

(2010) 10 CHH CK 0029
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 798 of 1993

State of M.P. (now C.G.)

APPELLANT

Vs

Uderam and Others

RESPONDENT

Date of Decision : 19-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (2011) 2 CGLJ 102 : (2011) 2 MPJR 82

Hon'ble Judges : Rajeev Gupta, C.J.; Sunil Kumar Sinha, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Sunil Kumar Sinha, J.—Being aggrieved with the judgment of acquittal dated 16th of January. 1993 passed in Sessions Trial No. 08/92J?y the Sessions Judge, Rajnandgaon, the State has filed this appeal. By the impugned judgment, the Respondents were acquitted of the charges framed under Sections 302/34 and 201 of IPC.

2. The facts, briefly stated, are as under:

Deceased Subhautin Bai was the mother of Respondent No. 1 Uderam. Respondent No. 2 is the wife of Respondent No. 1 and Respondents 3 & 4 are their son and daughter. On 22/08/1991, the dead body of deceased Subhautin Bai was found in a well. A merg intimation (Ex.-P/18) was " lodged by Respondent No. 1 in Police Station Dongargaon. The Investigating Officer reached to the place of occurrence, gave notices (Ex.-P/8) to the Panchas and prepared inquest (Ex.P/9) on the body of the deceased. The dead body of the deceased was sent for postmortem examination to Primary Health Centre, Dongargaon. The postmortem examination was conducted by Dr. I.A. Thakur (PW-7). He found multiple external injuries on the body of the deceased. On internal examination, he found that there was a fracture on the middle of scalp.

According to the postmortem report (Ex-P/17), the cause of death was shock and severe haemorrhage on account of multiple injuries and fracture on the scalp.

Various articles including stained earth, plain earth, bed sheet, a piece of frame of the cot, all having blood like stains, were seized from the house of the Respondents. After taking Respondent No. 2- Smt. Lagni Bai into custody, her disclosure memo (Ex;P/10) was recorded u/s 27 of the Evidence Act and a piece of wood and one iron spade were seized at her instance vide seizure memos - ExP/11 and Ex.-P/12. After due investigation, Dehatinalisi (Ex.P/19) was recorded, based on which, First Information Report (Ex.P/20) was registered in the Police Station. The seized articles were sent for their chemical examination to Forensic Science Laboratory, Sagar (M.P.) vide memo Ex.P/23. However, the FSL report could not be filed before the Sessions Court.

After completion of usual investigation, the charge sheet was filed in the Court of concerned Magistrate, who in turn committed the matter to the Sessions Court, Rajnandgaon, where, the trial was conducted and the Respondents/accused persons were acquitted of the charges under Sections 302/34 and 201 of IPC.

The case of the prosecution was that the Respondents committed murder of the deceased by assaulting her by lathi and spade and thereafter, they threw the dead body in the well.

The case of the prosecution was based upon the sole testimony of Smt. Shail (PW-8), who saw the Respondents assaulting the deceased on 21.08.1991 at about 09:00 a.m.

The learned Sessions Judge did not rely on the testimony of Smt. Shail (PW-8) and held that it was not safe to record the conviction of the Respondents on the basis of sole testimony of Smt. Shail (PW-8).

3. Mr. Akhil Mishra, learned Dy. Government Advocate appearing on behalf of the Appellant/State, argued that the learned Sessions Court erred in law in discarding the testimony of Smt. Shail (PW-8). He also referred to the other materials on record.

4. On the other hand, Mrs. Renu Kochar, learned Counsel appearing on behalf of the Respondents, opposed these arguments and supported the judgment passed by the Sessions Court.

