State Of Rajasthan vs Ram Niwas on 7 February, 2002

Equivalent citations: JT2002(2)SC457, AIRONLINE 2002 SC 91, (2002) 2 BLJ 659, (2002) ALL CRI R 948, (2002) 2 ALL CRI LR 117, 2010 (15) SCC 463, (2002) 3 EAST CRI C 235, (2002) 4 CRIMES 111, (2002) 44 ALL CRI C 755, (2002) 2 JT 457, (2002) 6 SUPREME 66, (2002) SC CR R 767, (2002) 3 JCR 160 (SC), (2002) 2 JT 457 (SC)

Bench: R.P. Sethi, K.G. Balakrishnan

ORDER

1. The respondent was married to Sneh Lata on 25th March, 1986. A child, namely, Vishwas (PW-2) was born to the parties in the year 1988. Sneh Lata died on 22nd December, 1993 in her house. It is alleged that poison was administered to her by the respondent - her husband in the presence of Vishwas, PW-2. The first information report was lodged by the brother of the deceased on the same day at 11 30 p.m. in the night. The respondent was charged for the commission of the offence punishable under Sections 302 and 498A of the Indian Penal Code. After recording the evidence, the trial court acquitted the accused. Leave to file acquittal appeal was denied by the High Court vide the order impugned in this appeal by special leave

2. Relying upon the statement of PW-2, learned counsel appearing for the appellant-state has urged that the trial court was not justified in acquitting the respondent because PW-2 had categorically stated that poison was administered to his mother - Sneh Lata by his father-respondent. It is further submitted that as there is no infirmity in the statement of PW-2, the same could be made the basis for conviction of the respondent.

3. The trial court has taken note of undisputed facts and thereafter referred to the statement of PW-2 wherein the facts of the occurrence have been narrated by the said witness. After noticing certain inherent defects and keeping in mind the statement of DW-1 Renu, who was admittedly present at the time when occurrence took place and apparently being influenced by the fact that Prem Chand Soni, another person who is stated to have come on the spot immediately after occurrence, had not been examined as witness by the prosecution, the trial court concluded that it was difficult to rely upon the testimony of the child witness for the purpose of convicting the respondent. On appreciation of facts and keeping in mind the narrations of PW-2, the trial court concluded that he was a tutored witness.

4. While rejecting the prayer for grant of leave to file the acquittal appeal, the High Court is also shown to have perused the record besides the judgment of the trial court and opined that "it is not a fit case in which the state may be permitted to file an appeal. The trial court has considered the evidence in right perspective and appreciation of evidence cannot be said to be arbitrary, illegal and improper."

5. The learned counsel appearing for the appellant-state has taken us through the statement of PW-2 and DW-2.

We also feel that the view taken by the trial court cannot be termed to be perverse or uncalled for. The mere possibility of our taking different view cannot be a ground for interfering with the order of acquittal of the trial court. This Court has held in Kalyan and Ors. v. State of U.P.

8. "The settled position of law on the powers to be exercised by the High Court in an appeal against an order of acquittal is that though the High Court has full powers to review the evidence upon which an order of acquittal is passed, it is equally well settled that the presumption of innocence of the accused persons, as envisaged under the criminal jurisprudence prevalent in our country is further reinforced by his acquittal by the trial court. Normally the views of the trial court, as to the credibility of the witnesses, must be given proper weight and consideration because the trial court is supposed to have watched the demeanour and conduct of the witness and is in a better position to appreciate their testimony. The High Court should be slow in disturbing a finding of fact arrived at by the trial court In Kali Ram V. State of Himachal Pradesh this Court observed that the golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The Court further observed:

> "It is no doubt true that wrongful acquittals are undesirable and shake the confidence of the people in the judicial system, much worse, however, is the wrongful conviction of an innocent person. The consequences of the conviction of an innocent person are far more serious and its reverberations cannot but be felt in a civilised society. Suppose an innocent person is convicted of the offence of murder and is hanged, nothing further can undo the mischief for the wrong resulting from the unmerited conviction is irretrievable. To take another instance, if an innocent person is sent to jail and undergoes the sentence, the scars left by the miscarriage of justice cannot be erased by any subsequent act of expiration. Not many persons undergoing the pangs of wrongful conviction are fortunate like Dreyfus to have an Emile Zola to champion their cause and succeed in getting the verdict of guilt annulled. All this highlights the importance of ensuring, as far as possible, that there should be no wrongful conviction of an innocent person. Some risk of the conviction of the innocent, of course, is always there in any system of the administration of criminal justice Such a risk can be minimised but not ruled out altogether It may in this connection be apposite to refer to the following observations of Sir Carleton Alien quoted on page 157 of "The Proof of Guilt" by Glanville Williams, second edition:
>
> "I dare say some sentimentalists would assent to the proposition that it is better that a thousand, or even a million, guilty persons should escape than that one innocent person should suffer: but no responsible and practical person would accept such a view. For it is obvious that if our ratio is extended indefinitely, there comes a point when the whole system of justice has broken down and society is in a state of chaos."

The fact that there has to be clear evidence of the guilt of the accused and that in the absence of that it is not possible to record a finding of his guilt was stressed by this Court in the case of Shivaji Sahebrao, criminal appeal No. 26 of 1970, D/27.8.1973 (supra) as is clear from the following observations:

> "Certainly it is a primary principle that the accused must be and not merely, may be guilty before a court, can be convicted and the mental distinction between 'may be' and 'must be' is long and divides vague conjectures from sure considerations."

9. "The High Court while dealing with the appeals against the order of acquittal must keep in mind the following propositions laid down by this Court, namely, (i) the slowness of the appellate court to disturb a finding of fact; (ii) the non-interference with the order of acquittal where it is indeed only a case of taking a view different from the one taken by the High Court."

6. In view of the facts and circumstances of the case and the position of law, we do not find any merit in this appeal which is accordingly dismissed. The bail bonds shall stand discharged