

Reportable

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO. 306 OF 2006

STATE OF RAJASTHAN

Appellant(s)

VERSUS

DHULKI

Respondent(s)

WITH

CRIMINAL APPEAL NO. 450/2006

STATE OF RAJASTHAN

Appellant(s)

VERSUS

PRABHULAL

Respondent(s)

O R D E R

1) These appeals have been filed by the State of Rajasthan against the judgment and order dated 03.08.2005 passed by the High Court of Rajasthan acquitting the respondents herein in both the appeals of the charges levelled against them for murder of one Kesha.

2) Kesha was married to Dhulki for about 15 years. His dead body was found in the vicinity of the Village Sera, where Dhulki was residing in her parental house. It appears that Dhulki had gone to reside at her parental house because of matrimonial disputes. The body of Kesha was found on 01.02.2001 and FIR was lodged by

the brother of Kesha on 02.02.2001.

3) On examination, it was found that Kesha had vomitted. Further, that he had consumed poison known as Sulphonse which is a psycho toxic poison.

4) According to the police, the investigation revealed two stones found under a Jamun tree recovered at the instance of Prabhulal, which had a white powder attached to them. According to the Police, these stones were used to crush the pills before it was administered to the deceased Kesha.

5) The trial Court, after considering the evidence, came to the conclusion convicted Dhulki for an offence punishable under Section 302 read with Section 120B of the Indian Penal Code, 1860 (for short "the IPC). The respondent Prabhulal is convicted under Section 302 read with Section 120B and Section 109 of the IPC. The trial Court accepted the evidence holding that though there is no eye-witness to the occurrence, the circumstances of the case were sufficient to record conviction. The trial Court observed that Dhulki and Kesha had strained matrimonial relationship and because of which she had gone to reside with her parents. She had an illicit relationship with one Prabhulal, who along with her conspired to eliminate Kesha. According to the trial Court, the evidence pointed to the fact that Prabhulal and Dhulki together had poisoned Kesha.

6) In appeal, the High Court considered the entire evidence and found the circumstances brought on record as extremely weak and insufficient to warrant a conviction of the respondents and, accordingly, acquitted both of them.

7) We have heard learned counsel appearing for the parties.

8) Learned counsel appearing for the State of Rajasthan submitted that there was sufficient evidence to indicate the complicity of Dhulki and Kesha. According to him, the strained relationship of Dhulki with Kesha and her illicit relationship with Prabhulal was sufficient to provide the motive for causing the death of Kesha. On this aspect, we have perused the evidence on record and we do not find any evidence of an illicit relationship between Dhulki and Prabhulal. The only reference to such relationship is in the testimony of PW-8, nine year old son of the deceased. His statement was recorded after two months. He has only deposed to the effect that during quarrel between his parents the name of Prabhulal used to come up. We do not find this sufficient to infer the existence of an illicit relationship. Be that as it may, there is no evidence whatsoever of any conspiracy between the two respondents to eliminate the deceased.

9) Coming to the alleged manner of poisoning, learned counsel appearing for the State submitted that there is evidence that Prabhulal purchased pesticide pills and later on crushed these

pills with two stones (referred to above) under a Jamun tree. The evidence relied on by the prosecution is that of a person in a village who is said to be running a general store, presumably, a *kirana* store, who sold pesticide pills to Prabhulal. This witness admitted that he had no license whatsoever to deal in such pills. We see no reason to accept the version of such a witness. The next piece of evidence that is relied on is recovery of two stones allegedly used to crush the pesticide pills. The stones were said to have been recovered under a Jamun tree which is neither in the vicinity of Prabhulal's house nor Dhulki's. The access to the Jamun tree which was located somewhere in the village is completely unrestricted. Prabhulal's statement in regard to such recovery is not reliable and, in any case, not reliable enough for holding the respondents guilty.

10) The picture that emerges is that there is virtually no reliable evidence in support of the prosecution story that Prabhulal poisoned the deceased Kesha in conspiracy with Dhulki. There is absolutely no evidence of Kesha having been invited either to the house of either of the accused for a meal or of the accused having sent a tiffin to the deceased for consumption.

11) A similar issue was considered by this Court in *Sharad Birdhichand Sarada vs. State of Maharashtra* reported in (1984) 4 SCC 116, where the Court observed at para 165 as follows:-

"165. So far as this matter is concerned, in such cases the court must carefully scan the evidence and determine the four important circumstances which alone can justify a conviction:

- (1) there is a clear motive for an accused to administer poison to the deceased,
- (2) that the deceased died of poison said to have been administered,
- (3) that the accused had the poison in his possession,
- (4) that he had an opportunity to administer the poison to the deceased."

12) In Anant Chintaman Lagu vs. State of Bombay reported in AIR 1960 SC 500 at para 59 this Court observed:-

"59. The cases of this Court which were decided, proceeded upon their own facts, and though the three propositions must be kept in mind always, the sufficiency of the evidence, direct or circumstantial, to establish murder by poisoning will depend on the facts of each case. If the evidence in a particular case does not justify the inference that death is the result of poisoning because of the failure of the prosecution to prove the fact satisfactorily, either directly or by circumstantial evidence, then the benefit of the doubt will have to be given to the accused person. But if circumstantial evidence, in the absence of direct proof of the three elements, is so decisive that the court can unhesitatingly hold that the death was a result of administration of poison (though not detected) and that the poison must have been administered by the accused person, then the conviction can be rested on it."

13) We are of the view that the High Court has considered the evidence in its correct perspective and rightly acquitted both the respondents.

14) We see no reason to take a different view.

15) In the result, both the appeals are dismissed.

..... J.  
(S.A. BOBDE)

..... J.  
(ABHAY MANOHAR SAPRE)

New Delhi;  
January 21, 2016.

ITEM NO.102

COURT NO.10

SECTION II

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 306/2006

STATE OF RAJASTHAN

Appellant(s)

VERSUS

DHULKI

Respondent(s)

WITH

Crl.A. No. 450/2006  
(With Office Report)

Date : 21/01/2016 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.A. BOBDE  
HON'BLE MR. JUSTICE ABHAY MANOHAR SAPREFor Appellant(s) Mr. Shiv Mangal Sharma, Adv.  
Mr. Puneet Parihar, Adv.  
Mr. Ankit Shah, Adv.  
Mr. Vivek R. Mohanty, Adv.  
Ms. Anjali Chauhan, Adv.  
For Mr. Milind Kumar, Adv.For Respondent(s) Ms. V. Mohana, Sr. Adv.  
Ms. Nidhi, Adv. (SCLSC)UPON hearing the counsel the Court made the following  
O R D E R

The appeals are dismissed in terms of the signed order.

(R.NATARAJAN)  
Court Master(SNEH LATA SHARMA)  
Court Master

(Signed order is placed on the file)