

Court No. - 48

Case :- WWW.LIVELAW.IN GOVERNMENT APPEAL No. - 87 of 2021

Appellant :- State of U.P.

Respondent :- Gurucharan Alias Sani Sardare And Another

Counsel for Appellant :- G.A.

Hon'ble Munishwar Nath Bhandari,J.

Hon'ble Shamim Ahmed,J.

This State appeal is against the judgment 20.11.2020 passed by the Additional Sessions Judge, Court No.1, Jhansi in Crime Case No.120/2010 acquitting the accused from the offence under Section 302 read with Section 34, 380 IPC.

The learned AGA has submitted that on registration of the FIR for the offence under Section 302/34, 380 IPC and 4/25 Arms Act, the investigation was conducted followed by a charge sheet. After framing of the charges, trial commenced. The allegation in the FIR was that on 12.2.2009 at about 7:00 p.m. when informant Smt. Meera returned to her house, the door was found open. Her husband Dhani Ram was lying on the floor. He was in the pool of blood. Two mobile phones of her husband were found missing.

After the investigation, the charge sheet was filed and after framing of the charges, the prosecution produced 13 witnesses and 20 documents to prove their case. The learned trial court did not find evidence to prove the case beyond doubt and accordingly acquitted the accused.

The learned AGA is fair enough to admit that the main witnesses turned hostile. The trial court otherwise found that the prosecution has failed to prove motive for the occurrence.

The learned trial court has considered the statement of PW-1 Smt. Meera, informant of the occurrence. She is not an eye witness. She reported about missing of mobile phones to make out an offence under Section 380 IPC also. It was admitted by her that no occurrence of theft has taken place otherwise because the almirah was found intact. She could not support the prosecution case. PW-2 Rupesh was declared hostile. He was otherwise a material witness. It is also the fact that the mobile phones were not recovered. In this regard, even PW-3 Sharif was declared hostile, thus even he did not support the prosecution case. PW-4 Chandra Kant was also declared hostile. Other witnesses did not support the prosecution case to prove

Kumar Pandey has also been considered by the court below. He had admitted that as per the statement of the witnesses, the deceased committed suicide. He denied even recovery of the knife at the instance of anyone. PW-9 Swami Nath also states that the information of theft of mobile phones was given by a 'Mukhbir'. The mobile phones could not be recovered. The learned court below has considered even the statement of other witnesses but found no evidence to prove the charges and accordingly, the order of acquittal has been passed.

The learned AGA could not refer to any evidence which may prove the case beyond doubt and accordingly, we do not find any reason for interference in the judgment passed by the learned trial court acquitting the accused for the offence under Section 302/34 and 380 IPC.

The appeal is accordingly dismissed.

Before parting with the judgment, we direct the State Government to make proper scrutiny of the cases before taking a decision for filing appeal otherwise it causes unnecessary burden on the Courts as well as on the office of the Government Advocate. In this case, no error in the impugned order could be shown which may justify filing of the appeal. Accordingly, the State Government should refrain themselves to file appeal in a case where no error exist.

Order Date :- 9.3.2021

SP