



[2024:RJ-JD:37083-DB]

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Criminal Appeal No. 98/1995

State Of Rajasthan

----Appellant

Versus

Angrey Singh

----Respondent

For Appellant(s) : Mr. Sameer Pareek, P.P.
For Respondent(s) : Mr. Vinit Sanadhya

**HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE MUNNURI LAXMAN****Judgment****Reportable****Reserved on 04/09/2024****Pronounced on 12/09/2024****Per Dr. Pushpendra Singh Bhati, J:**

1. This criminal appeal has been preferred by the appellant-State claiming the following reliefs:

"It is, therefore, respectfully prayed that the leave to appeal in the present matter may kindly be granted and entertained and accepted the appeal. It is further prayed that the order of the learned Addl. Sessions Judge, Raisinghnagar dated 28.10.1992 may kindly be set aside and the accused respondent be convicted and sentenced for the offences punishable under section 302 I.P.C."

2. The matter pertains to an incident which occurred in the year 1991 and the present appeal has been pending since the year 1995.

3. The appellant-State laid a challenge to the judgment dated 28.10.1992 passed by the learned Additional District & Sessions Judge, Raisinghnagar, in Sessions Case No.31/91 (State of



Rajasthan Vs. Angreysingh), whereby the present accused-respondent Angrej Singh has been acquitted of the charge under Section 302 IPC.

4. As the pleaded facts and the record would reveal, at around eight kilometres away from the Police Station, Vijay Nagar, there existed a Chak namely, 3 BL, where Choto (wife of the accused-respondent) was residing, due to uncordial relationship between the accused-respondent and his said wife, and therefore, the accused-respondent by establishing a *Dhani* in his field, was residing with his second wife.

4.1. As per prosecution, the incident had happened on 20.06.1991. On that date, at around 1:00 pm, the father (Karnail Singh) of the first wife (Choto) of the accused-respondent submitted a report that in his and in the presence of one Jangeer Singh, the accused-respondent, at around 10:00 a.m., inflicted 5-6 blows by *Kassi* on the head of Choto (first wife of accused-respondent) and also inflicted a blow on her neck by the said weapon, as a result whereof, Choto fell on the ground. At the relevant time, Karnail Singh (father of Choto) alongwith the said Jangeer Singh were present at the place of incident, as they wished to bring Choto to his paternal home, while the accused-appellant did not let them do so.

4.2. On the basis of the aforementioned report, the then SHO Kailash Chandra Meena of the concerned Police Station, reached the place of incident in question, alongwith a Doctor and a Photographer, whereafter, the panchnama laash of deceased-



Choto was conducted and the dead body was inspected, as well as photographs of the dead body were clicked.

4.3. Upon such report, a case was registered and the police started the investigation. Only during the course of investigation, it was revealed that at the relevant time, the deceased's 16 years daughter, namely, Rajvindra Kaur was also present at the place of incident in question at the relevant time. The police kept on searching for the accused-respondent for about five days thereafter. On 25.06.1991, the police was successful in taking the accused-respondent into custody. On 28.06.1991, the accused-respondent gave information to the police about the *Kassi* (weapon), using which, he committed the crime in question and also told the police that he can get the said weapon recovered from his *dhani*. Accordingly, on the same day, at around 9:00 am, the accused-respondent enabled the recovery of the said weapon as well as the clothes last worn by the deceased, from the roof of his *Kotha*. The same were then sent for FSL analysis, whereupon FSL report was submitted to the effect that the human blood detected on the said weapon as well as the clothes last worn by the deceased was of the same blood group; whereupon, on completion of the investigation, the police submitted a charge-sheet against the accused-respondent.

4.4. The learned Trial Court framed the charges against the accused-respondent; the same upon being read over to the accused, were denied by him and he claimed trial, and the trial accordingly commenced.



4.5. During the trial, the prosecution produced 09 witnesses and exhibited 19 documents; in defence, 01 witness was produced and 02 documents were exhibited for examination. The accused-respondent were examined under Section 313 Cr.P.C., wherein while pleading not guilty, the accused stated that they had been falsely implicated in this case.

