

A STATE OF RAJASTHAN
V.
HANIF KHAN & ANR.
Criminal Appeal No. 362-363 of 2009
B FEBRUARY 23, 2009
(DR. ARIJIT PASAYAT AND ASOK KUMAR GANGULY JJ.)

Penal Code, 1860 :

C ss. 376(2)(g), 302 r/w s. 34 and s. 201 r/w/s. 34 – Offence under – Conviction by trial court – Appeal – High Court allowed the same by a non-reasoned order – Justification of – Held : Not justified – It showed complete non-application of mind by the High Court – Order of trial court restored.

D The daughter of PW1 went missing and was later found dead. The Trial Court convicted the accused-respondents under ss. 376 (2)(g), 302 r/w s. 34 and s.201 r/w s. 34, IPC. The High Court discarded the evidence of the eye witness PW2 and allowed the appeal filed by the respondents.

E In appeal to this Court, it was contended that the High Court erred in discarding the evidence of PW2 without discussing her evidence and that merely because PW1 had not indicated in the complaint as to what PW2 allegedly had told him, it cannot be a ground to discard the evidence of PW2 who is none else than the wife of respondent no. 1.
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Allowing the appeal, the Court

G HELD : The judgment of the High Court is practically unreasoned and shows complete non-application of mind. The trial court had analysed the evidence of PW2 in great detail. The complainant PW1 was not an eye witness. The complaint filed by PW1 shows that he had got information about the death of his daughter and how the dead body

was found and in Court he had not stated that PW2 had A
told him anything. PW2 has only stated that the dead body
of the deceased was taken out by her father with the help
of the villagers. She has also stated in the cross
examination that police was present at the spot when PW1
arrived there. There is no evidence or any discussion or B
talk between PW1 and PW2 before the complaint was filed
by PW1. The High Court's order is clearly unsustainable
and is set aside and that of the trial court is restored. [Paras
6, 8 and 9] [1019-D-H; 1012-A-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal C
Nos. 362-363 of 2009

From the Judgement and Order dated 27.09.2005 of the
High Court of Rajasthan at Jodhpur in D.B. Criminal Appeal
No. 66 of 2003 and D.B. Criminal Appeal No. 24 of 2004. D

V. Madhukar, Sumit Ghosh, Jayendra Sevda, Aruneshwar
Gupta, for the Appellant.

S. Ramamani, for the Respondent.

The Judgement of the Court was delivered by E

DR. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division F
bench of the Rajasthan High Court at Jodhpur allowing the
appeal filed by the respondents. Learned Additional Sessions
Judge (Fast Track Court), Anoopgarh, Sriganganagar Rajasthan
had convicted the respondents for offences punishable under
Section 376 (2)(g), 302 read with Section 34, 201 read with
Section 34 of the Indian Penal Code, 1860 (in short the 'IPC'). G
For the offence relating to Section 372(2)(g) each was
sentenced to undergo rigorous imprisonment for 10 years,
for the offence relating to Section 302 read with Section 34 to
life imprisonment and for the offence relating to Section 201 H

A read with Section 34 IPC for five years and in each case fine was imposed with default stipulation. Two appeals were filed by the accused persons. Both the appeals were allowed.

3. Prosecution version in a nutshell is as follows:

B On 11.04.2001 at 8.30 p.m. complainant Billu Khan son of Sayyed Khan, resident of Badopal, Tehsil Pilibanga submitted a typed report (Ext. P-1) before the Station House Officer, Police Station Sri Vijaynagar about the incident of this case to this effect that the marriage of the daughter of applicant Julekhan C (hereinafter referred to as 'deceased') had been solemnized with Bablu Khan son of Garu Khan. It is about three years when her marriage had been solemnized. On 11.04.2001 in the morning the in-laws of the daughter of the applicant sent an information about missing of Julekhan while prior to this, the D message had been given about the death of the mother-in-law of Julekhan and later, when he left from there, he was told that his daughter was missing, her mother-in-law has not died and the Chunni of his daughter was found near the Dirge of the village E Bolivia. On hearing this, complainant Billu Khan reached at the Dirge of village Bolivia. The dead body of his daughter was found in the Dirge on 11.4.2001 between 6 - 6.30 p.m., which was taken out. The complainant stated that he did not know as to what has happened with his daughter. But he also mentioned F that once or twice she had complained about harassing in the hands of her elder brother-in-law (Jeth) Hanif Khan, sister-in-law Nooran and her relatives Ashaq All alias Ashaq and Attu Khan. He requested that appropriate action may be taken.

