

State of Rajasthan

Vs

Kamla

Criminal Appeal No. 582 of 1979

(S.R. Pandian, K. Jayachandra Reddy JJ)

11.10.1990

JUDGMENT

S. RATNAVEL PANDIAN, J.:-

1. The State of Rajasthan on being dissatisfied with the order of acquittal recorded by the high Court in Criminal Appeal No. 23 of 1973 has preferred this appeal.

2. The respondent and her husband Mal Singh (since acquitted) took their trial for offences under Section 302, IPC in the alternative under Sec. 302 read with Sec. 34, IPC and also under Sections 201 and 394, IPC. The case of the prosecution is that on 23-10-1971 the deceased Sarju who was about 7 years at the time of the occurrence was missing and not traceable in spite of incisive search made by the parents, relatives and villagers. Therefore, one Moti Lal (PW.8) reported this incident to the concerned police station on 24-10-71 at about 3.45 p.m.

3. During the course of the investigation on the statement of P.W. 1 that the deceased girl was found in the house of the respondent in the afternoon of 23-10-71, the police arrested respondent and her husband. In pursuance of the admissible portion of the statement of the respondent, not only the dead body was exhumed but also some ornaments of the deceased girl were recovered.

4. The trial Court on the basis of certain circumstantial evidence convicted the respondent under Section 302 and Sec. 394, I.P.C. and sentenced her to undergo imprisonment for life and for 10 years respectively. The convicted respondent challenged the correctness of the judgment before the High Court which for the reasons assigned in its judgment acquitted the respondent. Hence this appeal.

5. There is no direct evidence to connect the respondent with the offence in question. The prosecution has relied upon certain circumstantial pieces of evidence viz. (1) that the deceased was last found in the company of the respondent by P.W. 1 in the afternoon of 23-10-1971 in the house of the respondent; (2) the dead body was exhumed on the information furnished by the respondent; (3) the ornaments said to have been worn by the deceased at the time of the occurrence were recovered in pursuance of the admissible portion of the statement of the respondent within the meaning of Section 27 of the Evidence Act; and (4) that the weapon of offence namely the axe was also recovered in pursuance of the statement of the respondent.

6. Regarding the recoveries of the ornaments and the axe, the High Court on the scrutiny of the

evidence has found thus:

"Consequently, we are unable to hold that the recoveries of the ornaments and the axe at the instance of the appellant and in consequence of her information are beyond suspicion. "

7. Coming to the imported piece of the circumstantial evidence, namely, the exhumation of the dead body in pursuance of the statement given by the respondent, the High Court has held that this piece of evidence does not in any way incriminate the respondent with the offence in question for the reason that even before the respondent gave the information to the police about the place where from the dead body was exhumed, the respondent's husband who stands convicted gave the information to the head constable as to where the dead body was buried. After carefully examining the materials placed before us, we are of the opinion that the reasons given by the High Court for discarding the evidence in regard to the recoveries as well the evidence with regard to the exhumation of the dead body do not suffer from any infirmity. On the other hand, those reasons are quite convincing and satisfactory.

8. The only remaining piece of the evidence is that the deceased was last seen in the company of the respondent. While dealing with this circumstantial evidence, the High Court has held as follows:-

"That the deceased was last seen in the house of the appellant, though established on the record, by itself does not necessarily point to the guilt of the appellant in the absence of any other direct or circumstantial evidence regarding her complicity in the crime, especially when possibility of the deceased having fallen down from the wall of the house of the appellant and received the fatal head injury."

9. The above observation of the High Court cannot be said to be erroneous or perverse in the light of the medical evidence. Thus, we find no compelling reason warranting an interference in the impugned judgment.

10. In the result, the appeal is dismissed.

Appeal dismissed.

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