RUSTAM

Versus

The STATE

2013 Y L R 2600 [Sindh]

JUDGMENT

SYED MUHAMMAD FAROOQ SHAH, J.---Through this jail appeal, the appellant above named has assailed the judgment dated 2-12-2009, passed by learned Sessions Judge, Badin in sessions Case No.277 of 2009, whereby he was convicted and sentenced to suffer R.I. for 20 years and fine of Rs.10,000, the amount of fine if recovered shall be deposited in Government treasury, as all the witnesses turned hostile and resiled from their evidence. It was further observed by the trial Court that P.Ws. tried to save the accused, who has committed heinous offence. In case of failure to pay fine he shall undergo further imprisonment of one year more. Benefit of section 382-B, Cr.P.C. was, however, extended to the accused/appellant.

2. Heard learned counsel for the parties and perused the record.

3. Prosecution story in nutshell is that rape has been committed with Mst. Allah Bachai, daughter of complainant Muhammad Rahim Mazari in result of which she had committed suicide hence her statement could not be recorded by the police. It is also an admitted position that it is a case of unseen evidence. All eye-witnesses in their depositions stated that they found a person who was muffled face, ran away and they have been disclosed by the victim that one Rustam had committed Zina upon her. All eye witnesses have been declared hostile by the prosecution due to the reason that they did not identify the accused present in Court and stated that they cannot say whether the accused present in Court is same person whose name was disclosed by victim Mst. Allah Bachai to them.

4. Perusal of the impugned judgment reveals that complainant had filed application before the learned trial Court, stating therein that he did not want to proceed with the matter but the learned trial Court recorded conviction on the basis of evidence of hostile witnesses and observed that evidence of hostile witnesses has to be appreciated to find out the alleged guilt of accused or his innocence and when such evidence support to prosecution case on some material points, it is permissible to rely upon the same to that extent and statement of such witness could not be discarded for the reasons that he was declared hostile. In this aspect, reliance is also being placed on some case-law. In Para. 16 of the impugned judgment, the learned trial Court observed that the evidence on record clearly proves that incident had happened but the complainant party tried to save the accused after a compromise between the complainant party and accused

persons, particularly the complainant in his cross-examination has admitted that Mst. Allah Bachai disclosed to him that it was present accused who committed Zina upon her.

5. I have gone through the deposition of complainant (Exh.4) wherein he has categorically stated that he saw a person whose face was muffled and in doubt he has given his name to be Rustam son of Umed Ali by caste Mazari who on seeing him ran away. He has further identified the accused to be the same person whose name he has given in suspicion in the F.I.R. He did not support the contents of the F.I.R. wherein he has given the name of Rustam and if at all, it was the duty cast upon the Court to initiate proper proceedings against the complainant under section 193, P.P.C. for giving false evidence but the same proceedings have not been initiated.

6. Contentions made by learned A.P.-G. that Medical Officer has affirmed that Zina has been committed with the deceased prior to her suicide but it does not prove that as to whether present appellant has committed the offence or not. In Para 20 of the impugned judgment, the learned trial Court made an observation regarding cruelty of crime but has forgotten the golden principle of criminal administration of justice that even a slightest doubt favours accused, is sufficient for his acquittal.

7. Suffice is to say that the Trial Court while attending the plea of the appellant/accused facing trial by reading the evidence may judge credibility and demeanor of the witnesses in view of the principle that every-person is presumed to be innocent unless proved guilty. On re-appraisal of the evidence on record a different view may be drawn with regard to manifest wrong, perversity or uncalled conclusion from facts provided on record as material evidence has been misread blatantly to an extent that miscarriage of justice has occasioned. The appellant has served almost more than half of the awarded sentence, though there was no sufficient corroboratory evidence brought by the prosecution on the record to award him conviction.

8. From perusal of the record it transpires that the learned trial Court has not only misread the evidence but also mis-exercised its jurisdiction by placing undue reliance on some extraneous consideration, particularly, the prosecution had failed in bringing on record sufficient evidence whereby guilt of appellant and his active participation in the commission of offence is established. The trial Court unjustifiably drawn arbitrary inferences and conclusion against the norms of justice in evaluation of evidence. The ocular evidence is quite in conflict with the circumstantial evidence, it lacks corroboration and is unworthy of credit and unbelievable. The cited case-law is not attracting in the circumstances of the case, as each case is to be evaluated, keeping in view its facts and circumstances.

9. For what has been discussed above, it is settled that for extending benefit of doubt it is not necessary that there should be many circumstances creating doubt and if there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused then the accused will be entitled to the benefit not as a matter of grace and

concession but as a matter of right. As discussed above, in the instant case there are sufficient circumstances which creates doubt upon the prosecution case. The conviction cannot be recorded merely on probabilities and presumptions and prosecution has to prove its case beyond any shadow of doubt, which the prosecution has miserably failed to prove in the instant case. It appears that the impugned judgment is a result of misreading and non-reading of evidence, as all the witnesses did not support prosecution including the complainant, those have stated that victim disclosed the name of accused to be Rustam but admittedly statement of victim has not been recorded due to her suicidal act hence there is no evidentiary value on the ocular account particularly P.Ws. have been declared hostile. Resultantly, the appeal is allowed and the conviction and sentence awarded to the appellant is set aside. The appellant is on bail, his bail bond stands cancelled and surety is hereby discharged.

MWA/R-30/K Appeal allowed