4.6. Thereafter, upon hearing the contentions of both the parties as well as considering the material and evidence placed on record, the learned Trial Court, acquitted the accused-respondent, vide the impugned judgment dated 28.10.1992, as above. Hence, the appellant-State has preferred this appeal claiming the afore-quoted reliefs.

5. Learned counsel for the appellant-State submitted that in the present case, there were three eye witnesses i.e PW.4 Karnail Singh, PW.5 Rambindra and PW.6 Jangeer Singh, of the incident in question, who had clearly stated in their testimonies that the accused-respondent had committed the murder of the deceased, but the learned Trial Court discarded their testimonies, and passed the impugned judgment of acquittal in favour of the accused-respondent, which is not justified in law.

5.1. It was further submitted that PW.4 stated, in his testimony, that when the accused-respondent started beating the deceased, she shouted, whereupon, PW.5 & PW.6 reached the place of occurrence, and it was found that the accused-respondent had caused injuries by *Kassi* (weapon of murder) to the deceased. It was also submitted that PW.3- Dr. Devilal also stated that injuries



were caused on the deceased's head and neck, due to which, she died, and therefore, the entire evidence clearly shows that the accused-respondent had murdered the deceased.

5.2. It was further submitted that the accused-respondent was living separately, from the deceased (his first wife Choto) and daughter (PW.5), and was living with another wife; PW.4 (father of deceased) and PW.5 came at the place of occurrence at the relevant time for resolving the dispute between the deceased and the accused-respondent. It was also submitted that the FIR was lodged, whereupon the investigation commenced; the distance between the police station and the place of incident was only 8 kms, and therefore, the learned Trial Court had erred in holding that the FIR was lodged after investigation.

5.3. It was further submitted that the Kassi (weapon) was recovered on the basis of the information given by the accused-respondent and as per the FSL Report (Ex.P/16), the human blood detected on the said weapon and clothes of the deceased was of the same blood group. Therefore, such evidence, which is sufficient for convicting the accused-respondent, could not have been discarded by the learned Trial Court, while passing the impugned judgment of acquittal.

5.4. It was also submitted that PW.2-Buta Singh, who took the photographs of the deceased's body, PW.3-Dr. Devilal who conducted the postmortem of the deceased's body and PW.8-Kailash Chandra (SHO) who conducted the investigation, have fully supported the prosecution story, but still the learned Trial Court, vide the impugned judgment, acquitted the accused-



respondent of the charge of murder against him, which is not sustainable in the eye of law.

5.5. It was further submitted that the prosecution had been able to prove its case against the accused-respondent beyond all reasonable doubts, on the strength of sufficient material and evidence that was placed on record before the learned Trial Court, but despite the same, learned Trial Court passed the impugned judgment, which deserves to be reversed and accordingly, the accused-respondent deserves to be convicted and sentenced for the crime of murder i.e. under Section 302 IPC.

6. On the other hand, learned counsel for the accused-respondent, while opposing the aforesaid submissions made on behalf of the appellant-State, submitted that at time of registration of the FIR, nothing was mentioned as regards the presence of eye witness (PW.5) at the place of the incident, and therefore, in such circumstances, she could not have been produced as an eyewitness of the incident in question.

6.1. It was further submitted that the recovery witness PW.1 had turned hostile during the trial, and other than this, there are major contradictions in the testimonies of the other eye witnesses. As per learned counsel, it is also contradictory on the face of the record that as to at what time, the police arrived at the place of incident in question.

6.2. It was further submitted that the place of incident in question was having complete neighbourhood, but the prosecution had not produced any independent witness during the trial. It was also submitted that PW.5 stated that the Kassi (weapon) was lying





at the place of incident in question and the accused-respondent ran away therefrom, but as per the police authority, the said Kassi (weapon) was recovered on the basis of the information given by the accused-respondent, which is nothing but a clear contradiction, casting a shadow of doubt on the investigation.

6.3. It was further submitted that the learned Trial Court after considering all the evidence and material on record, passed the impugned judgment of acquittal, which, in the given circumstances, was justified in law and does not warrant any interference by this Court.

