

(2013) 08 MP CK 0242

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 9961 of 2011

The State of Madhya Pradesh

APPELLANT

Vs

Avinash Murti @ Ajju Gautam

RESPONDENT

Date of Decision : 05-08-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378(3)

Penal Code, 1860 (IPC) — Section 120B, 201, 302, 34

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(2)(v)

Citation : (2013) 08 MP CK 0242

Hon'ble Judges : B.D. Rathi, J;Ajit Singh, J

Bench : Division Bench

Advocate : Vijay Pandey, Deputy A.G, for the Appellant;

Final Decision : Dismissed

Judgement

B.D. Rathi, J.—Heard on admission. This is an application for grant of leave to appeal u/s 378(3) of the Code of Criminal Procedure ("Code" for short). By the impugned judgment dated 7/12/10 passed by Special Judge (under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Act")), Satna in Special Case No. 26/05, respondents have been acquitted of the offences punishable under Sections 120B, 302 or 302 /34 and 201 of the Indian Penal Code (for short "the Code") and Section 3(2)(v) of the Act.

2. As per the prosecution story, on 27/4/05 at about 11.30 a.m., Assistant Station Master, West Central Railways, Satna, intimated in writing at Police Station Civil Lines, Satna, that an unknown person, aged about 30 years, had been run over by a train and his dead body, cut into two pieces, was lying on 350 Road Track near Kilometer No. 1194/0405, Gate No. 312, between Sagma and Jaitwara Stations. During investigation, it surfaced that respondents, in furtherance of their common intention to kill Dinesh Choudhary and in pursuance

of a criminal conspiracy to falsely implicate Shivkumar Singh and his family members in the murder case, in the night intervening 26th and 27th of April, 2005 had killed Dinesh Choudhary and kept a false application regarding Shivkumar near his dead body.

3. Learned Government Advocate, while making reference to the evidence on record, submitted that the trial Court has erred in appreciating the evidence and the judgment of acquittal deserves to be interfered with.

4. Having regard to the arguments advanced by the learned Deputy Advocate General, we have gone through the impugned judgment.

5. The entire case of prosecution is based upon circumstantial evidence. As per the prosecution case, one Jeep, bearing Registration No. MP-19-F-3950 was used to commit the offence. It was registered in the name of mother of respondent no. 1 and was found parked near the spot. To prove this fact, prosecution examined Suresh (PW8), Raju (PW10) and Rajbahadur (PW22). However, Raju was declared hostile and Suresh testified that he did not notice registration number of the Jeep. Rajbahadur also deposed that he could not see the registration number of the Jeep due to darkness. Further, as per Forensic Science Lab Report (Ex. P/42), test to ascertain the group of the blood found as stain in Jeep, could not be conducted. Trial Court also found that the evidence of last seen together was not reliable. No other evidence was adduced by the prosecution to connect the respondents with the offence in question and, considering all this, trial Court acquitted the respondents.

6. On perusal of the evidence and material available on record, we fully agree with the findings recorded by the trial Court based on the proper appreciation of evidence on record.

7. It is well settled that the judgment of acquittal should not be disturbed unless the conclusions drawn on the basis of evidence brought on record are found to be grossly unreasonable or manifestly perverse or palpably unsustainable.

8. Taking into consideration the reasons assigned on the face of evidence on record establishing the aforesaid facts and circumstances, the view taken by the learned trial Court was apparently a possible view. As such, no interference is called for with the judgment of acquittal in question. The application, therefore, stands dismissed in limine.