

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 1333 of 2011

STATE OF RAJASTHAN

Appellant(s)

VERSUS

MADAN @ MADANIYA

Respondent(s)

J U D G M E N T

N. V. RAMANA, J.

1. This appeal by special leave is directed against the judgment and order dated 16.04.2010 passed by the High Court of Judicature for Rajasthan at Jodhpur in D.B. Criminal Appeal No. 678 of 2004, whereby the High Court acquitted the accused of the

charges under Sections 302 and 460 of the IPC, giving him the benefit of doubt.

- 2.** Brief facts according to the prosecution case necessary for the disposal of this case are as follows. On receiving an anonymous telephonic information, regarding the killing of one Smt. Santosh, daughter of Devki Devi Mali, the Police reached the spot of occurrence and recorded the statement of P.W.10-Smt. Devki Devi, mother of the deceased. Therein, P.W.10-Smt. Devki Devi, alleged that, the accused-Respondent, used to reside in vicinity and was harboring vengeance against the deceased Santosh as he believed that, few days earlier he was assaulted by 7-8 men, at the instance of the deceased Santosh. On the date of the incident, while the P.W.10 was at her agricultural farm, at about 6:00 A.M, P.W.5-Seema, her minor daughter came up to her and informed that, in the preceding night, the accused-Respondent along with one person entered their home at around 02:00 A.M. and gave lathi blows to the deceased, consequent to which she died. P.W.10-Devki Devi, thereafter immediately rushed to the house and found the body of the deceased lying on the roof.

- 3.** On the basis of the aforesaid statement made by P.W.10 (Smt. Devki Devi), a case was registered against the accused-Respondent and another person, thereafter they were arrested and subsequent recoveries were made in this regard. After completion of the investigation, a charge sheet was filed charging the accused persons for offence punishable under Sections 302, 460 and 34 of IPC. Thereafter, the accused persons were put on trial as they did not plead guilty to the charges leveled against them.
- 4.** The trial Court vide order dated 11.06.2004, convicted the accused for offences under Sections 302 and 460 IPC. Accordingly, he was sentenced to undergo imprisonment for life under Section 302 of IPC, with fine of Rs.1000 and in default of payment of fine, the accused was directed to undergo 2 months rigorous imprisonment. He was also directed to undergo 10 years rigorous imprisonment for conviction under Section 460 of IPC with a fine of Rs.500/- and in default of payment of fine, to further undergo one-month rigorous imprisonment.
- 5.** On the other hand, the co-accused Sheokar @ Sheokumar was

acquitted by the trial Court after being given the benefit of doubt for the charges levelled against him under Sections 302 and 460 IPC.

6. Aggrieved by the above order of conviction, the accused-respondent preferred an appeal before the High Court. The High Court allowed the appeal and set aside the order of conviction and sentence awarded by learned Sessions Judge. The benefit of doubt was extended in favor of the accused and he was acquitted from all the charges.
7. Aggrieved by the impugned order passed by the High Court, the State of Rajasthan has preferred this appeal.
8. The counsel for the appellant-State has submitted that, the High Court has gravely erred while passing the order of acquittal despite the existing ocular evidence as well as forensic evidence wherein the guilt of the accused was clearly established.
9. On the other hand, the counsel for the accused-respondent, while supporting the order of acquittal has submitted that, on objective appreciation of evidence, a reasonable doubt exists for

disbelieving the case advanced by the prosecution. Hence, the High Court was right in granting the benefit of doubt to the accused-respondent.

10. Heard learned counsels for the Parties. In an appeal against acquittal, the appellate court would only interfere where there exists perversity of fact and law. [See ***Bannareddy and Ors. vs. State of Karnataka and Ors***, (2018) 5 SCC 790] Further, the presumption of innocence is further reinforced against the acquitted-accused by having a judgment in his favor. [See ***Rabindra Kumar Pal @ Dara Singh v. Republic of India***, (2011) 2 SCC 490 in para. 94].
11. In light of the same, before we proceed to deal with the case, it would be appropriate to render a look at the statements of certain prosecution witnesses.
12. P.W.5 (Seema) aged 14, is the sister of the deceased and the accused respondent was her maternal cousin, claimed to be an eye-witness to the said incident. She has stated that, on the date of occurrence while she, P.W.4 (Kaptan), deceased Santosh and

her two sons were fast asleep on the roof, the accused-Respondent had come to their house and had started quarrelling with the deceased. The accused respondent, thereafter hit the deceased on her head with a lathi due to which she fell down. After the incident, she deposed that she went to the fields in the following morning and informed P.W.10 (Smt. Devki Devi) about the aforesaid incident. She also stated that, when the Police came at around 9:00 A.M, her mother (Smt. Devki Devi) came with the police, although she admitted that none of the family members had informed the police about the incident.