G On the above-said report Ext. P-1 Police Station Sri Vijaynagar registered the First Information Report No. 90/2001 Exbt. P-2 and the investigation was conducted by the then Circle Officer, Rai Singh Nagar Shri Yogesh Goel, PW- 13. During the investigation the Memo of the Inquest Report of the dead body H Ext. P4, Panchayatnama Ext. P-11 was prepared and the

photographs of the dead body had been taken vide Ex. P 25 to Ex. P30 through the photographer PW12 Happy. Treating the house of accused Hanif Khan as the place of occurrence, the site plan of the spot Ext. P-10 and memo of the circumstances on the spot was prepared and the Map of the Spot Ext. P-3 of the Diggi where the dead body of Julekhan was found was prepared. During the investigation, from the statements of the witnesses and other evidences of the incident circumstances surfaced that in the intervening night of dated 10/11.04.2001 accused persons Hanif Khan, Ashaq Ali alias Ashaq and Attu Khan K consumed liquor while by at the house of Hanif Khan in excess quantity and after consuming liquor they took deceased Julekhan to the room and all the three committed rape on her turn by turn and when they found that Julekhan had lost her consciousness and death was eminent then all the four accused persons threw her into a pit to show that Julekhan has committed suicide. Julekhan is the wife of DW3 Bablu Khan, the real younger brother accused Hanif Khan who had been sleeping there in the house in the night of the incident being in her matrimonial home. As per the prosecution story about four-five months ago on the day of the incident husband of Julekhan namely Bablu Khan and her mother-in-law Raja had gone towards Fazilka (Punjab) to feed the animals and on the day of the incident, both of them were not present at their house at Village Bolivia. The eyewitness of this incident is PW-2 Arsa, who happens to be the wife of accused Hanif Khan and who unveiled the curtain of this criminal act of rape and murder. Arsa had also revealed that accused Nooran who happens to be her sister-in-law and sister of accused Hanif Khan was present at the place of occurrence at the time of the incident and she rendered the fullest cooperation to the co-accused persons in commission of this crime and worked as an instigator. On having disclosed the above stated incident by Arsa in her police statement Ext. D-2 recorded on 12.4.2001, Investigating officer recorded the statements of other witnesses also. The

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A postmortem of the dead body of the deceased was conducted on 12.04.2001 itself. Report Ext. P-13 was obtained. The shirt (Jamfar) and bra of the deceased was seized vide Memo. Ext. P-15 and the same was sealed with specimen seal. On having recovered one pair of nylon chappals and one Chunni near the
B Diggi, those were seized vide Memo. Ext. P 16. Accused persons were arrested and except accused Nooran, the medical examination of all the three accused persons was done to find out whether they are competent to perform sexual intercourse or not.

C During the postmortem of the dead body of deceased Julekhan vaginal swab had been taken and slide had been prepared and her trouser (Saiwar) had also been sealed. During
D the investigation proceedings itself vaginal swab, slides, Saiwar, Chunni and Chappals were sent to Forensic Science Laboratory, Jaipur for test from where the report Ext. P-32 had been obtained. After completing the investigation, this charge sheet was filed in the above stated offence. As the accused persons pleaded innocence trial was held.

E It is to be noted that one M. Nooran also faced trial alongwith respondents. The four accused persons faced trial for alleged commission of offences punishable under Section 376(2)(g), 302, 201 and 120 B so far as three male accused
F persons are concerned and in respect of accused Nooran under Section 109, 302, 201, 120(B) IPC.

As noted above the present appellants had filed appeals before the High Court. There was no appeal filed by accused M. Nooran. Before the High Court primary stand was that the
G complainant had not stated in the complaint as to what PW2 – the alleged eye witness is supposed to have told the complainant. The High Court accepted it and without even discussing the evidence of PW2 held that PW2 did not have any knowledge of the incident. Accordingly the appeals of the respondents were
H allowed. Additionally, Nooran who did not prefer an appeal was

held to be entitled to the benefit of doubt and her conviction was set aside. A

4. In support of the appeal learned counsel for the appellant submitted that the High Court's reasoning is palpably wrong and the High Court could not have discarded the evidence of the eye witness PW2 even without discussion her evidence. Merely because the complainant had not indicated in the complaint as to what PW2 allegedly had told him, it cannot be a ground to discard the evidence of PW2 who is none else than the wife of accused Hanif Khan. B

5. Learned counsel for the respondent on the other hand supported the judgment of the High Court. C

6. We find that the judgment of the High Court is practically unreasoned and shows complete non-application of mind. The only reason which can be culled out from the impugned judgment of the High Court to direct acquittal reads as follows: D

"Absence of details leave us to one inference only that PW1 Billo Khan had no knowledge of any fact as alleged by him in relation to the accused when he scribed Ex.P1. The necessary corollary of the above drawn inference is that PW1 Aarsha had also no knowledge of what she had stated in her subsequent statements, because whatever she had known, she had already informed to PW1 Billo Khan." E

7. Even the High Court had erroneously held that until the evening of 10th at 8.30 AM when Exh. P1 was submitted to the police, the two witnesses had not known about the manner of incident. Even the High Court had noted the date wrongly. It is actually 11th and not 10th as noted by the High Court. F

8. Trial court had analysed the evidence of PW2 in great detail. The complainant was not an eye witness. The complaint filed by him shows that he had got information about the death of his daughter and how the dead body was found and in Court G

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- A he had not stated that PW2 had told her anything. PW2 has only stated that the dead body of the deceased was taken out by her father with the help of the villagers. She has also stated in the cross examination that police was present at the spot when Billu Khan (PW1) arrived there. There is no evidence or any
- B discussion or talk between PW1 and PW2 before the complaint was filed by PW1.

9. Above being the position, the High Court's order is clearly unsustainable and is set aside and that of the trial court is restored.

B.B.B.

Appeal allowed.