the FSL Report dated 04.09.2008 shows that the samples of viscera of the deceased gave positive test for the presence of organo phosphorous insecticide and the High Court erred in discarding the FSL Report. It was contended that almost all the seven witnesses from the family of the appellant including the appellant have consistently stated about the harassment meted out to the deceased in connection with the demand of dowry and the deceased died in mysterious circumstances within seven years of marriage and the trial court and the High Court should have raised the statutory presumption in law under Section 113B of the Evidence Act. In support of her contention, the learned counsel placed reliance upon the judgment of this Court in *Dinesh vs. State of Haryana*, (2014) 12 SCC 532; *Rajinder Singh vs. State of Haryana*, (2013) 15 SCC 245 and *Mangilal vs. State of Rajasthan & Anr.* (2001) 8 SCC 519.

6. Per contra, Mr. Mahabir Singh, learned Senior Counsel for the respondents contended that the prosecution was unable to prove

that Kamla was subjected to harassment for any kind of dowry demand 'soon before her death' and the trial court has rightly acquitted respondents No.2 to 5 herein on the finding that no substantive evidence was adduced to prove that just prior to the date of death deceased-Kamla had been subjected to harassment in connection with the demand of dowry. Drawing our attention to the FSL Report dated 30.08.2008 given by Rajasthan Medicare Relief Society, Jodhpur which stated that "*no opinion can be given*", learned counsel for the respondents submitted that in the absence of any substantive evidence to establish the charges, the High Court rightly declined to grant leave to appeal.

7. We have carefully considered the rival contentions of the parties and perused the impugned order and the material on record.

8. Section 378 of the Criminal Procedure Code deals with the power of the High Court to grant leave in case of acquittal.

Sub-sections (1) and (3) of Section 378 Cr.P.C. read as under:-

"378. Appeal in case of acquittal.- (1) Save as otherwise provided in sub-section (2), and subject to the provisions of sub-sections (3) and (5),-

(a) ...

(b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court or an order of acquittal passed by the Court of Session in revision.

(3) No appeal under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court."

Sub-section (3) of Section 378 Cr.P.C. puts a restriction on entertaining of appeals by imposing a condition that the leave of the High Court should be first obtained before any appeal is entertained.

9. The High Court while refusing leave must indicate the reasons for refusal to grant leave. Refusal of leave to appeal has the effect of foreclosing the right once for all and therefore there is a need to record reasons when the High Court refuses to grant leave to appeal. In *State of Rajasthan vs. Sohan Lal And Ors.*, (2004) 5 SCC 573, it was held as under:-

“...The State does not in pursuing or conducting a criminal case or an appeal espouse any right of its own but really vindicates the cause of society at large, to prevent recurrence as well as punish offences and offenders respectively, in order to preserve orderliness in society and avert anarchy, by upholding the rule of law. The provision for seeking leave to appeal is in order to ensure that no frivolous appeals are filed against orders of acquittal, as a matter of course, but that does not enable the High Court to mechanically refuse to grant leave by mere cryptic or readymade observations, as in this case (“the court does not find any error”), with no further, on the face of it, indication of any application of mind whatsoever. All the more so, when the orders of the High Court are amenable to further challenge before this Court. Such ritualistic observations and summary disposal which has the effect of, at times, and as in this case, foreclosing statutory right of appeal, though a regulated one, cannot be said to be a proper and judicial manner of disposing of judiciously the claim before courts. The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind. All the more so, when refusal of leave to appeal has the effect of foreclosing once and for all a scope for scrutiny of the judgment of the trial court even at the instance and hands of the first appellate court. The need for recording reasons for the conclusion arrived at by the High Court, to refuse to grant leave to appeal, in our view, has nothing to do with the fact that the appeal envisaged under Section 378 CrPC is conditioned upon the seeking for and obtaining of the leave from the court. This Court has repeatedly laid down that as the first appellate court the High Court, even while dealing with an appeal against acquittal, was also entitled, and obliged as well,

to scan through and if need be reappreciate the entire evidence, though while choosing to interfere only the court should find an absolute assurance of the guilt on the basis of the evidence on record and not merely because the High Court could take one more possible or a different view only. Except the above, where the matter of the extent and depth of consideration of the appeal is concerned, no distinctions or differences in approach are envisaged in dealing with an appeal as such merely because one was against conviction or the other against an acquittal.”

