SUPREME COURT OF INDIA

Mangilal

Vs.

State of Rajasthan

Crl.A.No.1064 of 2001

(S.N.Variava and K.T.Thomas JJ.)

18.10.2001

JUDGMENT

S. N. Variava, J.

1. Leave granted.

2. Heard parties.

3. This appeal is against the judgment dated 5th July, 2000, by which the High Court has summarily dismissed the Revision Petition filed by the Appellant herein. Briefly stated the facts are as follows: The Appellant is the father of one Munki. The said Munki was married to the 2nd Respondent. Of the said marriage there is a girl child born to these two parties. On 16th September, 1998, the Appellant filed a First Information Report with the Mahatma Gandhi Police Chauki, Jodhpur, Rajasthan. The complaint was to the effect that the 2nd Respondent used to beat his wife and harass her without any reasons. It was complained that even when the 2nd Respondent had been told not to beat his wife or harass her, he refused to listen to reasons. It was further complained that on 15th September, 1998, the Appellant was informed that Munki was seriously ill and had been admitted to Jodhpur Hospital. It was stated that when the Appellant went to the Hospital he found Munki in Emergency Ward. It was stated that Munki had informed the Appellant that she had been beaten and administered a glass of pesticide by her husband i.e. the 2nd Respondent. On the basis of the FIR, a complaint under Section 498-A and 323 was registered. Subsequently Sections 307 and 324 were also added. The 2nd Respondent was then tried for the said offences. By an Order dated 27th March, 2000 the 2nd Respondent was acquitted by the Second Additional District & Sessions Judge. Against the Order of acquittal the Appellant filed Criminal Revision Petition, which has been dismissed by the impugned Judgment dated 5th July, 2000. Hence this Appeal. Even though the State had not filed an Appeal against the Order of acquittal dated 27th March, 2000 and has not filed any SLP before this Court, Mr. Ranji Thomas, who appears for the State of Rajasthan, informs us that he is supporting the Appellant. In support of its case the Prosecution had examined a number of witnesses. Among the witnesses that it had examined was one Dr. N.S. Kothari, who was examined as Prosecution Witness No. 9.

He deposed that after Munki was admitted to the Hospital, her gastric lavage and blood sample were preserved and sent for chemical examination. He deposed that the chemical examination disclosed that an insecticide poison namely, organo-phosphorous, which was dangerous to life, was found present in gastric lavage and blood sample. He further deposed that if the treatment had not been given in time, Munki would have died. The report had been marked as Ex.P. 8. The result of the report read as follows:

> "On chemical examination, portion of blood sample and gastric lavage gave position test for the presence of organo- phosphorous insecticide."

4. On the basis of this evidence the Second Additional District & Sessions Judge concluded that poison dangerous to life was found in the body of Smt. Munki. Inspite of this finding the 2nd Respondent was acquitted. The reasoning of the Second Additional District & Sessions Judge, for acquitting the 2nd Respondent, are difficult to follow. Munki was supposed to have been taken to the Hospital by her Jeth. Munki had also deposed that when poison was administered to her, her mother-in-law and sister-in-law were also present. The Second Additional District and Sessions Judge has concluded that the Jeth and the mother-in-law and sister-in-law should have been examined by the prosecution. The Jeth was not an eye witness to the administration of poison. We fail to understand what evidence the Jeth could have given except to say that he took Munki to the Hospital. We also fail to understand how the Second Additional District & Sessions Judge expected prosecution to lead evidence of the 2nd Respodent's mother and sister. We fail to understand how non-examination of these parties was fatal to the prosecution case. The Second Additional District & Sessions Judge also held that the tumbler through which the poison was supposed to have been administered to Munki had not been produced by the Prosecution and that this was a serious lapse on part of the prosecution. On such specious reasoning it was held that there was no oral, documentary or circumstantial evidence to show that the 2nd Respondent had administered poison to his wife Munki. In our view the reasoning of the Second Additional District &Sessions Judge is entirely erroneous and cannot be sustained. It could not be said that there was no oral or direct evidence available in this case. The wife Munki survived. She has given evidence as PW 6. We have perused her deposition. She deposed about being beaten by her husband regularly. She has deposed that, on one occasion, when she was conceiving with a 7 months old child, she had been beaten so badly that the child died in the womb and she had remained ill for 15 days. She deposed in clear terms that her husband i.e. the 2nd Respondent had held her nose and poured the poison into her mouth, forcing her to take two or three sips of poison. She deposed that she remained conscious and ten minutes thereafter started vomiting. She deposed that her Jeth took her to the Hospital and that she received treatment over there. She deposed that when her father came to see her in the Hospital, she had informed him that poison had been administered to her by her husband. In cross examination her testimony has not been shaken at all even though there has been a lengthy and detailed cross examination. We find her evidence to be trustworthy and reliable. The Appellant, father of Munki, has given evidence as PW 3. He also corroborates the fact that Munki was regularly beaten by her husband. He deposed that on hearing that she had been admitted to the Hospital, he went to the Hospital. He deposed that she had informed him that her husband had administered poison to her. His testimony has also not been shaken in cross examination.

This is direct evidence, which was available before the Court. The Second Additional District & Sessions Judge was wrong to have ignored this evidence. This evidence was supported by the fact that on chemical examination organo-phosphorous i.e. an insecticide poison was found in the gastric lavage and blood sample of Munki. The evidence showed that this substance was dangerous to life. Through the evidence of these two witnesses the prosecution had also conclusively proved that 2nd Respondent had subjected Munki to cruelty. In view of this direct evidence we fail to understand how it could have been concluded that there was no oral, documentary or circumstantial evidence. This finding cannot be sustained and has to be set aside. Even though the Order of the Second Additional District and Sessions Judge was clearly unsustainable, the High Court approached the Revision in a most perfunctory manner. The High Court summarily dismissed the Criminal Revision. In this view of the matter the order of the trial court acquitting the 2nd Respondent cannot be sustained and is set aside. The accused, Respondent No. 2, is held guilty of offences under Sections 307, 324 and 498-A of the Indian Penal Code. The 2nd Respondent will have to be heard on the question of sentence to be imposed on him. We, therefore, send the matter back to the Second Additional District & Sessions Judge for hearing the 2nd Respondent on the quantum of sentence and for imposing the necessary sentence in accordance with law. The Appeal stands disposed of accordingly. Needless to state that the impugned Order is also set aside. There will be no Order as to costs.