7. Heard learned counsel for the parties as well as perused the record of the case.

8. This Court observes that the accused-respondent was charged with the offence of murder of his wife (Choto), and after conducting the trial, learned Trial Court acquitted him of the said charge under Section 302 IPC, vide the impugned judgment.

9. This Court further observes that in the present case, there were three eye witnesses namely, PW.4-Karnail Singh (father of deceased), PW.5-Rajvinder Kaur (daughter of deceased) and PW.6-Jangeer Singh.

9.1. A perusal of the testimony of PW.5 shows that at the relevant time, she was present at the place of incident in question; she stated that the accused-respondent was not living together with her and her deceased mother, and also used to fight with her mother (deceased); she further stated that PW.4 and PW.6 came to her house a day prior to the date of incident in question to convince the accused-respondent not to indulge into fight with the



deceased on petty issues. As per the said witness, the next day (i.e. date of incident in question), when PW.4 & PW.6 left the place and covered some distance (around 1/2 Kilometer) from the house, accused-respondent started giving beatings to the deceased, and then took out the *Kassi* (weapon), and started hitting the deceased and caused injuries to her body; she also stated that thereupon, PW. 5 started shouting, and on hearing the same, PW.4 & PW.6 came back to the place of occurrence, and on seeing them, the accused-respondent fled away from the said place.

Relevant portion of the testimony of PW.5 is reproduced as hereunder:-

"मेरे नाना करनेलसिंह व जरनेलसिंह थोड़ी दूर आधा किला दूरी पर गये होंगे तब मेरा पिता अंग्रेजसिंह थाप मुक्कों से मारपीट करने लगा फिर पास में कस्सी पड़ी थी जिसको उठाकर मेरे पिता ने 5-6 कस्सी की चोटें मेरी मां के मारी जो तीन बार सिर पर एक कान के पास एक आंख के पास लगी मेरी मां नीचे गिर गई एक सिधी कस्सी की चोट मेरी मां के गले पर भी मारी। मैंने रोला मचाया मेरे नाना व जंगीरसिंह वापिस आ गये मेरा पिता अंग्रेजसिंह कस्सी लेकर अपनी ढाणी की तरफ भाग गया। फिर हमने मेरी मां को देखा तो वह तब तक मर चुकी थी।"

9.2. A perusal of the testimonies of PW.5 and PW.6 shows that on the date of incident in question, when they went away at around 1/2 kilometre therefrom, they heard the shouts of PW.5, whereupon they immediately returned back and saw the accused-respondent hitting the deceased by *Kassi* (weapon) and causing injuries to head and neck of the deceased as a result whereof, the blood was oozing from the body of the deceased. Under such



circumstances, they went to the police station and reported the incident to the police.

Relevant portion of the testimonies of PW.4 & PW.6 are reproduced as hereunder:-

Testimony of PW.4:

" आधा किला चले होंगे कि मारपीट के कारण मेरी दोहिती ने हल्ला किया अंग्रेजसिंह ने हमारी लड़की को मारा हम आधा किला दूर से देखने लगे। हम वापिस आये इतने में मुलजिम ने देखते देखते कस्सी से हमारी छोरी को मार दिया ओर भाग गया। सिर, ओर गले पर मुलजिम ने चोटें मारी थीं। मेरी लड़की गिर गई। चोटों से खूब खून बहा। उसी समय मैं थाने चला गया मैं और जंगीरसिंह दोनों थाने गये और थाने में रिपोर्ट करा दी।"

Testimony of PW.6:

" इस पर मैं करनेल सिंह वहां से रवाना हो गये। तब मुलजिम छोटो के साथ थप्पड़ मुक्की करने लगा। इस पर छोटो और राजबिन्दर ने हल्ला किया यह सुन कर हम वापिस मुड़े हम करीब 40-50 फुट दूर थे हमने देखा कि अंग्रेज सिंह छोटो के सिर पर 5-6 वार छोटो के सिर में किये। छोटो मौके पर गिर गयी। हमने ना मार ना मार का हल्ला किया तो अंग्रेज सिंह ने कस्सी का सीधा वार छोटो के गले पर किया।"

9.3. This Court further observes that a perusal of the testimonies of aforesaid the eyewitnesses, contained some minor contradictions, particularly, as regards the time of arrival of the police at the place of incident in question, but except from such contradiction, all the three eyewitnesses clearly deposed that the accused-respondent caused several injuries to the deceased by *Kassi* (weapon) and the said incident was clearly seen by all the three eye witnesses i.e. PW.4, PW.5 & PW.6.

