

(2017) 01 RAJ CK 0048
In the Rajasthan High Court
Case No : 288 of 2016

State of Rajasthan

APPELLANT

Vs

Rahul Giri @ Bittu S/o Kailash Giri

RESPONDENT

Date of Decision : 25-01-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#), [Section 378\(iii\)](#), [Section 378\(i\)](#) - Power to examine the accused - Appeal in case of acquittal - Appeal in case of acquittal

Citation : (2017) 01 RAJ CK 0048

Hon'ble Judges : Gopal Krishan Vyas, Kailash Chandra Sharma

Bench : DIVISION BENCH

Advocate : JPS Choudhary

Judgement

1. The instant cr. leave to appeal has been filed by the State of Rajasthan under Section 378(iii) and (i) of the Cr.P.C . against the judgment dated 5.8.2016 passed by the learned Addl. Sessions Judge No.4, Jodhpur Metropolitan, Jodhpur in Sessions Case NO.108/2012 (16/2015) by which the learned trial court acquitted the respondents from the charge under Sections 341, 324, 324 / 34, 302, 302 / 34 IPC and under Section 4 / 25 of the Arms Act.
2. Learned Public Prosecutor vehemently argued that the FIR was registered upon the complaint submitted by one Arjun Singh (PW--10) on 5.8.2010. In the written report it is stated by the complainant that on 15.8.2010 at about 11-11.15 am when his brother Jitendra Singh was coming from his house and reached

near canal, at that time, near the house of Prem Singh, all of sudden respondent Aslam son of Ramjan Khan, Manish son of Ramesh Raya and Pawan Solanki, caught his brother and gave beating by hands and legs. The respondent Rahul Giri inflicted knife blow on leg of his brother and upon hue and cry of Jitendra Singh, the respondents ran away on motorcycle.

3. The injured was taken to the MG Hospital in three wheeler of Surendra Singh and during the course of treatment, his brother died.

4. Upon aforesaid report, FIR no.178/2010 was registered under Section 143, 341 and 302 IPC and after investigation, charge-sheet was filed against the respondents.

5. The learned trial court framed charges against the respondent Rahul Giri for the offence under Sections 341, 324 and 302 IPC and under Section 4 / 25 of the Arms and against Manish Arya and Salam Khan for the offence under Sections 341, 324 / 34 and 302 / 34 IPC but they denied the charges and prayed for trial.

6. To prove the prosecution case, statements of 16 witnesses were recorded and 29 documents were exhibited during trial. After recording evidence of prosecution, statement of all the respondents were recorded under Section 313 Cr.P.C., but they refuted the allegations levelled by the prosecution and said that they are innocent but no witness was produced by them.

7. The learned trial court after hearing the final arguments, acquitted the respondents from the charges levelled against them while giving benefit of doubt vide judgment dated 5.8.2016.

8. Learned Public Prosecutor vehemently argued that finding of the learned trial court is erroneous because there is ample evidence of eye witnesses to prove the case against the respondents. It is also submitted that in the statements of eye

witnesses, there are allegations that Manish ARya and Aslam Khan caught the deceased and Rahul Giri inflicted injury by knife and due to the said injury he fell down and blood was oozing and later on he died in the hospital.

9. Learned Public Prosecutor further argued that it is a case in which deceased died due to injuries caused by the respondents, but the learned trial court gave erroneous finding that whole prosecution case is doubtful and acquitted the respondents, therefore, the leave to appeal may kindly be granted against the judgment impugned.

10. After hearing the learned Public Prosecutor we have perused the entire evidence, so also, finding arrived at by the learned trial court. The learned trial court after considering the entire evidence gave finding that the prosecution has not proved the case beyond reasonable doubt that occurrence took place on the date of incident. Most of the witnesses refused to see the incident as alleged by the complainant. The witness Rajendra Singh (PW--3) turned hostile and did not prove the occurrence. The eye witness PW--7 Surendra Singh in whose three wheeler the deceased was taken to the hospital turned hostile and did not prove the fact that deceased was taken to the hospital in his three wheeler.

11. The PW--8 Bhagwan Ram turned hostile and did not support the prosecution case. The learned trial court observed in para no.40 that all those witnesses produced by the prosecution as eye witnesses namely Mahendra Singh, Rajendra, Surendra Singh and Bhagwan Singh categorically stated before the court that no occurrence took place in front of them. Therefore, the learned trial court disbelieved the testimony of PW--9 Jitendra Singh and PW--10 Arjun Singh and granted benefit of doubt to the respondents. There is finding that recovery of knife from Rahul Giri is also

doubtful.

12. After perusing the finding of the learned trial court, we are of the opinion that entire evidence has been considered properly by the trial court and it has been held that prosecution has not proved the allegation beyond doubt. Upon above discussion coupled with findings we are of the opinion that it is not a fit case to grant leave to appeal against the judgment impugned.

13. Therefore, the instant cr. leave to appeal filed by the State of Rajasthan is hereby rejected.