

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CRAA No.100/2012

State of J&K

....Petitioner(s)/Appellant(s)

Through :- Mr. Raman Sharma, AAG.

V/s

Shankaar Chand

....Respondent(s)

Through :- Mr. Razat Sudan, Advocate vice
Mr. Achal Sharma, Advocate.
Respondent in Person.

**Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE**

**ORDER(Oral)
(29.11.2024)**

(Sanjeev Kumar-J)

01. This appeal by the State (now the Union Territory of J&K) is directed against a judgment of acquittal dated 12.06.2012 passed by the Court of learned Additional Sessions Judge, Udhampur (“the trial Court”) in file No.03/Sessions titled '*State V/s Shankaar Chand*' bearing FIR No.16/2010 of Police Station Ramnagar. Before we advert to the grounds of challenge urged by learned counsel appearing for the appellant, we deem it appropriate to give brief resume of the prosecution case and the evidence lead by it during the trial before the trial Court.

02. The deceased-Makhna Devi was second wife of the respondent. The accused married to Makhna Devi about 12/13 years before the date of occurrence and out of this wedlock, there were two sons and two daughters. As the prosecution story divulges the relations between the respondent and deceased were cordial for initial 4/5 years. Thereafter, the respondent became habitual

drunkard and started beating the deceased. It is stated that on 20.11.2009, the respondent in the state of intoxication started beating the deceased. On her raising hue and cry, some people of the locality rescued her from the respondent. PW-Des Raj, the father of the deceased, on coming to know about of the incident, came to the house of the respondent and took the deceased to the District Hospital, Udhampur for treatment. She was thereafter referred to Government Medical College, Jammu for further treatment. With a view to lodging the complaint against the respondent, the deceased approached SSP, Udhampur on 21.12.2009 by way of a written complaint alleging her maltreatment by her husband-the respondent. When no action was taken by the Police on her complaint, the deceased approached Chief Judicial Magistrate, Udhampur with a complaint on 01.02.2010. On the intervention of the Chief Judicial Magistrate, an FIR No.16/2010 under Section 498-A RPC was registered in the Police Station Ramnagar and the investigation entrusted to PW-13 Subash Chander ASI. While the investigation was going on, the complainant-Makhna Devi breathed her last on 10.03.2010. Resultantly, offence under Section 302 RPC against the respondent was also added.

03. Having regard to the seriousness of the case, PW-12 Mr. Niaz ul Hassan Malik SHO Police Station Ram Nagar himself took over the investigation. The statements of the witnesses under Section 161 Cr.P.C. were recorded. The statement of some of the witnesses under Section 164-A Cr.P.C. were also got recorded before the learned Magistrate. On conclusion of the investigation, challan was presented before the trial Court against the respondent for commission of offence under Section 498-A/302 RPC. The trial framed the charges on 30.12.2010. The respondent denied the charges and pleaded not guilty. The prosecution with a view to proving its case against the respondent

examined PW-Des Raj, PW-Chanchla Devi, PW-Sushma Devi, PW-Pawan Kumar, PW-Krishni Devi, PW-Shiv Ram, PW-Nek Ram, PW-Dharam Chand S/o Sant Ram, PW-Dharam Chand S/o Mangu. Besides Dr. Mangat Ram who had conducted the autopsy and PW-Subash Chander and I.O. Niaz-ul Hassan Malik were also produced as witnesses of the prosecution.

04. On conclusion of the prosecution evidence, the incriminating circumstances emerging therein were put to the respondent and his statement under Section 342 Cr.P.C. was recorded. The respondent denied the allegations, however, chose not to lead any evidence in defence. The trial Court examined the entire evidence brought on record by the prosecution and came to the conclusion that the only eye witness, i.e. PW-3 Sushma Devi had not supported the prosecution case and that the other circumstances relied upon by the prosecution were not firmly proved and consequently, dismissed the challan and acquitted the respondent vide impugned judgment.

05. The impugned judgment is assailed by the appellant on the ground that the trial Court has not appreciated the circumstantial evidence in proper perspective and has declined to place reliance thereupon without giving any cogent reasons. The conclusions drawn by the trial Court, it is contended, are against the weight of evidence on record. The trial Court has ignored the important pieces of evidence and has based its judgment on surmises and conjectures.

06. Having heard learned counsels for the parties and perused the material on record, we are of the considered opinion that the judgment of acquittal passed by the trial court is correct both in law and facts and does not call for any interference in this acquittal appeal.

07. Indisputably, there was only one eye witness examined by the prosecution, i.e. PW-3 Sushma Devi. PW-Sushma Devi is none other than the daughter of the

deceased. She has not supported the prosecution case rather she has in her statement categorically stated that her mother, the deceased, died of illness and that she was never subjected to any beating by her father-the respondent herein. No doubt the prosecution declared PW-Sushma Devi hostile, but on cross examination by APP, she explained her deposition made in the statement recorded under Section 164-A Cr.P.C. She has stated that at the relevant point of time, she was in the custody of her maternal grandparents and the statement which was recorded under Section 164-A Cr.P.C. was made by her under pressure. PW-Sushma Devi who at the time of making her statement in the Court was in 8th Standard and, therefore, was well aware about the statement she was making in the Court. The trial Court has, thus, rightly given credence to the statement of PW-Sushma Devi, more particularly, when there was no other direct evidence to prove that the deceased died because of injury inflicted to her by the respondent.

08. The trial Court has discussed other circumstances which were relied upon by the prosecution to prove its case before the trial Court and has rightly not found them firmly established on the basis of evidence led by the prosecution. The post mortem report is though suggestive of the fact that the death of the deceased was as a result of septicemia which had occurred due to an injury in the abdomen of the deceased. The doctor who conducted the autopsy was also examined in the Court but he could not save with certainty as to how such injury could have been caused. In his deposition, he has stated that such injury was possible due to an animal hit in the abdomen or by some other blunt object. The prosecution has not led any cogent evidence to prove any such occurrence where the deceased received the aforesaid fatal injury noted by the doctor that too, at the hands of the respondent. In the presence of such weak and shaky evidence,

the trial Court had no option but to dismiss the challan and acquit the respondent. The trial Court has aptly noticed that even there was delay of more than 02 months in registration of FIR which too, had remained unsatisfactory explained.

09. For the reasons we have given above and also other elaborately dealt with by the trial Court, we do not find any merit in this appeal and the same is, accordingly, dismissed.

(MOHD. YOUSUF WANI)
JUDGE

(SANJEEV KUMAR)
JUDGE

Jammu
29.11.2024.
Eva

Whether the order is speaking?
Whether the order is reportable?

Yes/No
Yes/No