5. We have heard the learned Counsel for the parties at length and have also perused the records of the sessions case.

6. Smt. Shail (PW-8) deposed that "she was the neighbour of the Respondents. She was residing in a house just after one house of the house of Respondents. On the fateful day, at about 10:30 a.m., when she had gone towards her Badi, she saw that Respondent No. 2 Lagni Bai and Respondent No. 3-Narayan were quarrelling with the deceased and were also assaulting her in front of their house. The deceased ran inside the house and the above Respondents also

followed her". Her statement u/s 161 Code of Criminal Procedure (Ex.D/1) was recorded on 24.08.91. In her 161 statement, she had taken the names of 4 accused persons, whereas, in her Court evidence, she exonerated 2 of them. When she was confronted with her 161 statement, she could not explain the above omission. She very categorically deposed that she had not seen Uderam at the place of occurrence. If the name of Uderam is there in her 161 statement, she cannot tell the reasons for the same. She further deposed that she had only seen a Danda in the hands of accused-Narayan and she had not seen spade in the hands of any of the accused persons, and she never stated before the Police that she had seen the accused persons assaulting the deceased by spade. If the same has been mentioned in her 161 statement, marked as "B to B", she cannot tell the reasons for the same.

7. The Sessions Judge observed that there were many discrepancies in the evidence of Smt. Shail (PW-8). Firstly, she exonerated 2 accused persons in her Court evidence, secondly, she deviated from her evidence regarding weapon of the offence, and thirdly, she did not make disclosure to anybody for about 4 days i.e. up to 24.08.1991, whereas, the police party had reached to the village on the very next day of the incident i.e. on 22.08.1991. The Sessions Judge further observed that there was no corroboration of the evidence of PW-8. The case of the prosecution was that the deceased was being treated with cruelty by the Respondents and two witnesses namely Devadas (PW-1 -Village Kotwar) and Eknath (PW-2) were examined in that behalf. Neither Devadas (PW-1) nor Eknath (PW-2) deposed that the Respondents used to treat the deceased with cruelty. On the contrary, their evidence was that the Respondents were keeping the deceased with love and affection. Both these witnesses were declared hostile by the prosecution. Even in their cross-examinations, nothing contrary could be brought on record.

8. We note that the seized articles were sent for their chemical examination to the Forensic Science Laboratory, Sagar, but no report could be filed by the prosecution. It is on all these grounds, the learned Sessions Judge did not rely on the sole testimony of Smt. Shail (PW-8) and held that the prosecution utterly failed to prove that the Respondents committed murder of the deceased and they threw the dead body inside the well.

9. In the facts and circumstances of the case, the aforesaid finding recorded by the Sessions Court appears to be justified.

10. In Budh Singh and Others Vs. State of U.P., the Supreme Court held vide para 9. that in a matter of appeal against acquittal, the High Court does not ordinarily set aside a judgment of acquittal in a case where two views are possible, although the view of the Appellate Court is a more probable one. However, while dealing with a judgment of acquittal, it is free to consider the entire evidence on record so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. It is also entitled to consider as to whether in arriving at a finding of fact, the trial Court has failed to

take into consideration admissible evidence and has taken into consideration evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject matter of the scrutiny of the Appellate Court.

11. In *V.N. Ratheesh Vs. State of Kerala*, , the Supreme Court held that there is no embargo on the Appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The Supreme Court said that the golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and other to his innocence, the view which is favourable to the accused should be adopted. The Supreme Court further said that the paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilt is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the Appellate Court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. The Supreme Court referred to the decision rendered in the matter of *Bhagwan Singh and Ors. v. State of Madhya Pradesh* 2002(2) Supreme 567. It was further held that the principle to be followed by Appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference.

12. In *Ramesh Babulal Doshi Vs. State of Gujarat*, , the Supreme Court said that "While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then-and then only-reappraise the evidence to arrive at its own conclusions".

13. We have gone through the entire evidence on record with a view to find out as to whether the views of the Sessions Court were perverse or otherwise unsustainable. After going through the entire evidence available on record, we do not find any compelling and substantial reasons to interfere with the judgment of acquittal. It is not a case in which the judgment may be said to be unreasonable or a case in which relevant and convincing materials have been eliminated in the process of appreciation.

14. For the foregoing reasons, we do not find any substance in the appeal. The appeal filed by the State, therefore, is liable to be dismissed and is hereby

dismissed.