SUPREME COURT OF INDIA

State of Maharashtra

Vs.

Mansingh

Crl.A.No.462-63 of 1999

(B.N.Agrawal and H.K. Sema, JJ.)

19.08.2004

ORDER

B.N.Agrawal, J.

1 The respondent herein was convicted by the trial court under Section 302 of the Penal Code (for short "IPC") and awarded death penalty. He was further convicted under Section 376 IPC and sentenced to undergo rigorous imprisonment for a period of ten years and to pay fine of Rs 2000; in default to undergo further imprisonment for a period of two years. The respondent was also convicted under Section 201 IPC and sentenced to undergo rigorous c imprisonment for a period of five years and to pay fine of Rs 1000; in default to undergo rigorous imprisonment for a period of one year. All the sentences were, however, ordered to run concurrently. On appeal being preferred, the High Court of Bombay recorded order of acquittal of the respondent. Hence, these appeals by special leave.

2. Undisputedly, in the present case, there is no direct evidence, but it is a ^ case of circumstantial evidence and the trial court came to the conclusion that the prosecution has succeeded in proving the following circumstances against the respondent by credible evidence:

> "(a) the respondent was last seen in the company of the victim girl;
> (b) the accused made a false statement before the search party and misled them in conducting the search for dead body of the victim;
> (c) the accused had given false explanation in relation to his own injuries; and
> (d) bloodstained clothes, which the accused was wearing, were seized and the blood group thereon was that of the deceased."

2. So far as the first circumstance is concerned, the prosecution has attempted to prove the same by the evidence of PWs 1, 6 and 14. So far as ^ PWs 1 and 6 are concerned, from their

evidence it does not appear that the accused and the victim were last seen by them. Then remains the evidence of PW 14 who, in his statement made before the police as well as the court, has consistently stated that he had last seen the victim in the company of the accused. The ground of attack to his evidence was that though the occurrence is said to have taken place in the night of 13/14-12-1994, between 10 p.m. to 9 5 a.m., but this witness was examined by the police for the first time after three weeks on 6-1-1995, for which no reasonable explanation was furnished by the prosecution. This witness stated that a relation of his expired, as such on the next day he went to the other village and after he came back therefrom his statement was recorded by the police. The investigating officer, PW 17, stated that he tried his level best to examine this witness between 14-12-1994 h and 17-12-1994. 20-12-1994 and 22-12-1994. 30-12-1994 and 2-1-1995. But State of Maharashtra V. Mansingh 133 as the witness was not available in the village, he could not be examined and the fact that the investigating officer made search for this witness for recording statement has been noted down in the case diary itself. In our view, the prosecution has given reasonable explanation for examination of this witness by the police after three weeks. We do not find any ground to disbelieve the evidence of PW 14. Merely because he was a solitary witness and to prove the circumstance, his evidence cannot be thrown out. It is well settled that a circumstance can be proved even by evidence of solitary witness, if his evidence is found to be credible and free from doubt. Thus, we hold that the prosecution has succeeded in proving this circumstance against the respondent.

3. The second circumstance has been proved by PWs 3 and 4. According to the evidence of PWs 3 and 4, when they went in search of the dead body, the accused misled them by saying that he had verified the upper portion of the nala and they should see the lower portion, while as a matter of fact, dead body was found in the upper portion of nala covered with leaves. These two witnesses have consistently supported the prosecution case and no ground could be shown to disbelieve their evidence. Thus, we are of the view that the prosecution has led credible evidence to prove this circumstance as well.

4. Next circumstance has been proved by the evidence of PWs 3 and 8, who found injuries on the head and right as well as left knee of the accused. So far as injury on the head is concerned, the accused in his statement under Section 313 of the Code of Criminal Procedure has admitted the same and has given the explanation for the same, but so far as the injuries of the knees are concerned, he has denied the same. The doctor, PW 13, has reported that he found injuries on both the right and left knees of the accused. According to the prosecution, the accused received these injuries while committing rape upon the victim on rough surface. Neither we find any reason to discard the evidence of PWs 3 and 8, nor the evidence of PW 13, the doctor. Thus, we hold that the prosecution has proved this circumstance also.

5. Last circumstance against the accused is that bloodstained clothes were seized from his person and the same were sent to the Serologist, who reported that they contained human blood and the blood group thereon was Group ‘B’, which was the blood group of the

deceased. Thus, we have no difficulty in holding that the prosecution has succeeded in proving this circumstance as well. In our view, on the basis of the aforesaid circumstances, only one irresistible conclusion can be drawn which is incompatible with innocence of the accused. In view of the foregoing discussions, we are of the opinion that the prosecution has succeeded in proving its case beyond reasonable doubt and the order of acquittal rendered by the High Court suffers from the vice of perversity.

6. Now the question which arises is as to whether the present case would come within the ambit of rarest of the rare case. In the facts and circumstances of the case, we are of the view that the trial court was not distified in imposing extreme penalty of death against the respondent and ends of justice would be met in case the sentence of life imprisonment is awarded against the respondent.

7. Accordingly, the appeals are allowed, order of acquittal rendered by the High Court is set aside and that of conviction recorded by the trial court is restored, but sentence of death awarded by the trial court is commuted to life a imprisonment. The respondent is directed to be taken into custody forthwith to serve out the remaining period of sentence and after taking into custody, the trial court shall send compliance report to this Court within one month from today. SLPs (Crl.) Nos. 1445-46 of 1999

8. In view of the order passed by us in Criminal Appeals Nos. 462-63 of ^ 1999, these petitions have become infructuous and, accordingly, the same are dismissed.