

Neeta Vs Sandeep alias Athanni and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 5, 2012

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 161, 175, 313, 378(4)
Penal Code, 1860 (IPC) â€” Section 201, 302, 34

Hon'ble Judges: Rameshwar Singh Malik, J; Jasbir Singh, J

Bench: Division Bench

Advocate: Garima, for the Appellant;

Final Decision: Dismissed

Judgement

Jasbir Singh, Judge

Criminal Misc. No. 53298 of 2012

1. In view of the reasons mentioned in the application, it is allowed and a delay of 97 days in filing the appeal stands condoned.

Criminal Misc. No. A-746-MA of 2012

Complainant-Neeta has filed this application u/s 378(4) Cr.P.C. seeking leave to file an appeal against the judgment of acquittal dated 31.3.2012.

2. FIR No. 274 dated 4.11.2009 was registered against respondents No. 1 & 2/accused on 4.11.2009 on a statement Ex. PE made by Neeta

(P.W. 14) for commission of offences under Sections 302, 201 & 34 IPC in Police Station Baroda. It was an allegation against both the above

accused that they had killed Jasmer, husband of respondent No. 2.

3. The trial Judge has noted the following facts regarding case of the prosecution:-

2. It is case of the prosecution that Smt. Neeta, the complainant (P.W. 14) is a sister of the deceased Jasmer. The latter was married with accused

Smt. Sushina alias Sheena and both of them were living as husband and wife at their native village Ridhana on the day of occurrence. It has been

urged that 17.10.2009 was the day of festival of Diwali. Smt. Neeta had visited her brother, Jasmer at village Ridhana on that day. She was

disturbed in her sleep around midnight by the quarrelling couple where upon she learnt that accused Smt. Sheena had developed illicit relations with

Sandeep, a neighbour. The husband had been regularly attempting to prevail upon her to withdraw from the unholy alliance. She would not listen to

him. Accused Smt. Sheena went out to summon her co-accused, namely, Sandeep with intent to finish the chapter of life of her husband. Sandeep

was accompanied by Naresh and Jagbir and their parents, namely, Daya Nand and Smt. Parmeshwari. There were two more accomplices with

them but Smt. Neeta failed to identify them. Sandeep, Naresh and Jagbir laid the deceased on the ground whereas Daya Nand gagged his mouth

with a piece of cloth. The alarm raised by her failed to attract the attention of the co-villagers because of Diwali celebration fireworks in the village.

Accused Sandeep then tied legs of the deceased below the knees with a naked electricity wire and passed electric current through the wires when

an intent to cause his death. Jasmer succumbed to the injuries at the spot because of electrocution.

4. It was case of the prosecution that complainant-Neeta (P.W. 14), after the above incident, had become unconscious. She came in senses on the

next day. She narrated the occurrence to her husband and other co-villagers, who promised her to initiate appropriate legal action against the

accused. However, when nothing was done, she got recorded her statement Ex. PE to Sub Inspector Ishwar Singh (P.W. 13) on 4.11.2009

which led to the registration of the above said FIR. Thereafter, the Investigating Officer went to the place of occurrence, prepared a rough site plan

Ex. PJ with correct marginal notes and also recorded statements of Indraj (P.W. 15) and Shiv Kumar (P.W. 8) u/s 161 Cr.P.C. It is also on

record that prior thereto on 18.10.2009, Assistant Sub Inspector Om Parkash (P.W. 5), on receipt of information regarding death of Jasmer, went

to Gohana. He recorded statement of Balwan Singh (P.W. 18) whereupon no cognizable offence was made out against any person. Assistant Sub

Inspector Om Parkash (P.W. 5) prepared inquest report on the dead body of Jasmer and sent it for post mortem examination, which was

conducted by Dr. Kapil Jain (P.W. 1). On receipt of Post Mortem Report, Assistant Sub Inspector Om Parkash also recorded statement of

Indraj (P.W. 15) and Naresh Kumar (P.W. 2) u/s 175 Cr.P.C. The above police officer also went to the place of occurrence, took into

possession blood stained earth against a recovery memo.

5. In between, the case was also investigated by Deputy Superintendent of Police Rajinder Singh (P.W. 19) and on 7.11.2009 he recorded the

supplementary statement of Neeta (P.W. 14). Respondent No. 1/accused Sandeep alias Athanni was arrested on 8.11.2009. It is case of the

prosecution that he was produced before the police by Surender Singh (P.W. 16) before whom he made an extra judicial confession. Upon

interrogation respondent No. 1 suffered a disclosure statement which led to the recovery of electric wire, which was kept concealed by him in the

fodder room of his Gher. Respondent No. 2-Sushina alias Sheena was arrested on 9.11.2009. On interrogation, she made a disclosure statement

admitting her guilt. She also got recovered a rope, a chunni and sleeping pills from almirah of her house.

6. On completion of investigation, final report was put in Court. Copies of the documents were supplied to the accused, as per norms. The case

was committed to the competent Court for adjudication. The respondents No. 1 & 2/accused were charge sheeted to which they pleaded not

guilty and claimed trial.

