State of Haryana Vs Sharif and others

Criminal Miscellaneous No. 648-MA of 2008

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Jan. 29, 2009

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 378(3)#Penal Code, 1860 (IPC) â€" Section 302

Citation: (2009) 2 RCR(Criminal) 169

Hon'ble Judges: Satish Kumar Mittal, J; Daya Chaudhary, J

Bench: Division Bench

Advocate: P.S. Sullar, DAG, for the Appellant;

Final Decision: Dismissed

Judgement

Satish Kumar Mittal, J.
The State of Haryana has filed this application u/s 378 (3) of the Code of Criminal Procedure for grant of leave to

appeal against the judgment dated 1.9.2008, passed by Additional Sessions Judge, Nuh in Sessions Case No. 26 of 2003 titled as ""State through

Hidayat Khan v. Sharif and others"", whereby all the six accused have been acquitted.

2. In this case, after three months of the alleged occurrence, complaint under Sections 302, 148, 149 IPC was filed by Hidayat Khan, the husband

of Smt. Sariam alias Mohamadi (deceased), alleging that on 16.12.1998 in the evening, when the complainant was working in the fields, his wife

Sariam along with his two children, namely Asifa and Arstoon came in the field at about 4.00 p.m. for irrigating the field. Then accused persons

came there in a jeep. It is alleged that Sharif and Jamshed caught hold of his wife from her hands and hair, whereas his both children were caught

hold by Sheru and Rashid Lambardar. It is alleged that in the presence of the complainant, all the accused took away his wife and both the children

towards the well by dragging and threw them in well. It is further alleged that out of fear, the complainant along with his third child Sabir ran away

from the spot.

3. The learned trial court, after considering the evidence led by the prosecution, has acquitted all the accused, while coming to the conclusion that

the prosecution has completely failed to establish the guilt against all the accused beyond a shadow of reasonable doubt. A perusal of the impugned

judgment reveals that the trial court has acquitted all the accused, while recording the following findings :

(a) It has been held that the prosecution has completely failed to explain the delay of three months in filing the criminal complaint against the

accused. In this regard, the complainant gave explanation that he informed the police about the alleged occurrence, but the police did not take any

action and thereafter, he moved an application on 12.1.1999 to SP and when he was not heard even by the SP, then an application was moved to

the Chief Minister, Haryana on 27.2.1999 at Hodal. The trial court, after considering the evidence led in this regard, has held that the prosecution

has failed to prove that any such application was filed by the complainant before S.P. The alleged application (Mark A) made to the Chief Minister

has also not been proved.

(b) Learned trial court has relied upon the inquest proceedings as well as the statement made by Noora son of Kallu, father of the complainant,

who had stated before the police that his daughter-in-law along with her two children had committed suicide. This witness has also stated that

when the alleged occurrence took place, his son Hidayat Khan (complainant) had gone to Delhi with his vehicle and he was not present at that time

in the village. The trial court has also relied upon the statement of Kasam, Sarpanch of the village, who was produced by the accused in their

defence as DW.2, who has stated that on 17.12.1998, the deceased along with her two children, committed suicide and he was present at the time

of the inquest proceedings, in which father-in-law of the deceased has correctly stated that his daughter-in-law had committed suicide.

(c) Learned trial court has further relied upon the medical evidence. PW.11 Dr. Bhavnish Arora, in his statement before the Court, has

categorically stated that there was no injury mark on any part of the body of the deceased, and possibility of death by jumping into the well cannot

be ruled out. The trial court held that the medical evidence goes contrary to the prosecution version, given in the complaint that all the accused had

dragged his deceased wife and children and thereafter threw them in the well. This version is contrary to the medical evidence, as no mark of any

injury was found on the body of the deceased.

(d) The trial court has also held that the statement of PW.6 Hidayat Khan, the complainant, is not trustworthy. His version that on the next day of

occurrence, Ahmad and other villagers took out dead bodies from the well and that thereafter they approached the SP, Gurgaon and police

reached the village, runs contrary to the statement (Ex.PH) made by his father, therefore, it does not inspire any confidence and is not reliable.

4. After taking into consideration the aforesaid factors, the trial court has acquitted all the accused.

5. We have heard counsel for the applicant-State. He could not point out any illegality or perversity in the aforesaid observations/findings recorded

by the trial court. In our opinion, the evidence led by the prosecution in this case does not lead to only assumption of the guilt of the accused. The

view taken by the trial court on the basis of the evidence available on the record can also be a reasonable and possible view. The evidence led by

the prosecution in the present case is not sufficient to convict the accused for the alleged offence. Therefore, the trial court has rightly acquitted the

accused. Thus, in the facts and circumstances of the case, we do not find any ground to grant leave to appeal.

Dismissed.