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**(2010) 01 RAJ CK 0043**  
**In the Rajasthan High Court**

State of Rajasthan

APPELLANT

Vs

Gangasahay and Others

RESPONDENT

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**Date of Decision :** 21-01-2010

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 34

**Citation :** (2010) 2 RLW 1180 : (2010) 1 WLN 513

**Hon'ble Judges :** Raghuendra S. Rathore, J; Narendra Kumar Jain, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

N.K. Jain, J.—Heard learned Counsel for the appellant and examined the impugned judgment as well as record of the trial court.

2. This appeal on behalf of the State of Rajasthan u/s 378 Cr.P.C. is directed against the impugned judgment and order dated 11.9.1980 passed by the Additional Sessions Judge No. 1, Alwar, in Sessions Case No. 6/80 whereby the learned trial court acquitted all the nine accused respondents from the charges levelled against them.

3. Briefly stated the facts of the case are that PW 1 Babu Singh lodged a report at Police Station Tehla, District Alwar, on 2.11.79 in respect of alleged murder of Prabhu Singh wherein it was alleged that on 1.11.79 at about 6-7 PM two persons of Prabhu Singh came and informed that dead body of Prabhu Singh is lying in the forest of Kutuka. He went at the spot and there it was told by Moti Singh that at about 6-7 PM, they heard some voice about beating, then he, Hakim Singh and Gulab Singh went there and saw that Prabhu Singh was being killed. Accused Mulya, Bobdia, Gangasahay, Ganganath, Surjiya, simbhu and Kajod R/o Kutuki, had sword, Kulhari etc. On the basis of above report, the police registered a case u/s 302, 147, 148 and 149 IPC and commenced investigation. A postmortem was conducted on the dead body and the postmortem report was

prepared which was exhibited as Ex. P 2. The accused persons were arrested and as per information of five accused persons, the weapons were recovered. After completion of investigation, the police submitted a charge-sheet against the accused persons, who were committed for trial to the court of Sessions Judge, who transferred the case for trial to the court of Additional Sessions Judge No. 1, Alwar. The trial court framed charge against the accused respondents for the offence u/s 147, 148, 302 and 302/34 IPC. The accused persons denied the charge and claimed to be tried. In support of the case, the prosecution examined PW 1 Babu Singh, PW 2 Dr. K.C. Nagpal, PW 3 Moti Singh, PW 4 Gulab Singh, PW 5 Ram Chander, PW 6 Hakim Singh, PW 7 Gokal Singh, PW 8 Kishanlal and PW 9 Ramhet and produced 30 documents - Ex P 1 to Ex. P 30. Thereafter, the statements of accused persons were recorded u/s 313 Cr.P.C. wherein they showed their innocence and that they have been falsely implicated in the case due to enmity. The defence examined the statements of DW 1 Ram Ratan and DW 2 Ramsi. The learned trial court after considering the evidence on record and hearing the parties, acquitted all the accused persons from all the charges on the ground that the prosecution has failed to prove the charges against them beyond all reasonable doubts. Being aggrieved with the same, the present appeal has been filed after grant of leave to appeal by this Court.

4. The submission of the learned Counsel for the State is that this is the case wherein there were four eye witnesses, namely; Moti Singh (PW 3), Gulab Singh (PW 4), Hakim Singh (PW 6) and Gokal Singh (PW 7) who consistently stated before the court that accused persons were giving beating upon the person of deceased. Accused Bobadia inflicted a blow by Barchhi on the head of deceased Prabhu Singh. Accused Simbhu inflicted a blow by Barchhi on the neck of deceased. Other accused persons also inflicted injuries on the person of deceased. He further contended that there was no contradiction in the statements of the eye witnesses and the trial court committed an illegality in acquitting the accused respondents. He also referred the statements of prosecution witnesses including the statement of PW 9 Ramhet, Investigating Officer. He also contended that the recovery of weapons were also made, therefore, there was corroboration of statements of eye witnesses but the trial court wrongly acquitted the accused respondents, He, therefore, prayed that the order of the trial court be set aside and the respondents be convicted and sentenced for the charges levelled against them.