- 13.** P.W.4 (Kaptan), aged 12, is the brother of the deceased, claimed to be an eye-witness to the said incident and the accused-Respondent was his maternal cousin. He stated that, he, P.W. 5 (Seema), deceased Santosh and her sons were sleeping on the terrace, while their father P.W.11 (Lalchand) was sleeping in the courtyard. He stated that he woke up to a hue and cry, and he saw the deceased getting assaulted in a sitting condition. He also stated that, their house is situated in a populated neighborhood and adjacent to their house, there was a temple and some one was sitting on the roof during the occurrence of the incident.

Lastly, he stated that, none of the family members had informed the police about the incident.

14. P.W.10 (Smt. Devki Devi), mother of the deceased, improved upon her earlier statement and stated that, while she was working in the fields both P.W.4 (Kaptan) and P.W.5 (Seema) came to the field to inform about the death of the deceased Santosh. Thereafter, she immediately returned back to the house and found the body of deceased lying on the roof.

15. P.W.11 (Lalchand), father of the deceased, stated that, he was present in house when the incident took place in the terrace, but since the accused-respondent threatened him, he did not interfere in the said incident. He further stated that, he sent his minor daughter P.W.5 (Seema) at around 6:00 A.M. to the fields to inform his wife P.W.10 (Smt. Devki Devi) about the murder of deceased-Santosh. He further clarified that, he did not send any neighbor to inform P.W.10 (Smt. Devki Devi) nor did he inform the Police.

16. P.W.2 (Sohan Singh) stated that, he along with other villagers, went to the residence of P.W.11 (Lalchand) and asked about the

incident but P.W.11 (Lalchand) and P.W.10 (Devki Devi) did not disclose any name and on the contrary stated that, they are yet to confirm the same.

17. It is equally pertinent to note the statements made by the accused under Section 313 of Cr.P.C and other defense witnesses. The accused in his statement under Section 313, Cr.P.C has stated that, he has wrongfully been roped in as accused, due to existing prior enmity between the parties. The accused has also stated that, the deceased did not maintain a cordial relationship with her husband. The husband of the deceased had threatened to kill her pursuant to their disagreements.

18. D.W.1 (Kartar Singh), stated that he came to know about the incident in the morning and thereafter, he along with Gurjeet went to fetch P.W.10, (Smt. Devki Devi) from agricultural field at the instance of P.W.11 (Lalchand). Thereafter, all three of them rushed to spot of occurrence by a tempo. This witness has further, stated that, when he reached the spot of occurrence, P.W.11 (Lalchand), did not confirm who the assailants were as he himself was not aware about the same. Additionally, P.W.1

(Kartar Singh), stated that one day prior to the incident, the deceased had an altercation with her husband, who had threatened to kill her.

19. On perusal of the statements, we find that, there exists major contradictions in the statements of prosecution witnesses while establishing the circumstances surrounding the murder of the deceased-Santosh.

20. *Firstly*, the case of the prosecution strongly relied upon on the testimony rendered by the two child-witnesses, P.W.4 (Kaptan) and P.W.5 (Seema). It is an established rule of practical wisdom, that evidence rendered by the child-witness must be evaluated carefully and it must find adequate corroboration before it is relied on. (See ***Panchhi v. State of U.P.*** (1998) 7 SCC 177). Although, both P.W.4 (Kaptan) and P.W.5 (Seema) claimed to be the eye witnesses to the entire incident, they have given different versions as to the position of the victim, while P.W.4 (Kaptan) clearly stated that accused gave blows to the deceased while she was sitting, P.W.5 (Seema) on the contrary has stated that the victim was standing and after receiving the blow she fell down.

Moreover, both the witnesses have failed to state the specific timing at which the incident occurred.

21. Additionally, owing to severe contradictions in the statements of the prosecution witnesses, the prosecution has failed to prove the fact as to who gave the information to P.W.10 (Smt. Devki Devi). In our opinion, the High Court has correctly laid emphasis on this aspect, as it leads to the inference about the presence of P.W.4 and P.W.5 at the place of occurrence of the incident. In light of the above circumstances, the statements of both the child-witnesses do not inspire confidence.

