
(2003) 08 MP CK 0050
In the Madhya Pradesh High Court
Case No : Criminal Appeal No. 1144/90

State of Madhya Pradesh

APPELLANT

Vs

Nanhelal and Others

RESPONDENT

Date of Decision : 26-08-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2004) 1 MPHT 217 : (2004) 1 MPLJ 380

Hon'ble Judges : Rajeev Gupta, Acting C.J.;Ajit Singh, J

Bench : Division Bench

Advocate : S.K. Rai, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Rajeev Gupta, Ag. C.J.

Appellant State has filed this appeal against the impugned judgment dated 21-4-1990, passed by Second Additional Sessions Judge, Damoh in S.T. No. 92/89, whereby respondents accused persons Nanhelal, Mukundi, Bhaiyalal and Premlal were acquitted of the charges under Sections 302 read with Section 34, IPC.

Police Gaisabad, District Damoh, after completing the investigation of the case registered at Crime No. 34/89, on the report of first informant Shyamlal charge-sheeted respondents accused persons Nanhelal, Mukundi, Bhaiyalal and Premlal for the alleged commission of the offence punishable u/s 302 read with Section 34, IPC. The accused persons were alleged to have committed murder of one Dulli @ Tularam by causing injuries on him by means of stones, during the period between 4-4-89 to 6-4-89.

The accused persons abjured their guilt and pleaded false implication to the charges framed by the Trial Court for the alleged commission of the offences

punishable u/s 302 read with Section 34, IPC.

At the trial, the charge of murder was sought to be proved against the accused persons on the evidence of S.K. Pandey (P.W. 1), Jairam (P.W. 2), Vimla Bai Shrivastava (P.W. 3), Yadvendra Singh (P.W. 4), Lakhan Singh (P.W. 5), Nepal Singh (P.W. 6), Pyarelal (P.W. 7), Halkooram (P.W. 8), Shyamlal (P.W. 9), Barelal (P.W. 10), Kalian (P.W. 11), Chandra Prakash (P.W. 12), Premlal Shukla (P.W. 13) and P.N. Tiwari (P.W. 14).

The Trial Court on the ocular and medical evidence led by the prosecution at the trial, found it proved that deceased Dulli @ Tularam died a homicidal death on account of the external injuries found on his body. On a close scrutiny of the evidence led by the prosecution against the accused persons at the trial, the Trial Court found that the prosecution evidence fell short of establishing the capital charge of murder against the accused persons. The Trial Court, therefore, recorded the impugned judgment of acquittal of the accused persons of the charge u/s 302 read with Section 34, IPC.

Shri S.K. Rai, the learned State Counsel vehemently argued that the Trial Court has erred in discarding the evidence of the prosecution witnesses on flimsy and untenable grounds.

As there is no eye-witness account in the case to connect the accused persons with the alleged commission of murder of Dulli @ Tularam, the entire prosecution case against them rests on circumstantial evidence alone.

The two main incriminating circumstances sought to be proved by the prosecution against the accused persons at the trial were that of the extra-judicial confession made by accused Nanhelal to Yadvendra Singh (P.W. 4), Lakhan Singh (P.W. 5) and Nepal Singh (P.W. 6); and, that of the deceased having been last seen alive in the company of the accused persons by Barelal (P.W. 10), Kalian (P.W. 11) and Chandra Prakash (P.W. 12).

As all the three witnesses namely; Yadvendra Singh (P.W. 4), Lakhan Singh (P.W. 5) and Nepal Singh (P.W. 6), relating to the first incriminating circumstance about the alleged extra-judicial confession made by accused Nanhelal, did not support the prosecution case at all, at the trial, this circumstance remained unproved.

So far as the other incriminating circumstance of the deceased having been last seen alive in the company of the accused persons is concerned, of the three witnesses examined by the prosecution for establishing this circumstance Barelal (P.W. 10) and Kalian (P.W. 11) did not support the prosecution case. It appears that these two witnesses, in their case diary statements, had stated that they had seen accused persons Mukundi, Bhaiyalal and Premlal going towards "Naraiya", whereas in their evidence in the Court they have deposed to have seen accused Nanhelal and deceased Dulli @ Tularam going towards "Naraiya". The evidence of remaining witness Chandra Prakash (P.W. 12) also does not

stand on any better footing. On his own admission, in Para 3 of his cross-examination, his case diary statement was recorded by the police after 2 days of the recovery of the body of the deceased. The fact that this witness saw the deceased going in the company of accused Nanhelal towards "Naraiya" does not find place in his case diary statement (Ex. D-2).

Though some stone pieces were alleged to have been recovered in pursuance of the information given by accused Nanhelal u/s 27, of the Evidence Act, but no report from the Serologist was placed on record to establish that the blood stains on these stone pieces were of human origin.

In this state of evidence, no fault can be found with the approach and the findings recorded by the Trial Court leading to the acquittal of the respondents accused persons. The learned State Counsel could not point out any such piece of legal evidence which was not taken into consideration by the Trial Court, while recording the impugned judgment of acquittal. The findings leading to the acquittal of the respondents accused persons are based on appreciation of the evidence led by the prosecution at the trial. Mere possibility of another view on the prosecution evidence will not, by itself, be a sufficient ground to warrant interference in an appeal against acquittal. Thus, we do not find any scope for interference.

For the foregoing reasons, the appeal against acquittal fails and is hereby dismissed. The impugned judgment of acquittal of respondents Nanhelal, Mukundi, Bhaiyalal and Premlal of the charge u/s 302 read with Section 34, IPC is hereby affirmed.

Respondents Nanhelal, Mukundi, Bhaiyalal and Premlal are on bail. Their bail bonds shall stand discharged.

Criminal Appeal dismissed.