

A

KHUMBA RAM

v.

STATE OF RAJASTHAN & ORS.

(Criminal Appeal No. 2077 of 2011)

B

October 15, 2015

[R.K. AGRAWAL AND R. BANUMATHI, JJ.]

C *Code of Criminal Procedure, 1973 – s. 378(1) and (3) –*
Acquittal of the accused u/ss. 498A, 304B alternatively u/s.
302 IPC by trial court (fast track) – Applications by the State
and the appellant (father of deceased) for leave to appeal
and criminal revision – Applications dismissed by High Court
by common order – On appeal by the father of the deceased,
D *held: High Court is required to record reasons while refusing*
to grant leave to appeal – In the present case, High Court
failed to record reasons for refusing to grant leave to appeal
– In the facts and circumstances of the case, High Court
E *should have granted leave to appeal and thereafter should*
have reappreciated the evidence and recorded its finding
independently on merit – High Court should also have
considered the FSL Report in proper perspective because
the trial court order was passed without consideration thereof
F *– Even though the State has not come in appeal, in the*
interest of justice, State as well is granted leave to appeal –
Matter remitted to High Court – Penal Code, 1860 – ss. 498A
and 304B alternatively u/s. 302.

G

Allowing the appeal, the Court

H

HELD: 1.1 Sub-section (3) of Section 378 Cr.P.C. puts a restriction on entertaining of appeals by imposing a condition that the leave of the High Court should be first obtained before any appeal is entertained. The High

Court while refusing leave must indicate the reasons for refusal to grant leave. Refusal of leave to appeal has the effect of foreclosing the right once for all and therefore there is a need to record reasons when the High Court refuses to grant leave to appeal. [Para 8 and 9] [894-F-G]

1.2 In the present case, the approach of the High Court is completely incorrect. The High Court has not recorded any reason as to why leave to appeal was refused. In the instant case, there is no dispute that deceased died within seven years of marriage in unnatural circumstances. The trial court does not seem to have examined the evidence adduced by the prosecution in the light of the statutory presumption to be raised under Section 113B of the Evidence Act. In such circumstances, the High Court ought to have granted leave to appeal and thereafter re-appreciated the evidence and recorded its findings independently as regards guilt or otherwise of the accused. The High Court has not given any reason for refusing to grant leave to file appeal against acquittal. The impugned order is very cryptic by which the High Court refused leave to appeal and dismissed both appeal as well as the revision and therefore, the impugned order is liable to be set aside and the matter be remitted back to the High Court. Even though State has not preferred any appeal before this Court, as the impugned order is a common order and in the interest of justice, it is appropriate to grant leave to appeal to the State as well. [Para 11] [896-F-H; 897-A-C]

State of Rajasthan vs. Sohan Lal And Ors. (2004) 5 SCC 573:2004 (1) Suppl. SCR 480; State of Orissa vs. Dhaniram Luhar (2004) 5 SCC 568: 2004 (2) SCR 68 – relied on.

2. Yet another ground for remitting the matter back to the High Court is that the judgment of the trial court

A was delivered on 24.03.2009 and the FSL Report was received after the disposal of the case by the trial court, which shows positive test for the presence of organo phosphorous insecticide in the viscera. The High Court should have considered the FSL Report in proper perspective and as the first appellate court, it should have independently examined the matter and recorded its findings objectively. [Para 12] [897-D-E]

C *Dinesh vs. State of Haryana* (2014) 12 SCC 532; *Rajinder Singh vs. State of Haryana* (2013) 15 SCC 245; 2013 (7) SCR 370; *Mangilal vs. State of Rajasthan & Anr.* (2001) 8 SCC 519; 2001 (4) Suppl. SCR 392 – cited.

D CASE LAW REFERENCE

(2014) 12 SCC 532 cited. Para 5

2013 (7) SCR 370 cited. Para 5

E 2001 (4) Suppl. SCR 392 cited. Para 5

2004 (1) Suppl. SCR 480 relied on. Para 9

2004 (2) SCR 68 relied on. Para 10

F CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2077 of 2011.

G From the Judgment and Order dated 03.02.2010 of the High Court of Judicature for Rajasthan at Jodhpur in D.B. Criminal Revision Petition No. 584 of 2009.

Ms. Aishwarya Bhati, T. Gopal, Adarsh Kr. Tiwari, Hemendra Sharma, Advs., for the Appellant.

