
(2016) 01 RAJ CK 0090
In the Rajasthan High Court
Case No : Cr. Appeal No. 174 of 2015.

Smt. Leela

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 25-01-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 302 149, 307, 323, 324

Citation : (2016) 2 CriLR 660

Hon'ble Judges : Gopal Krishan Vyas;P.K. Lohra, JJ.

Bench : Division Bench

Advocate : Mahesh Bora, Sr. Advocate with Nishant Bora, Advocate, for the Appellant; T.R.S. Sodha and B.S. Rathore, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Gopal Krishan Vyas, J. - The instant Cr. appeal has been filed by Smt. Leela Devi Wd/o Late Sh. Kalu Ram under Section 372 of the Cr.P.C. against the judgment dated 2.1.2015 passed by the learned Addl. Sessions Judge NO.2, Jodhpur Metropolitan, Jodhpur in Sessions Case No. 25/2014 by which all the respondents were acquitted from the charges levelled against them under Section 147, 148, 323, 324, 307 and 302/149 IPC.

2. As per brief facts of the case on the basis of statement of injured Babu Lal (PW - 2) in emergency ward of MDM Hospital, Jodhpur on 18.7.2009 in which it was alleged that he and Madan Lal Nai, Guddu Bheel, Swaroop Bheel along with their wives and children were sitting in the agricultural field of Kalu Ram Beniwal. On that date, at about 6-6.30 pm Kalu Ram came there in his vehicle Car bearing No. RJ-19-UA 1402 along with him one Ram Lal and Om Prakash were also with him.

3. When Kalu Ram came there in his field, 6-7 tractors, 2-3 jeep and 100-150 persons along with men and women came upon spot. Further, the allegations were made that Mishri Lal Chhaba, Prem Chhaba and Nena Ram Chhaba were

having revolver and they made fire on spot. It is also stated that one Lal Das, Jiya Das and Jagdish were having Sword and knife and other persons were having Lathi, Kasiya and Kooth in their hands and in the incident Mishri Lal Chhaba made fire upon Kalu Ram and Prem Chhaba made fire upon Mishri Lal Chhaba and all Lal Das, Jeeya Das and Jagdish inflicted injury by sword and knife and one Surja Ram and Ameen Patwari assaulted him and Madan Nai. After inflicting injuries by different weapons they went from the place of occurrence while assuming that they died. Due to the injuries Kalu Ram died in the agricultural field itself and they took Mi ey took Mishri Lal along with them.

4. Upon aforesaid information FIR no. 164 dated 19.7.2009 was registered at Police Station Dangiyawas and investigation was conducted by the police.

5. After investigation, the SHO Police Station Dangiyawas filed challan against 14 persons in the court of Addl. Chief Judicial Magistrate, Bilara, District Jodhpur on 23.10.2009 for the offences under Section s 147, 148, 323, 307 and 302/149 IPC. The Addl. Chief Judicial Magistrate committed the case to the court of Sessions Judge, Jodhpur Metropolitan, Jodhpur form where the case was transferred for trial to the court of Addl. Sessions Judge No. 2, Jodhpur Metropolitan, Jodhpur.

6. The learned trial court framed charges against all the accused persons under Sections 147, 148, 149, 323, 307 and 302/149 IPC and commenced trial. In the trial statements of 16 prosecution witnesses were recorded and 48 documents were exhibited and after recording evidence of prosecution, statements under Section 313 Cr.P.C. were recorded by the learned trial court and all the respondents denied the allegations levelled by the prosecution witnesses and stated that they have falsely been implicated in this case. No evidence was produced in defence.

7. In the trial, all the eye witnesses turned hostile except PW - 6 Madan Lal and the learned trial court after considering the entire facts and the fact that no eye witness is corroborating the prosecution story and PW-6 Madan Lal improved his statement from his statement recorded under Section 161 Cr.P.C., therefore, prosecution has failed to prove its case beyond reasonable doubt, acquitted all the respondents from the charge levelled against them while considering entire evidence vide judgment dated 2.1.2015.

8. The instant appeal has been filed by Smt. Leela Devi w/o of late Kalu Ram. No leave to appeal has been filed by the State of Rajasthan nor by the complainant but Smt. Leela Devi preferred this appeal being victim of the incident because her husband died in the incident.