10. Expressing the same view, in *State of Orissa vs. Dhaniram Luhar*, (2004) 5 SCC 568, this Court held as under:-

“...Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief in its order, indicative of an application of its mind; all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court order not sustainable.”

11. On the anvil of the above principles, considering the present case, in our view, the approach of the High Court is completely incorrect. The High Court has not recorded any reason as to why leave to appeal was refused. In the instant case, there is no dispute that deceased-Kamla died within seven years of marriage in unnatural circumstances. By perusal of the judgment of the trial court, the trial court does not seem to have examined the evidence adduced by the prosecution in the light of the statutory presumption to be raised under Section 113B of the Evidence Act. In such circumstances, the High Court ought to have granted leave to appeal and thereafter re-appreciated the evidence and recorded its findings independently as regards guilt or otherwise of the accused. The High Court has not given any reason for refusing to grant leave to file

appeal against acquittal. The impugned order is very cryptic by which the High Court refused leave to appeal and dismissed both appeal as well as the revision and in our view, the impugned order is liable to be set aside and the matter be remitted back to the High Court. Even though State of Rajasthan has not preferred any appeal before this Court, as the impugned order is a common order and in the interest of justice, we deem it appropriate to grant leave to appeal to the State as well.

12. Yet another ground for remitting the matter back to the High Court is relevant to be noted. The judgment of the trial court was delivered on 24.03.2009 and the FSL Report dated 16.04.2009 (Annexure P-2 in the SLP Paper Book) received from the Regional State Forensic Science Laboratory, Rajasthan, Jaipur after the disposal of the case by the trial court, show positive test for the presence of organo phosphorous insecticide in the viscera. In our view, the High Court should have considered the FSL Report in proper perspective and as the first appellate court, it should have independently examined the matter and recorded its findings objectively.

13. In the result, without commenting on the merits of the case, the impugned order is set aside and leave to appeal is granted. Appeal filed by the State as well as criminal revision filed by

appellant-Khumbha Ram shall be taken on the file of the High Court and after affording sufficient opportunities to both parties, the High Court shall dispose of the same in accordance with law. The appeal stands allowed accordingly.

.....J.
(R. K. AGRAWAL)

.....J.
(R. BANUMATHI)

New Delhi;
October 15, 2015



JUDGMENT

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 2077/2011

KHUMBHA RAM

Appellant(s)

VERSUS

STATE OF RAJASTHAN & ORS.

Respondent(s)

[HEARD BY HON'BLE R.K. AGRAWAL AND HON'BLE R. BANUMATHI, JJ.]

Date : 15/10/2015 This appeal was called on for judgment today.

For Appellant(s)

Ms. Aishwarya Bhati, Adv.
Mr. T. Gopal, Adv.

For Respondent(s)

Mr. Nikhil Jain, Adv.
For Ms. Madhusmita Bora, AOR
Ms. Ruchi Kohli, AOR

Hon'ble Mrs. Justice R. Banumathi pronounced the judgment of the Bench comprising Hon'ble R.K. Agrawal and Hon'ble R. Banumathi, JJ.

For the reasons recorded in the reportable judgment, which is placed on the file, without commenting on the merits of the case, the impugned order is set aside and leave to appeal is granted. Appeal filed by the State as well as criminal revision filed by appellant - Khumbha Ram shall be taken on the file of the High Court and after affording sufficient opportunities to both parties, the High Court shall dispose of the same in accordance with law. The appeal stands allowed accordingly.

As a sequel to the above, pending application, if any, is also disposed of.

(Renuka Sadana)
Court Master

(Parveen Kr. Chawla)
AR-cum-PS