

(2013) 08 MP CK 0085

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 12027 of 2012

The State of Madhya Pradesh

APPELLANT

Vs

Rahul Pandey

RESPONDENT

Date of Decision : 12-08-2013

Acts Referred:

Arms Act, 1959 — Section 27(1)
Criminal Procedure Code, 1973 (CrPC) — Section 378(3)
Limitation Act, 1963 — Section 5
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2013) 08 MP CK 0085

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

Bench : Division Bench

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

Final Decision : Dismissed

Judgement

B.D. Rath, J.—Default, as pointed out by the Office, is ignored. Heard on I.A. No. 20854/12 which is an application u/s 5 of the Limitation Act for condonation of delay in preferring this application for leave to appeal.

2. As per Office note, the application is barred by 415 days.

3. Considering the reasons assigned therein, the I.A. is allowed and the delay in filing this application for leave to appeal, is hereby condoned.

4. Heard on admission.

5. 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 15/4/11 passed by I Additional Judge to the Court of I Additional Sessions Judge, Panna, in Sessions Trial No. 96/2010, respondents have been acquitted of the offences punishable under Sections 302 read with 34 of the Indian Penal Code (for short "IPC"), while co-accused Gyanendra has been convicted u/s 302 of the IPC and Section 27(1) of the Arms Act and sentenced accordingly.

6. As per the prosecution story, on 11/5/10 at about 10.45 a.m., complainant Mohanlal, while sitting inside his house along with his daughter Kishori and maternal grandchildren Kuldeep and Annu, heard a sound of gunshot from outside where his maternal grandson Rohit was sitting with his friends Rahul Pandey, Gyanendra Singh, Mannu Yadav, Rammu Sen and Tinkal Thakur and 5 minutes back had come inside for taking water, and as he, Annu and Kuldeep went outside, they saw that Rohit was lying down and blood was oozing from his neck while Gyanendra was standing armed with a country made pistol, who, seeing them, threw the same and all the accused persons ran away.

7. Learned Deputy Advocate General, 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.

8. Having regard to the arguments advanced by the learned Deputy Advocate General, we have gone through the impugned judgment and record of the trial Court.

9. From the evidence of Kuldeep (PW 3), Kishori (PW 10), Mohanlal (PW 11), Anuradha (PW 12) and Vivek (PW 13), it is apparent that respondents were sitting outside the house of the complainant. Rohit came there with water to give them. Immediately, sound of gunshot was heard by the family members sitting inside the house. They came out and saw that Gyanendra was standing armed with a Katta, who threw the same and all the respondents fled from the spot. Except this, there is no evidence against the respondents. After considering the evidence and material on record, trial Court found that the prosecution had failed to prove its case against the respondents beyond a reasonable doubt and, accordingly, the impugned judgment of acquittal was passed.

10. After perusal of the entire evidence and material available on record, we agree with the findings recorded by the trial Court.

11. 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.

12. 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.