9. Learned counsel for the appellant submits that the appellant is victim, therefore, even if she was not prosecution witness nor she was complainant, she can file the instant appeal against the judgment impugned. It is also argued that even if all other eye witnesses including PW - 2 Babu Lal author of the FIR turned hostile upon the testimony of PW - 6 Madan Lal, it is a case in which the learned

trial court ought to have accepted his evidence so as to convict the respondents, but the learned trial court committed a grave error while acquitting all the respondents from the charge levelled against them.

10. The learned counsel for the appellants further argued that even if it is presumed that compromise arrived at between the parties, then also, this Court cannot lose sight of the fact that serious incident took place on 19.4.2009 in which two persons died, therefore, the testimony of PW - 6 Madan Lal is required to be accepted.

11. Learned counsel for the appellant vehemently argued that witness PW - 6 Madan Lal specifically stated in the court that injuries were caused by revolver to the deceased, therefore, it is a case in which prosecution has proved its case beyond reasonable doubt, in spite of that the learned trial court erroneously acquitted the respondents from the charge levelled against them, therefore, the judgment impugned may be quashed and the respondents may be convicted for alleged offence.

12. Per contra, learned counsel appearing for the respondents vehemently argued that this appeal has been filed by the stranger. The appellant Smt. Leela Devi was neither prosecution witness nor complainant in this case, therefore, this appeal deserves to be dismissed on this count alone. Learned counsel for the respondents argued that in criminal trial it is the duty of the prosecution to prove its case beyond reasonable doubt, but here in this case, the eye witnesses PW - 3 Mohan Lal, PW - 9 Bhiya Lal, PW - 10 Rameshwar, PW - 11 Guda Ram @ Bhudha Ram and PW - 12 Swaropa Ram all turned hostile and they did not support the prosecution case. Further, it is submitted that PW - 6 Madan Lal gave his statement contrary to his statement Ex.P/1 recorded in the investigation under Section 161 Cr.P.C. The witness PW - 2 Babu Lal turned hostile and did not support the allegation of PW - 6 Madan Lal, therefore, it is a case in which the prosecution has miserably failed to prove its case beyond reasonable doubt.

13. Learned counsel for the respondents argued that PW - 6 Madan Lal gave names of respondents but how he has identified them is not disclosed in his statement. PW - 6 Madan Lal himself stated that he came on spot and in the village for the first time, therefore, no error has been committed by the learned trial court in acquitting the respondents, hence, this appeal may kindly be dismissed.

14. After hearing the learned counsel for the parties, first of all it is obvious that although the appeal has been filed by Smt. Leela Wd/o late Kalu Ram and she was neither prosecution witness nor she was complainant of the case, but this court can examine the validity of the judgment upon prayer of the appellant because admittedly appellant Smt. Leela Devi is wife of deceased Kalu Ram who died in the incident. In view of the fact that appellant is widow of deceased and no appeal has been filed by the complainant, we deemed it appropriate to examine the case on merits.

15. Admittedly, in this case all the eye witnesses turned hostile except PW - 6 Madan Lal. The learned trial court observed in the findings that PW - 6 Madan Lal improved his statements in the court from the statements made under Section 161 Cr.P.C. recorded in the investigation. Upon perusal of both the statements it appear that PW - 6 Madan Lal improved his statements for the purpose of identification and role of the respondents. In the statement recorded under Section 161 Cr.P.C. he specifically stated that he has no knowledge who has assaulted him but in the court made specific allegation. Meaning thereby, this witness did not identify any of the respondents but in the trial improved his version before the court and made specific allegation, therefore, the learned trial court disbelieved the testimony of PW - 6 Madan Lal.

16. In our opinion, the finding given by the learned trial court does not suffer from any illegality or infirmity because none of the eye witnesses supported the prosecution case and PW - 6 Madan Lal also did not support the incident correctly, therefore, there is no question to accept the testimony of the witness PW - 6 Madan Lal because he has improved his statement recorded in the trial from the statements made under Section 161 Cr.P.C.

17. In view of the above, no error has been committed by the learned trial court to acquit the respondents. Therefore, this appeal is hereby dismissed.