H Mahabir Singh, Sr. Adv., Jayant Bhatt (NP), Ms. Ruchi

Kohli, Ms. Preeti Singh, Gagan Deep Sharma, Nikhil Jain, Ms. Madhusmita Bora, Advs., with him for the Respondents. A

The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. This appeal by special leave has been filed against the common order dated 03.02.2010 passed by the Jodhpur Bench of the Rajasthan High Court in Leave to Appeal Application No.294/2009 and Criminal Revision Petition No.584/2009 whereby the High Court dismissed both leave to appeal as well as the revision petition thereby confirmed the order of acquittal dated 24.03.2009 passed by the Additional Sessions Judge (Fast Track), Balotara in Sessions Case No.71/2008 whereby the accused-respondents were acquitted of the charges punishable under Sections 498A, 304B IPC alternatively under Section 302 IPC. B C D

2. The factual background which led to the filing of this appeal are as under:- Marriage of second respondent-Bhanwara Ram and the appellant's daughter Kamla (since deceased) was solemnized on 27.05.2007 and Kamla remained peacefully in her in-laws house for sometime. It is alleged that within short while thereafter, her in-laws started to treat her with cruelty in connection with demand of dowry. On 27.07.2008, appellant sent his son Jetha Ram (PW-5) to bring back his daughter and Kamla was brought back to her parents house. Within two weeks thereafter i.e. on 09.08.2008, respondent No.2 came to the house of the appellant to take back his wife (Kamla). Deceased told second respondent that she is preparing for Patwari examination and as such she was not prepared to return quickly. Angered over the same, respondent No. 2 is said to have beaten Kamla and the appellant was compelled to send his daughter Kamla with respondent No.2 on 10.08.2008. On 11.08.2008, Kamla died in her matrimonial house and her body was found in a tank there and the parents of Kamla came to know about death of E F G H

A their daughter.

3. On the complaint filed by the second respondent before Police Station Gida, a case No.5/08 was registered in Gida Police Station as death of Kamla was within seven years of marriage. Investigation into the cause of death was initiated by Assistant Collector and Executive Magistrate, Bayatu and investigation report was submitted stating that deceased-Kamla has not died due to drowning in the water. On the basis of the said report, a case under Sections 498A and 304B IPC was registered and investigation was taken up. After completion of the investigation, chargesheet under Sections 302, 304B and 498A IPC was filed against the accused persons viz. Bhanwara Ram, Deshraj Ram, Dhupudevi and Kamla daughter of Deshraj Ram.

4. Before the trial court prosecution has examined fifteen witnesses. The trial court vide its judgment dated 24.03.2009 held that the prosecution has failed to prove that the accused persons harassed the deceased in connection with demand of dowry prior to her death and that there was no medical evidence as to how deceased Kamla died. The trial court thus acquitted all the accused/ respondents of all the charges under Sections 498A, 304B IPC in the alternate under Section 302 IPC giving them benefit of doubt. Aggrieved by the order of acquittal, the State and Khumbha Ram, father of the deceased preferred leave to appeal and the criminal revision before the High Court which vide the impugned order dismissed State's leave to appeal and appellant's criminal revision petition. Being aggrieved, the father of the deceased has preferred this appeal.

5. Ms. Aishwarya Bhati, learned counsel for the appellant submitted that the High Court erred in dismissing the appeal without properly appreciating the evidence and the fact that the trial court completed the trial in a fast track within six months

of the incident without even waiting for the FSL Report from the Forensic Science Laboratory, Jodhpur which came nearly twenty days after the judgment. It was submitted that the FSL Report dated 04.09.2008 shows that the samples of viscera of the deceased gave positive test for the presence of organo phosphorous insecticide and the High Court erred in discarding the FSL Report. It was contended that almost all the seven witnesses from the family of the appellant including the appellant have consistently stated about the harassment meted out to the deceased in connection with the demand of dowry and the deceased died in mysterious circumstances within seven years of marriage and the trial court and the High Court should have raised the statutory presumption in law under Section 113B of the Evidence Act. In support of her contention, the learned counsel placed reliance upon the judgment of this Court in *Dinesh vs. State of Haryana*, (2014) 12 SCC 532; *Rajinder Singh vs. State of Haryana*, (2013) 15 SCC 245 and *Mangilal vs. State of Rajasthan & Anr.* (2001) 8 SCC 519.

6. Per contra, Mr. Mahabir Singh, learned Senior Counsel for the respondents contended that the prosecution was unable to prove that Kamla was subjected to harassment for any kind of dowry demand 'soon before her death' and the trial court has rightly acquitted respondents No.2 to 5 herein on the finding that no substantive evidence was adduced to prove that just prior to the date of death deceased-Kamla had been subjected to harassment in connection with the demand of dowry. Drawing our attention to the FSL Report dated 30.08.2008 given by Rajasthan Medicare Relief Society, Jodhpur which stated that "*no opinion can be given*", learned counsel for the respondents submitted that in the absence of any substantive evidence to establish the charges, the High Court rightly declined to grant leave to appeal.

7. We have carefully considered the rival contentions of

A the parties and perused the impugned order and the material on record.

8. Section 378 of the Criminal Procedure Code deals with the power of the High Court to grant leave in case of acquittal.

B Sub-sections (1) and (3) of Section 378 Cr.P.C. read as under:-

“378. Appeal in case of acquittal.- (1) Save as otherwise provided in sub-section (2), and subject to the provisions of sub-sections (3) and (5),-

C (a) ...

(b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court or an order of acquittal passed by the Court of Session in revision.

E (3) No appeal under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.”

