

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 2119 OF 2010

STATE OF RAJASTHAN

APPELLANT(S)

VERSUS

KISTOORA RAM

RESPONDENT(S)

J U D G M E N T

B.R. GAVAI, J.

1. The present appeal challenges the judgment dated 15th September 2009 passed by the High Court of Judicature for Rajasthan at Jodhpur in D.B. Criminal Appeal No. 25 of 1986, thereby acquitting the respondent-accused herein and reversing the judgment dated 10th January 1986 passed by the learned District and Sessions Judge, Jodhpur (hereinafter referred to as the “trial court”) in Original Criminal Case No.114 of 1984, thereby convicting the respondent-accused herein under Section 302 of the Indian Penal Code, 1860 (for short “IPC”) and sentencing him to undergo life imprisonment. The respondent-accused was also convicted under Section 201 of the IPC and sentenced to

undergo three years' rigorous imprisonment.

2. The respondent-accused was charged for an offence punishable under Sections 302 and 201 of the IPC. It is the prosecution case that the accused had killed his wife with a *lathi*, dragged her 100 feet away from the house and set her on fire in order to destroy the evidence.

3. The trial court, after appreciating the evidence, convicted the respondent-accused for the offence punishable under Section 302 of the IPC and sentenced him to suffer life imprisonment with a fine of Rs.100/-. The respondent-accused was also convicted for the offence punishable under Section 201 of the IPC and sentenced to undergo three years' rigorous imprisonment with a fine of Rs.100/-.

4. Being aggrieved thereby, the respondent-accused preferred an appeal before the High Court. The High Court, *vide* impugned judgment, allowed the appeal thereby reversing the order of conviction and acquitted the accused for the offences charged. Being aggrieved thereby, the State of Rajasthan has preferred an appeal before this Court.

5. We have heard Mr. Vishal Meghwal, learned counsel appearing on behalf of the appellant-State of Rajasthan.

6. Mr. Meghwal, learned counsel for the appellant-State has submitted that when the trial court, upon appreciation of

evidence of Guman Singh (PW-4), had convicted the respondent–accused, there was no reason for the High Court to interfere with the same. He has submitted that the extra-judicial confession made by the respondent–accused before Guman Singh (PW-4) is such, which would inspire confidence in the judicial mind. It is submitted that Guman Singh (PW-4) was an independent witness inasmuch as he had served in the police department and there was no reason to disbelieve his testimony. It is further submitted that Hamira Ram (PW-7) though has been declared hostile, part of his testimony related to extra-judicial confession is trustworthy and the same corroborates the testimony of Guman Singh (PW-4). He has, therefore, submitted that the impugned judgment passed by the High Court needs to be set aside and the judgment of the trial court needs to be confirmed.

7. We have perused the judgment of the trial court dated 10th January 1986 as well as the High Court dated 15th September 2009.

8. The scope of interference in an appeal against acquittal is very limited. Unless it is found that the view taken by the Court is impossible or perverse, it is not permissible to interfere with the finding of acquittal. Equally if two views are

possible, it is not permissible to set aside an order of acquittal, merely because the Appellate Court finds the way of conviction to be more probable. The interference would be warranted only if the view taken is not possible at all.

9. The High Court has elaborately discussed the evidence. Undisputedly, Hamira Ram (PW-7) has turned hostile. The trial court itself had disbelieved the alleged recovery of the incriminating material allegedly recovered at the instance of the respondent–accused.

10. That only leaves with the extra-judicial confession allegedly made by Guman Singh (PW-4). The High Court, relying on the judgment of this Court in the case of ***State of Punjab v. Bhajan Singh and Others***¹, so also in the case of ***Gopal Sah v. State of Bihar***² has held that extra-judicial confession was a weak piece of evidence and unless there was some corroboration, the conviction solely on the basis of extra-judicial confession could not be sustained. The view taken by the High Court cannot be said to be either impossible or perverse meriting our interference.

11. In that view of the matter, we are not inclined to interfere with the impugned judgment. We find no merit in

¹ (1975) 4 SCC 472

² (2008) 17 SCC 128

the appeal. The appeal is dismissed.

12. Pending application(s), if any, stands disposed of accordingly.

.....**J.**
(B.R. GAVAI)

.....**J.**
(PAMIDIGHANTAM SRI NARASIMHA)

New Delhi;
28th July, 2022.