5. Since no one is present on behalf of the respondents, therefore, we could not get any assistance on their behalf and we, ourselves, examined the finding of the trial court in the light of submissions of appellant and the record of the trial court minutely.

6. From the impugned judgment of the trial court, it is clear that the trial court has disbelieved on the statements of four eye witnesses, namely; Moti Singh (PW 3), Gulab Singh (PW 4), Hakim Singh (PW 6) and Gokal Singh (PW 7) for the following reasons:

(i) The incident took place on 1.11.1979 at about 6-7 PM and so-called eye witnesses were also present at the spot but they did not lodge the report immediately and waited for next day and even on the next day, the FIR was not lodged by the eye witnesses but by Babu Singh (PW 1) who is not the eye witness.

(ii) When the eye witnesses were present at the spot and during the investigating of the case also, why their statements were not recorded immediately by the investigating agency and no explanation has been given for not recording the same before 6.11.1979.

(iii) The incident took place in between 6-7 PM on 1.11.1979 and as per evidence available on record, the sun set time on that day was 5.35 PM, therefore, it was not possible to see the accused persons.

(iv) The information furnished by three accused persons u/s 27 of the Evidence Act and the recovery of weapons in pursuance thereof makes it clear that no blood stained was found on the weapons and the same is clear from the recovery memos Ex. P 24 (Accused Kajod), Ex. P 25 (accused Gangasahay) and Ex. P 26 (accused Simbhu).

(v) Both the independent witnesses of the recovery of weapons i.e. Motbirs, were not examined by the prosecution during the trial of the case.

(vi) The name of Gokal Singh (PW 7), the so-called eye witness, does not find place in the FIR.

(vii) There was material contradiction in between the distance of place of incident and the place where the accused persons were sitting i.e. Jal Wala well ("ty okyk dqok?").

(viii) The eye witnesses are interested witnesses.

(ix) There was enmity in between deceased party and the accused party.

7. We have examined the aforesaid reasons on the basis of record as well as the submissions of the learned Public Prosecutor.

8. It is clear from FIR Ex P 1 that name of Gokal Singh (PW 7) is not mentioned in it. PW 1 Babu Singh in his statement, has stated that names of two persons who informed him that Prabhu Singh has been murdered, but names of both the persons are not mentioned in the FIR.

9. Moti Singh (PW 3) has stated that he along with Gulab Singh, Gokal Singh and Hakim Singh were sitting at ty okyk dqok and he heard "eksrh ekj fy;k j". He recognised the voice of his father and he immediately ran away. The distance of place of incident was about 375 steps. It was time of sun set. When they ran away about 50 steps, they saw 10-12 persons had surrounded his father and were giving beatings by sword, Kulhari and Lathies. Accused Bobadia inflicted a Barchhi blow on his head, Accused Simbhu inflicted a Barchhi blow on his neck

and thereafter they all ran away to the village. He stated that accused party had enmity with them as number of cases are pending in between them and due to that enmity, his father has been killed. It is relevant to mention that no document to prove enmity i.e. pending cases has been placed on record. In cross examination, it was specifically mentioned that he did not state to the SHO as to whether he could see his father or not from Jal Wala Kuao i.e well ("ty okyk dqok"). He also stated that he had already disclosed that Gokal Singh was also sitting with them. He admitted that he was not aware, as to which accused was armed with which weapon and on which part of body of his father, the injury was inflicted. A question was put to him that there was a distance of one Km. from ty okyk dqok to place of incident but he denied the same.

10. Gulab Singh (PW 4) in his statement has stated the same story but he admitted that he did not disclose the name of the accused persons to other persons who were present at the spot soon after the murder of Prabhu Singh.

11. Hakim Singh (PW 6) and Gokal Singh (PW 7) also admitted that they did not disclose the names of accused persons to the persons who were present at the place of incident.

12. The trial court rightly relied upon the testimony of independent person i.e. Kishan Lal (PW 8) Sarpanch of gram Panchayat Salota. He specifically admitted in his statement that he was called by Moti Singh and he went at the place of incident and asked him about the incident and the persons who have killed his father. However, he did not disclose the name of any persons but told him that he suspects on "Jogis" as litigation is pending in between both the parties.

