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Crl.A.No. 1238 OF 1997
ITEM No.115

Court No. 5

SECTION IIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL No.1238 OF 1997

GOVIND Appellant (s)

VERSUS

STATE OF M.P. Respondent (s)

(WITH OFFICE REPORT)

Date : 29/01/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DORAISWAMY RAJU
HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Appellant (s)Mr. Vijay Kumar, Adv., for
Mr. SUK Sagar, Adv.

For Respondent(s)Mr. S Dave, Adv.
Ms. Vibha Datta Makhija, Adv.

UPON hearing counsel the Court made the following

O R D E R

Heard the learned counsel for the parties.

The appeal is allowed in terms of the signed order and the appellant is acquitted of the charge. He is also discharged from his bail bonds in terms of the signed order.

(D.L.Chugh) (Vijay Aggarwal)
Court Master Court Master

Signed order is placed on the file

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.1238 OF 1997

GOVINDAppellant(s)

versus

STATE OF M.P. Respondent(s)

O R D E R

The above appeal has been filed by the accused-appellant, husband of the deceased Durgabai Challenging the order of the High Court dated 17.9.1997 passed in Criminal Appeal No.237 of 1993 convicting the accused-appellant under Section 323 of the Indian Penal Code while partly allowing the appeal filed by the State and thereby setting aside the acquittal recorded by the learned trial judge of the charge under Section 302 and 201 IPC and convicting the appellant under Section 323 IPC followed by a sentence of one year rigorous imprisonment in addition to the payment of a fine of Rs.500/- with a default stipulation. At the same time, the High Court, affirmed conclusions of the trial court that the appellant cannot be held guilty under Section 302 or 304 Part II and Section 201 IPC.

The case of the prosecution before the courts below was that the victim Durgabai was found murdered by strangulation on the intervening nights of 19/20th December, 1991 and the appellant, the husband as well as his brother Manohar were considered to be responsible not only for the murder but also for the attempt to conceal and destroy the evidence relating to the same. The appellant alone was charged and tried for offences under Section 302 and 201 IPC, whereas his brother, the other accused was tried for the offence under Section 201 IPC alone. After considering the materials on record the learned Additional Sessions Judge, Dhar, MP came to the conclusion that the question as to whether the appellant committed the murder is highly doubtful and could not be held liable under Section 201 IPC as well. Both the appellant and his brother Manohar were consequently acquitted. The learned trial judge arrived at such conclusions on the basis of the medical opinion that the death can not be considered to be homicidal and could not be said to have been caused by any strangulation, in the absence of any injury on the cervical vertebra or congestion in the lungs. Otherwise, also the case of the prosecution was considered to be doubtful from the slippery nature of the evidence that has been adduced in support of the case of the prosecution.

Aggrieved against the acquittal the State pursued the matter in appeal before the High Court but leave was granted to appeal only against the appellant. A Division Bench of the High Court while agreeing with the conclusions of the learned trial judge so far as it related to the offence of murder and the offence under Section 201 IPC are concerned, yet thought fit to convict the accused under Section 323 IPC on the ground that the abrasions of 2" x 1" found on the neck of the deceased which were considered to be an injury anti mortem, must be attributed to the accused appellant.

Learned counsel for the appellant vehemently challenged the conclusions arrived at by the High Court after inviting our attention to the relevant portions of the judgments of the courts below and the medical evidence, on record. Mr. Siddharth Dave, learned counsel for the respondent-State tried to justify the conclusions arrived at by the High Court on the ground that they are reasonable and could be possible for being justified on the basis of the materials placed on record.

We have carefully considered the submissions of the learned counsel appearing on either side. In our view, in the teeth of the medical opinion and the acquittal of the appellant under Section 302 and 201 IPC and the categorical acceptance of the medical opinion, without any reservation it is hardly possible for the High Court to fix any responsibility on the appellant or attribute one abrasion found on the neck of the deceased, to him to be punished under Section 323 IPC. The necessary ingredients to fix appellant with such responsibility or convict is completely missing in the case and in the absence of any clear, cogent, concrete and convincing evidence for the same, the conviction under Section 323 IPC also could not have been made.

The conclusions of the High Court seem to proceed upon mere probabilities or possibilities and suspicions in the background of mere relationship of the victim and the appellant to be husband and wife and nothing else. Suspicion, however strong, has been held to be no sufficient ground or be allowed to be substitute for the required proof and thus the conviction in this case, in our view, cannot be sustained at all.

For the reasons stated above the appeal stands allowed and the conviction of the appellant under Section 323 IPC by the High Court is set aside. He is discharged from his bail bonds.

.....J.

(DORAISWAMY RAJU)

.....J.

(ARIJIT PASAYAT)

New Delhi,
JANUARY 29, 2004