10. This Court also observes that a perusal of the postmortem report (Ex.P/8) reveals that a total of 08 injuries were caused to



the deceased, and her death was caused due to head injury. This Court further observes that as per the testimony of PW.3-Dr. Devilal who conducted the postmortem of the deceased body, the injuries were caused by some sharp-edged weapon, and injury no. 2 & injury no.6 were sufficient to caused her death; he further stated that the injuries in question could have been caused by Kassi (weapon of crime in question).

The description of the injuries caused to the deceased, as mentioned in the testimony of PW.3, are reproduced as hereunder:-

- "1. कटा हुआ घाव ढाई इंच $X1/3$ " $X1/3$ " खोपड़ी के पीछे ओक्सीपीटल भाग पर नीचे की तरफ थी यह चोट साधारण थी व धारदार हथियार से आई हुई थी।
2. कटा हुआ घाव 3" $X1/2$ " दिमाग पर गहराई तक में खोपड़ी पर पीछे के भाग पर उपरी तरफ व बीच में इसके नीचे की ओक्सीपीटल हड्डी टूटी पाई गई व मस्तिष्क भी कटा हुआ पाया गया। यह चोट खतरनाक व धारदार हथियार से आई हुई थी।
3. कटा हुआ घाव डेढ इंच $X1/3$ " $X1/3$ " इंच खोपड़ी के पीछे के भाग पर उपरी दो चोटों के नीचे यह चोट साधारण व धारदार हथियार से आई हुई थी।
4. कटा हुआ घाव 1 " $X1/3$ " $X1/3$ खोपड़ी के पीछे के भाग बाई ओर उपरी तरफ थी यह चोट साधारण वह धारदार हथियार से आई हुई थी।
5. कटा हुआ घाव इंच $X1/3$ " $X1/3$ " खोपड़ी पर पीछे की तरफ दाहिनी ओर दाहिने कान के पीछे व उपरी तरफ यह चोट साधारण धारदार हथियार से आई हुई थी।
6. कटा हुआ घाव ढाई इंच $X1/2$ इंच X मस्तिष्क तक गहरा खोपड़ी के बीच में अग्रिम भाग पर जो घाव आगे से पीछे की ओर था इस घाव को काटने पर दोनों पेराईटल हड्डियां टूटी हुई पाई गई व मस्तिष्क भी नीचे तक कटा हुआ पाया गया।
यह चोट खतरनाक धारदार हथियार की आई हुई थी।
7. कटा हुआ घाव $3/4$ " $X1/3$ " $X1/3$ " दाहिनी आंख के भौंह पर बाहरी तरफ यह चोट साधारण धारदार हथियार से आई हुई थी।



8. कटा हुआ घाव 4" X1/3" X1/3" तिरछा घाव ठोडी के नीचे ट्रीसवर्त यह चोट साधारण व धारदार हथियार से आई हुई थी।"

11. This Court further observes that on the basis of the information (Ex.P/15) given by the accused-respondent, the police recovered the *Kassi* (weapon) from the house of the accused-respondent and the human blood was also detected on the said *Kassi* (weapon).

12. This Court also observes that the as per the FSL Report (Ex.P/16), human blood as detected on the *Kassi* (weapon) was of the same blood group, as found on the clothes last worn by the deceased, and the said recovery was made by the police vide Ex.P/13.

The relevant portion of the said FSL Report is reproduced as hereunder:-

"DESCRIPTION OF PACKETS

The packet (s) Four packets marked A to D enclosed within cloth packing which was/were properly sealed bearing impressions which tallied with the specimen seal impression forwarded.