13. In view of the above discussions of prosecution evidence, it is clear that the reasons assigned by the trial court for disbelieving the statements of eye witnesses are absolutely correct.

14. The learned Public Prosecutor is unable to point out any illegality or perversity in the finding of the trial court.

15. Apart from the above, it is also relevant to mention that there was allegation that all the nine accused persons were armed with weapons. However, neither any information was furnished nor any recovery of weapon in pursuance thereof has been made from the four accused persons. No blood stained was found on the socalled recovered weapons vide recovery memos Ex. P 24, Ex. P 25 and Ex. P 26. There was a specific allegation in the statements of eye witnesses that accused Bobadia inflicted a Barchhi blow on the head of deceased but no information was furnished by him and no recovery of weapon was made at his instance.

16. This is an appeal against the order of acquittal. It is a settled law that unless there are some compelling or substantial reasons, the order of acquittal should not be interfered with. It is also settled law that even if two views are possible on the basis of appreciation of prosecution evidence, then the view which is

favourable to accused should be adopted. In this connection, we may refer to the judgment of the Hon"ble Supreme Court in the case of State of Madhya Pradesh Vs. Bacchudas @ Balram and Others, of the judgment reproduced as under:

9. 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 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 the other to his innocence, the view which is favourable to the accused should be adopted. 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 guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellant court to reappreciate 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. (See Bhagwan Singh and Others Vs. State of M.P., The principle to be followed by the 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. These aspects were highlighted by this Court in Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra, Ramesh Babulal Doshi Vs. State of Gujarat, ; Jaswant Singh Vs. State of Haryana, ; Raj Kishore Jha Vs. State of Bihar and Others, State of Punjab Vs. Karnail Singh, ; State of Punjab Vs. Pohla Singh and Another, ; Suchand Pal Vs. Phani Pal and Another, and Sachchey Lal Tiwari Vs. State of Uttar Pradesh,

17. Apart from the above, it is also relevant to mention that against the impugned judgment which is under appeal, the complainant Babu Singh had preferred D.B. Criminal Revision Petition No. 53/1981 challenging the order of acquittal of the accused respondents. The Division Bench vide its judgment dated 11.3.1981 dismissed the same on merits by a speaking order. The order dated 11.3.1981 is also reproduced as under:

The accused non-petitioners were tried by learned Addl. Sessions Judge No. 1, Alwar under Sections 147, 148, 302 and 302/34 I.P.C. for committing the murder of Prabhu Singh and the learned Addl. Sessions Judge after thorough perusal of the record, came to the conclusion that there were certain glaring defects in the prosecution case:

(i) The F.I.R. of this case was not lodged by the alleged eye-witnesses just after the occurrence. They waited for some time, collected other villagers and thereafter settled the story. Yet the name of P.W. 7 does not find place in the list of eye-witnesses given in the F.I.R.

(ii) The occurrence took place after sun set. The alleged eye-witnesses were sitting at a distance of 300 steps and as such could not have identified assailants.

(iii) Sarpanch Kishan Lal reached the scene of occurrence just after the event, but none of the alleged eye-witnesses disclosed to him the names of the accused assailants. Instead of naming the accused, the witnesses stated that they had suspicion against Jogis. An eyewitness does not suspect, he believes and asserts affirmatively.

We have examined the judgment of the trial court in the light of the arguments advanced before us. The State has rightly not considered this case to be a fit one for filing an application for leave to appeal against acquittal. This Court does not stand for vindicating the private grudge of parties. This is nothing to hold that relevant piece of evidence was not considered or the trial court misread the evidence. The judgment cannot be said to be perverse. Even if two views of the same evidence are possible, a judgment of acquittal cannot be set aside.

For the reasons mentioned above, we find no reason to interfere in the finding arrived at by the trial court. The revision is dismissed summarily.

18. In view of above discussions, we do not find any merit in any of the submissions of the learned Public Prosecutor. The impugned judgment passed by the trial court is perfectly legal and is in accordance with law and no interference in it, is called for. The appeal is accordingly dismissed being devoid of any merits.