22. *Secondly*, it is also pertinent to observe here that, although the incident happened around 2.00 A.M., but none of the family members chose to inform the police about the said occurrence. Rather the wheel of process, in the present case commenced upon receiving an anonymous telephonic information by the Police. P.W.5 (Seema) voluntarily stated in her statement that, a neighbor might have informed the police about the same. It was only after the reaching of the Police on the spot of occurrence, that P.W.10 (Smt. Devki Devi) has stated about the incident and

the guilt of the accused.

- 23.** *Thirdly*, the High Court on perusal of the statement of P.W.11 (Lalchand) has raised suspicion, as it is quite abnormal that, he being the father of the deceased, did not interfere in the said occurrence although he was in the same house. Further, he admittedly did not go up to the terrace to see the deceased till the police came after long 6-7 hours, till this time the deceased was lying on the roof.
- 24.** *Lastly*, the fact as to why he sent his minor daughter instead of some responsible major to inform his wife P.W.10 (Smt. Devki Devi), who was present in the field at a distance of 2-3 Kms, at the early hours in the morning, raises doubt as to the credibility of this witness. Our attention is also drawn to the fact that, the statement of P.W.11 (Lalchand) does not speak anything about the giving of information to independent witnesses D.W.1 (Kartar Singh) and P.W.2 (Sohan Singh), whereas, both these witnesses have clearly stated about their encounter with P.W.11 (Lalchand) and P.W.10 (Deviki Devi), wherein they have expressed unawareness about the assailants. These contradictions go to

root of matter raising questions about the credibility of these witnesses.

- 25.** After having observed the evidence of the above crucial witnesses, a reference may be made to observations of this court in ***Krishnegowda and Ors. vs. State of Karnataka*** (2017)13 SCC 98, wherein it held that:

Although there is no absolute Rule that the evidence of related witnesses has to be corroborated by the evidence of independent witnesses, it would be trite in law to have independent witnesses when the evidence of related eyewitnesses is found to be incredible and not trustworthy. **The minor variations and contradictions in the evidence of eyewitnesses will not tilt the benefit of doubt in favor of the Accused but when the contradictions in the evidence of prosecution witnesses proves to be fatal to the prosecution case then those contradictions go to the root of the matter and in such cases Accused gets the benefit of doubt. (emphasis supplied)**

- 26.** In the present case, the evidence relied by the prosecution is full of contradictions. We cannot ignore the fact that although P.W.4 (Kaptan), clearly admitted that, their house is situated in a populated neighborhood, it is quite surprising that, when the

incident occurred on the terrace no one interfered or came to the place of occurrence until morning. The prosecution has failed to provide any independent witness to bring home, the guilt of the accused.

27. Further, the High Court also raised doubt while placing reliance upon the scientific evidence as there existed contradictions in the seizure list of the clothes of deceased and the forensic evidence on record, which was left unexplained by the Public Prosecutor. Additionally, the prosecution has pressed that recovery was made subsequent to the confession of the accused. In this context, it is pertinent to note that, the alleged recovery was made in the presence of P.W.7 (Sukhbir Singh) who is the paternal cousin of the deceased, who in his statement has stated that the lathi recovered had blood stains in it. Surprisingly, this fact of lathi marked in blood stains is not only absent in the recovery memo but also in the forensic report. These shortcomings imply a sketchy investigation hence, bringing the reliability of the above evidences into question considering the facts and circumstances of the present matter.

28. Moreover, the High Court has correctly observed that, the trial court totally overlooked the defense adduced by the accused-respondent, especially when he has denied the allegations levelled against him, vitiating the fundamentals of justice. In light of the above observations, it is correctly concluded that, there exists reasonable doubt for believing the case laid down by the prosecution and the guilt of the accused has not been proved beyond doubt.

29. It is the duty of the court to separate the grains from the chaff and to extract the truth from the mass of evidence. In our opinion, the case of the prosecution is based on mere conjectures and surmises. Moreover, the material contradictions inevitably raises a doubt as to whether it was the accused-respondent, who had caused the death of the deceased-Santosh. After examining the rationale behind the conclusion of the High Court in acquitting the accused-respondent, we do not find any compelling reasons to deviate from the same.

30. In our opinion, there exists no perversity in the judgment of the High Court. Further, in the absence of compelling reasons, this

court is not keen to entertain this appeal challenging the order of acquittal.

31. The appeal is accordingly dismissed. Pending applications, if any, shall also stand disposed of.

.....J.
(N. V. Ramana)

.....J.
(Mohan M. Shantanagoudar)

NEW DELHI,

OCTOBER 25, 2018