DESCRIPTION OF ARTICLES

| Packet / Parcels No. | Exhibit No. marked by me | Details of Exhibit | Number/extent of blood stains |
|----------------------|--------------------------|--------------------|--|
| A | 1 | Blood smeared soil | Blood smeared |
| B | 2 | Control soil | No blood |
| C | 3 | Kurta | Moderate, brown, Faint brown, medium, small, at places, thick, thin. |
| | 4 | Salwar | Few, Red brown, Faint brown, medium, small, at places, thin. |



| | | | |
|---|---|-------|---|
| D | 5 | Kassi | Moderate, brown, Faint brown, medium, small, at places, thick, thin. |
|---|---|-------|---|

RESULT OF EXAMINATION

Exhibit No.1 (from packet marked A), 3, 4 (from C) and 5 (from D) are stained with Human blood.

REPORT ON BLOOD GROUP

Exhibit No.1 (from A) 3, 4, (from C) and 5 (from D) are stained with "A" group blood."

13. This Court also observes that PW.1-Gurdutt Singh who was the recovery witness had turned hostile during the trial, while the other prosecution witnesses have clearly supported prosecution story, with no material contradiction and/or inconsistency.

14. This Court is conscious that the power of interference in the judgment of acquittal passed by the learned Trial Court is provided under Section 386 Cr.P.C., as per which, the Appellate Court can reverse the finding of the learned Trial Court and convict the accused and award the sentence, as per law. The relevant portion of Section 386 is reproduced as hereunder:-

"386. Powers of the Appellate Court.

—After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may—

(a) in an appeal from an order or acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;"



15. At this juncture, this Court deems it appropriate to reproduce the relevant portions of the judgments rendered by the Hon'ble Apex Court in the cases of ***Mallappa & Ors. Vs. State of Karnataka (Criminal Appeal No. 1162/2011, decided on 12.02.2024)*** and ***Babu Sahebagouda Rudragoudar and Ors. Vs. State of Karnataka (Criminal Appeal No. 985/2010, decided on 19.04.2024)***, as hereunder-:

Mallappa & Ors. (Supra):

"36. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as:

(i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive inclusive of all evidence, oral or documentary;

(ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;

(iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;

(iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;

(v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;

(vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court."

**Babu Sahebagouda Rudragoudar and Ors. (Supra):**

39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles: (a) That the judgment of acquittal suffers from patent perversity; (b) That the same is based on a misreading/omission to consider material evidence on record; (c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

16. This Court also observes that the scope of interference in the judgment of acquittal passed by the learned Trial Court is provided in aforequoted precedent law as well as in Section 386 Cr.P.C., and when the same is applied in the present case at hand, it is revealed, while passing the impugned judgment of acquittal, the learned Trial Court had omitted/misread the material evidence on record, including the testimonies of three eyewitnesses of the incident in question, recovery of *Kassi* (weapon of crime in question), injuries caused to the deceased, medical report as well as other evidence, which were sufficient to convict and sentence the accused-respondent for the crime in question. Thus, the impugned judgment of acquittal passed by the learned Trial Court suffers from illegality, perversity and errors of law and facts.

16.1. This Court also observes that the learned Trial Court while passing the impugned judgment of acquittal had clearly ignored the testimonies of the three eyewitnesses, merely on count of some minor contradictions therein, and also ignored the other



corroborative evidence produced on record by the prosecution, which is nothing but a patent error of law in the impugned judgment of acquittal. This Court further observes that on the basis of evidence and material available on record, there could have been no other view in the present case, other than the one of convicting the accused-respondent under Section 302 IPC.

17. Thus, looking into the overall evidence and material on record the acquittal of respondent-accused under Section 302 IPC vide the impugned judgment is not sustainable in the eye of law, and therefore, the present appeal filed by the appellate-State is **allowed**, while quashing and setting aside the impugned judgment of acquittal dated 28.10.1992 passed by learned Trial Court.

17.1. Resultantly, for the offence punishable under Section 302 IPC, the accused-respondent is awarded Life Imprisonment and a fine of Rs.10,000/-, in default of payment of which, he shall undergo further six months' Rigorous Imprisonment.

17.2. The accused-respondent is on bail. His bail bonds are cancelled/forfeited. He is ordered to be taken back into custody, to be sent to the concerned Jail, to serve out the sentence so awarded to him, by the present judgment.

(MUNNURI LAXMAN),J

(DR. PUSHPENDRA SINGH BHATI),J

skant/-