7. The prosecution produced 19 witnesses and also brought documentary evidence, to prove its case. On conclusion of the prosecution evidence,

separate statements of respondents No. 1 & 2/accused were got recorded u/s 313 Cr.P.C. providing them an opportunity to explain the

incriminating circumstances appearing against them in the prosecution evidence. It was specifically stated by respondent No. 1-Sandeep alias

Athanni that he was falsely implicated in this case. He has no relation whatsoever with respondent No. 2-Sushina alias Sheena and because of

some family dispute with Jasmer, he was wrongly implicated by the complainant. Respondent No. 2-Sushina alias Sheena stated that the

complainant along with her sister had transferred their respective shares in the ancestral land in favour of her husband on 20.9.2008. Jasmer died

due to electric shock. Both sisters of her husband, at that stage, asked her to return their share of land to them which they had given to Jasmer. On

refusal to do so, a false case was got registered against her. It was further stated that the complainant had also filed a civil suit for setting aside the

judgment and decree on the basis of which her share was transferred in the name of Jasmer, deceased. It was further stated that FIR was got

registered with a view to pressurize respondent No. 2 to succumb to the wishes of the complainant. The respondents/accused also led evidence in

defence.

8. The trial Judge, on appraisal of evidence on record, found respondents No. 1 & 2 not guilty and accordingly, they were acquitted of the charges

framed against them. It was rightly noticed that the prosecution has failed to give any explanation for long delay in getting the FIR recorded. Death

of Jasmer occurred on 17.10.2009. FIR was recorded on 4.11.2009. As per case of the complainant, after noticing death of her brother she went

unconscious and regained her conscious only on 18.10.2009. She narrated the entire occurrence to her husband and other co-villagers. If that was

so, why the matter was not brought to the notice of the police is a great mystery which the prosecution has failed to settle. It is case of the

prosecution that the complainant had seen the entire occurrence when murder of Jasmer was committed. In the witness box, the complainant has

stated that on 18.10.2009 when she regained conscious, the police officials met her and took her thumb impression on a paper. It is not explained

on record as to why she failed to disclose the names of the assailants at that time. It is case of the prosecution that accused Sandeep alias Athanni

had made an extrajudicial confession before Surender Singh (P.W. 16) on 8.11.2009. In paragraph No. 14 of the impugned judgment, the trial

Court has rightly opined that evidence of extrajudicial confession is a weaker type of evidence and it needs to be scrutinized in a threadbare

manner. After dissecting the statement made by Surender Singh (P.W. 16), it was stated that his statement was not free from blemish. In cross-

examination, he admitted that he belongs to village Jagsi, where the complainant and her two sisters were married. It has also come on record that

he is not related to respondent No. 1 and there was no such acquaintance between them, on account of which respondent No. 1 may have

reposed faith in him. There is nothing on record to show any link between respondents No. 1 and 2. View taken by the trial Judge is as per

evidence on record.

9. Their Lordships of the Supreme Court in Allarakha K. Mansuri v. State of Gujarat, 2002 (1) RCR (Cri.) 748, held that where, in a case, two

views are possible, the one which favours the accused, has to be adopted by the Court.

10. A Division Bench of this Court in State of Punjab v. Hansa Singh, 2001 (1) RCR (Cri.) 775, while dealing with an appeal against acquittal, has

opined as under:-

We are of the opinion that the matter would have to be examined in the light of the observations of the Hon"ble Supreme Court in Ashok Kumar

Vs. State of Rajasthan, , which are that interference in an appeal against acquittal would be called for only if the judgment under appeal were

perverse or based on a mis-reading of the evidence and merely because the appellate Court was inclined to take a different view, could not be a

reason calling for interference.

11. Similarly, in State of Goa Vs. Sanjay Thakran and Another, and in Chandrappa and Others Vs. State of Karnataka, , it was held that where, in

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

12. In Mrinal Das & others v. The State of Tripura, 2011 (9) SCC 479, decided on September 5, 2011, the Supreme Court, after looking into

many earlier judgments, has laid down parameters, in which interference can be made in a judgment of acquittal, by observing as under:

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.

13. Similarly, in the case of State of Rajasthan Vs. Shera Ram @ Vishnu Dutta, , the Hon"ble Supreme Court has observed as under:-

7. A judgment of acquittal has the obvious consequence of granting freedom to the accused. This Court has taken a consistent view that unless the

judgment in appeal is contrary to evidence, palpably erroneous or a view which could not have been taken by the court of competent jurisdiction

keeping in view the settled canons of criminal jurisprudence, this Court shall be reluctant to interfere with such judgment of acquittal.

8. The penal laws in India are primarily based upon certain fundamental procedural values, which are right to fair trial and presumption of

innocence. A person is presumed to be innocent till proven guilty and once held to be not guilty of a criminal charge, he enjoys the benefit of such

presumption which could be interfered with only for valid and proper reasons. An appeal against acquittal has always been differentiated from a

normal appeal against conviction. Wherever there is perversity of facts and/or law appearing in the judgment, the appellate court would be within

its jurisdiction to interfere with the judgment of acquittal, but otherwise such interference is not called for.

14. Thereafter, in the above case a large number of judgments were discussed and then it was opined as under:-

10. There is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other. The preponderance

of judicial opinion of this Court is that there is no substantial difference between an appeal against conviction and an appeal against acquittal except

that while dealing with an appeal against acquittal the Court keeps in view the position that the presumption of innocence in favour of the accused

has been fortified by his acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds

well set out on the materials on record, the acquittal may not be interfered with. Thus, this fine distinction has to be kept in mind by the Court while

exercising its appellate jurisdiction. The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of justice, where

interference is imperative and the ends of justice so require and it is essential to appease the judicial conscience.

15. Counsel for the applicant has failed to indicate any misreading of evidence on the part of the trial Judge which may necessitate interference by

this Court. Dismissed.