

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 1219-1220 OF 2002

STATE OF RAJASTHAN Appellant (s)

VERSUS

SHARVAN & ANR. Respondent(s)  
(With appln(s) for exemption from filing O.T.)

Date: 30/04/2008 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA  
HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA

For Appellant(s) Ms. Madhurima Tatia,Adv.  
Mr. Aruneshwar Gupta,Adv.

For Respondent(s) Mr. Dharam Bir Raj Vohra,Adv.(NP)

Mr. Ashok K. Mahajan ,Adv(NP)

UPON hearing counsel the Court made the following  
ORDER

The appeals are dismissed in terms of the signed order. The respondents are on bail. Their bail bonds shall stand discharged.

[ Meenu Sethi ] [ Pushap Lata Bhardwaj ]  
A.R.-cum-P.S. Court Master

Signed order is placed on the file  
IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1219-1220 OF 2002

State of Rajasthan ...Appellant

Versus

Sharvan & Anr. ...Respondents

O R D E R

These appeals are directed against the judgment and order passed by a Division Bench of the Rajasthan High Court dated 1.11.2001 in Criminal Appeal Nos. 335 & 305 of 1999 allowing the appeals preferred by the respondents herein from the judgment of conviction and sentence dated 29.4.1999 passed by the Additional Sessions Judge, Hindon City in Sessions Case No.9/1998.

The occurrence took place on 29.9.1997 at about 9 a.m. The first informant- Yadram (P.W.-4) lodged the First Information Report as regards murder of Sheodan by Kallu s/o Harbhan and Sharvan s/o Malua which was recorded at about 11.45 a.m. on the same day. The homicidal nature of the death of the said Sheodan is not in dispute.

Yadram- P.W.4 in his first information alleged that

when the deceased had gone to the field to cultivate crop of millet, two-three persons came from behind and fled away after causing 'cutting injuries' on him. The accused who were named in the First Information Report were said to have been in possession of Daranti (scythe) and axe in their hands. Allegedly, he reached the place of occurrence from his own field after hearing sound of

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Sheodan, Kallu and Sarwan. Many other persons working in their fields arrived at the place of occurrence and by that time the accused persons fled away. It, however, appears from the judgment passed by the Courts below that apart from Yadram (P.W.4), Govind (P.W.5) - nephew of the deceased, Sukhi (P.W.15) wife of the deceased and Chandulal (P.W.16) were eye witnesses. Their names, however, were not disclosed in the First Information Report. Those whose names have been mentioned in the First Information Report, namely, Babulal, Chuttan, Vishram, and Sujan who examined themselves as P.W.14, P.W.7 and P.W.13, admittedly, did not witness the actual assault by the accused on the deceased.

The statements of the so called eye witnesses were also recorded after a few days in respect whereof the explanation of the investigating officer had not been accepted by the High Court. The High Court in view of the fact that names of the none of the so called eye witnesses had been disclosed in the First Information Report, did not rely upon their statements.

More importantly Chandulal (P.W.16) came out with a story that respondent No.1 was caught at the spot. If his deposition and depositions of other witnesses on the said allegation were to be believed, Sarwan was brought to the house of the deceased and kept tied there. Admittedly, however, he was arrested on 7.11.1997 i.e. after a period of about 1 1/2 months. The prosecution witnesses further alleged that the Daranti which was the weapon of assault was kept at the house of the deceased. A purported recovery of a blood stained Daranti, the memo whereof was marked as Exhibit P.13, was shown to have been recovered from the house of the accused. Similar purported recovery was said to have been made from the respondent No.2.

The learned Sessions Judge also did not believe the entire prosecution case. Accused Sarwan was convicted for an

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offence under Section 302 IPC and sentenced to undergo rigorous imprisonment for life. Accused Kallu was convicted for an offence under Section 324 IPC and he was sentenced to undergo rigorous imprisonment for two years. Learned Sessions Judge in his judgment appears to have laid emphasis on the fact that respondent No.1 herein, admitted in his statement under Section 313 of the Code of Criminal Procedure that he had in fact been caught by the villagers but having been found by them to be innocent he was let off. Whereas the learned Sessions Judge had relied upon that part of the statement made by the respondent No.1 in his examination under Section 313 of Cr.P.C. to arrive at a conclusion that the statement made by Chandulal (P.W.16) that he apprehended respondent No.1 at the spot stood corroborated, the High Court on the other hand did not agree to the said findings opining that the prosecution has failed to prove the fact that respondent No.1 was caught at the spot.

The purported blood stained weapons were not sent for chemical examination. No report of the Chemical Examiner was filed in Court. Land dispute between the parties is accepted. The First Information Report might not have been lodged after a great delay but the tenor of the same appears to be that more than two persons took part in the incident.

Furthermore, the purported apprehension of the respondent No.1 at the spot would have been a major factor which was expected to be disclosed in the F.R.R. so as to enable the Investigating Officer to

apprehend him at the first instance.

Why despite the fact that the main assailant had been caught at the spot and was allowed to go away from there by the villagers had not been explained by the prosecution. Yet again why the statements of so called eye witnesses Govind

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(P.W.5), Sukhi(P.W.15) and Chandu(16) were not recorded within a reasonable time by the investigating officer has not been explained by the Investigating Officer.

The view of the High Court is a possible one. We in exercise of our jurisdiction under Article 136 of the Constitution of India would not ordinarily interfere with the judgment of acquittal recorded by the High Court when it is found that both the views of the learned Sessions Judge as also the High Court were possible views. We, therefore, are of the opinion that no case has been made out for interference with the impugned judgment. The appeals are dismissed.

The respondents are on bail. Their bail bonds shall stand discharged.

[S.B. SINHA]

.....J.

[LOKESHWAR SINGH]

.....J.

PANTA]  
New Delhi,  
April 30, 2008.

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