F Sub-section (3) of Section 378 Cr.P.C. puts a restriction on entertaining of appeals by imposing a condition that the leave of the High Court should be first obtained before any appeal is entertained.

G 9. The High Court while refusing leave must indicate the reasons for refusal to grant leave. Refusal of leave to appeal has the effect of foreclosing the right once for all and therefore there is a need to record reasons when the High Court refuses to grant leave to appeal. In *State of Rajasthan vs. Sohan Lal And Ors.*, (2004) 5 SCC 573, it was held as under:-

H “ ...The State does not in pursuing or conducting a

criminal case or an appeal espouse any right of its own A
but really vindicates the cause of society at large, to
prevent recurrence as well as punish offences and
offenders respectively, in order to preserve orderliness
in society and avert anarchy, by upholding the rule of law.
The provision for seeking leave to appeal is in order to B
ensure that no frivolous appeals are filed against orders
of acquittal, as a matter of course, but that does not enable
the High Court to mechanically refuse to grant leave by
mere cryptic or readymade observations, as in this case C
("the court does not find any error"), with no further, on
the face of it, indication of any application of mind
whatsoever. All the more so, when the orders of the High
Court are amenable to further challenge before this Court.
Such ritualistic observations and summary disposal D
which has the effect of, at times, and as in this case,
foreclosing statutory right of appeal, though a regulated
one, cannot be said to be a proper and judicial manner
of disposing of judiciously the claim before courts. The
giving of reasons for a decision is an essential attribute E
of judicial and judicious disposal of a matter before
courts, and which is the only indication to know about the
manner and quality of exercise undertaken, as also the
fact that the court concerned had really applied its mind.
All the more so, when refusal of leave to appeal has the F
effect of foreclosing once and for all a scope for scrutiny
of the judgment of the trial court even at the instance and
hands of the first appellate court. The need for recording
reasons for the conclusion arrived at by the High Court, G
to refuse to grant leave to appeal, in our view, has nothing
to do with the fact that the appeal envisaged under
Section 378 CrPC is conditioned upon the seeking for
and obtaining of the leave from the court. This Court has
repeatedly laid down that as the first appellate court the H
High Court, even while dealing with an appeal against

A acquittal, was also entitled, and obliged as well, to scan
through and if need be reappraise the entire evidence,
though while choosing to interfere only the court should
find an absolute assurance of the guilt on the basis of
B the evidence on record and not merely because the High
Court could take one more possible or a different view
only. Except the above, where the matter of the extent
and depth of consideration of the appeal is concerned,
no distinctions or differences in approach are envisaged
C in dealing with an appeal as such merely because one
was against conviction or the other against an acquittal.”

10. Expressing the same view, in *State of Orissa vs. Dhaniram Luhar*, (2004) 5 SCC 568, this Court held as under:-

D “...Reasons introduce clarity in an order. On plainest
consideration of justice, the High Court ought to have
set forth its reasons, howsoever brief in its order,
indicative of an application of its mind; all the more when
its order is amenable to further avenue of challenge. The
E absence of reasons has rendered the High Court order
not sustainable.”

11. On the anvil of the above principles, considering the
present case, in our view, the approach of the High Court is
F completely incorrect. The High Court has not recorded any
reason as to why leave to appeal was refused. In the instant
case, there is no dispute that deceased-Kamla died within
seven years of marriage in unnatural circumstances. By perusal
G of the judgment of the trial court, the trial court does not seem
to have examined the evidence adduced by the prosecution
in the light of the statutory presumption to be raised under
Section 113B of the Evidence Act. In such circumstances, the
High Court ought to have granted leave to appeal and thereafter
H re-appreciated the evidence and recorded its findings
independently as regards guilt or otherwise of the accused.

The High Court has not given any reason for refusing to grant leave to file appeal against acquittal. The impugned order is very cryptic by which the High Court refused leave to appeal and dismissed both appeal as well as the revision and in our view, the impugned order is liable to be set aside and the matter be remitted back to the High Court. Even though State of Rajasthan has not preferred any appeal before this Court, as the impugned order is a common order and in the interest of justice, we deem it appropriate to grant leave to appeal to the State as well.

A

B

C

12. Yet another ground for remitting the matter back to the High Court is relevant to be noted. The judgment of the trial court was delivered on 24.03.2009 and the FSL Report dated 16.04.2009 (Annexure P-2 in the SLP Paper Book) received from the Regional State Forensic Science Laboratory, Rajasthan, Jaipur after the disposal of the case by the trial court, show positive test for the presence of organo phosphorous insecticide in the viscera. In our view, the High Court should have considered the FSL Report in proper perspective and as the first appellate court, it should have independently examined the matter and recorded its findings objectively.

D

E

13. In the result, without commenting on the merits of the case, the impugned order is set aside and leave to appeal is granted. Appeal filed by the State as well as criminal revision filed by appellant-Khumbha Ram shall be taken on the file of the High Court and after affording sufficient opportunities to both parties, the High Court shall dispose of the same in accordance with law. The appeal stands allowed accordingly.

F

G

H