

(2009) 10 CHH CK 0036
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 1052 of 1989

State of M.P.

APPELLANT

Vs

Bhoju @ Bhojram Sahu and Another

RESPONDENT

Date of Decision : 26-10-2009

Acts Referred:

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

Citation : (2009) 4 CGLJ 30

Hon'ble Judges : Rajeev Gupta, C.J.;Pritinker Diwaker, J

Bench : Full Bench

Advocate : VVS Murthy, Deputy Advocate General, for the Appellant; Praful Bharat, Amicus Curiae, Lakhanlal, for the Respondent

Final Decision : Dismissed

Judgement

Rajeev Gupta, C.J.—The Appellant/State has filed this appeal against the impugned judgment of acquittal dated 17.10.1985, passed by the Third Additional Sessions Judge, Raipur, Camp Baloda Bazar in Sessions Trial No. 50/1985, whereby Respondents/accused persons Bhoju @ Bhojram, Lakhanlal, Gendram, Vedram, Mohitram and Puhuram were acquitted of the charge u/s 302 read with Section 34 of the Indian Penal Code.

2. Police Bhatapara, district Raipur after completion of the investigation of the case registered on the report of P.W./1 Shivkumar, brother of deceased Rajaram, charge-sheeted as many as six accused persons, namely, Bhoju @ Bhojram, Lakhanlal, Gendram, Vedram, Mohitram and Puhuram for the alleged commission of the offence punishable u/s 302 read with Section 34 of the Indian Penal Code on the accusation of their having committed murder of Rajaram in the evening of 26.10.1984.

3. The accused persons abjured their guilt and pleaded false implication to the charge framed by the trial Court u/s 302 read with Section 34 of the IPC.

4. At the trial, the above charges against the accused persons were sought to be

proved on the evidence of P.W. 1 Shivkumar, P.W. 2 Santosh, P.W. 3 Jagdish Prasad, P.W. 4 Biranchi Dehari, P.W. 5 Dr. S.A. Matunge and P.W. 6 D.P. Shukla.

5. The accused persons also examined D.W. 1 Chandrika Prasad Sahu in support of their defence.

6. The trial Court, on a close scrutiny of the entire evidence led by the prosecution and the defence though held that deceased Rajaram died homicidal death on account of the injuries sustained by him in the evening of 26.10.1984, found that the prosecution evidence fell short of establishing the above charge against the accused persons. The trial Court, therefore, acquitted the accused persons of the charge u/s 302 read with Section 34 of the Indian Penal Code vide impugned judgment dated 17.10.1985.

7. Initially, the acquittal of all the six accused persons was challenged by the State by seeking leave to appeal, but, vide order dated 02.11.1989 passed in M. Cr.C. No. 327/1986, leave was granted only against the acquittal of Respondents No. 1 Bhoju @ Bhojram and No. 2 Lakhanlal and leave was refused against the acquittal of Respondents No. 3. Gendram, 4. Vedram, 5. Mohitram and 6 Puhuram.

8. Shri V.V.S. Murthy, learned Deputy Advocate General vehemently argued that that trial Court has erred in discarding the evidence of the informant P.W. 1 Shivkumar and the eyewitness P.W. 2 Santosh on flimsy and un-tenable grounds. Learned Deputy Advocate General further submitted that the evidence of prosecution witnesses taken together is more than sufficient to establish the charge of murder punishable u/s 302 read with Section 34 of the Indian Penal Code against Respondents No. 1 Bhoju @ Bhojram and No. 2 Lakhanlal.

9. Shri Praful Bharat, learned Amicus Curiae for Respondent No. 2 on the other hand supported the impugned judgment of acquittal and contended that the evidence of P.W. 2 Santosh, the solitary eyewitness in this case has been rightly discarded by the trial Court as his evidence suffers from serious infirmities. Learned Counsel further submitted that the evidence of P.W. 1 Shivkumar, the informant and the only witness about the alleged extrajudicial confession of Respondent/accused Lakhanlal is also not worthy of credence.

10. The fact that deceased Rajaram died homicidal death on account of the injuries sustained by him in the evening of 26.10.1984 was neither under challenge before the trial Court, nor is disputed before us in this appeal.

11. The entire prosecution case against the accused persons hinges on the solitary eyewitness account of P.W. 2 Santosh.

12. P.W. 2 Santosh is a child witness aged about nine years and is son of deceased Rajaram. Though he claims to have seen the accused persons assaulting his father Rajaram and disclosed about the incident to the first informant, who happens to be his uncle P.W. 1 Shivkumar before lodging of the First Information Report, the material facts that accused persons Bhoju @

Bhojram, Lakhanlal, Gendram, Vedram, Mohitram and Puhuram were the assailants of deceased Rajaram and P.W. 2 Santosh was an eyewitness of the alleged incident of murder of his father, have not been mentioned in the First Information Report at all. The omission of the above material fact in the First Information Report would certainly lead to the inference that P.W. 2 Santosh in fact did not witness the incident at all and is a got-up eyewitness. The trial Court, in our opinion, in view of the above broad features, has rightly discarded the evidence of the solitary eyewitness P.W. 2 Santosh.

13. The other piece of evidence relied upon by the prosecution before the trial court was about the alleged extra judicial confession of Respondent/accused Lakhanlal before P.W. 1 Shivkumar.

14. P.W. 1 Shivkumar in his deposition before the trial Court has stated that when he reached near the house of Karthik Ram, where his brother Rajaram (deceased) was lying, he found that accused Lakhanlal was standing there with a knife in his hand and on his query, as to who has caused the injuries on his brother Rajaram, accused Lakhanlal made an extra judicial confession admitting that he has caused the injuries on Rajaram by means of knife. True, the witness did mention this fact in his First Information Report (Ex.P/1), but in his cross-examination in paras 2 and 4 he admitted that when he reached near the house of Karthik Ram, where Ms brother Rajaram was lying injured, he did not find any other person and he did not talk to any person at that place. In view of the above categoric admission of this witness in his cross-examination, the presence of accused Lakhanlal near the place where Rajaram was lying injured when this witness P.W. 1 Shivkumar reached there becomes highly doubtful.

15. The other connecting evidence against accused persons Bhoju @ Bhojram and Lakhanlal was about the alleged seizure of knife from Bhoju @ Bhojram and Pajama and shirt of Lakhanlal which were alleged to be stained with blood is of no help to the prosecution as no Serologist report was produced before the trial Court to establish that any of these articles were stained with human blood.

16. In an appeal against acquittal if two views on the prosecution evidence are possible and the trial Court has taken one view favourable to the accused persons, then it will not be permissible for the appellate Court to reverse the finding of acquittal by taking the other possible view on the prosecution evidence.

17. For the foregoing reasons, we do not find any such infirmity in the impugned judgment of acquittal which may warrant interference in this appeal against acquittal.

18. The appeal filed by the Appellant/State against the acquittal of Respondents/accused persons Bhoju @ Bhojram and Lakhanlal, therefore, is liable to be dismissed and is hereby dismissed.