2023 SCeJ 575 = PLRonline 472683 (SC) = (2023-4)212 PLR 361 (SC) (SN)

SUPREME COURT OF INDIA

Before: Abhay S. Oka & Pankaj Mithal, JJ.

CHHOTE LAL – Appellant

Versus

ROHTASH & ors. – Respondents

Criminal Appeal No.2490 of 2014
14.12.2023

Indian Penal Code, 1860 (45 of 1860), Section 302 – Acquittal – Complainant / Father was the sole eyewitness – He had neither seen anyone killing his son nor he had deposed that he had seen anyone burning the victim – Therefore, he is not actually an eyewitness either to the killing or to the burning of the deceased, though he may be an eyewitness to the incident which took place prior wherein a car had chased their motorcycle, pushed them towards the roadside making them fall in the bushes, thereupon assaulting the deceased and then taking him away in an injured position in the car – He has not deposed anything as to why he had not tried to intervene and save his son – He himself had not received any injuries – The statement that he could not do so on account of the threats extended by the accused persons appears to be a bald statement as no one in a situation where his son is being assaulted and carried away would remain a mere spectator – In the FIR it was stated that the accused assaulted his son with a knife and iron rod, and there was no mention about the use of a pistol by the accused – However, the police have recovered empty cartridge – Cause of death as per postmortem is also firing from close range – Very presence of the complainant appears to be doubtful – Acquitted.

Criminal Trial – Eyewitness – Relative – Complainant, a sole eyewitness, happens to be the most interested witness being the father of the deceased and having long enmity with the group to which the accused persons belong – His testimony was to be examined with great caution and the High Court was justified in doing so and in doubting it so as to uphold the conviction on his solitary evidence – Indian Penal Code, 1860 (45 of 1860), Section 302 – Acquittal . [Para 13]

Criminal Trial – Possible views – Both versions as taken by the trial court and by the High Court appear to be the possible views – Prosecution has failed to prove the guilt of the accused both by circumstantial evidence and by means of evidence of the eyewitness – In circumstantial evidence, the chain of events is not complete whereas the presence of eyewitness is also doubtful – View taken by the High Court in extending the benefit of doubt to the accused persons appears to be the most plausible view – Indian Penal Code, 1860 (45 of 1860),

Section 302 – Acquittal . [Para 14]

For Appellant(s): Mr. Anjani Kumar Mishra, AOR For Respondent(s): Mr. Chinmoy Khaladkar, Adv., Ms. Salonee Paranjape, Adv., Mr. B. K. Pal, AOR, Mr. Dinesh Chander Yadav, A.A.G., Mr. A.S. Rishi, Adv., Mr. Ishwar Chand, Adv., Mr. M.K. Bansal, Adv., Dr. Monika Gusain, AOR

JUDGMENT

Pankaj Mithal, J. –

1. Heard learned counsel for the parties.

2. Out of the ten accused persons before the Court of Sessions, six were convicted for the offences under Sections 148, 201/149 and 302/149 of the Indian Penal Code[1] *[[1]Hereinafter referred to as "IPC"]* and separate punishment for each of the offences was prescribed, the maximum being imprisonment for life with a fine of Rs.5,000/- and in default thereof, to undergo further imprisonment of six months under Section 302/149 IPC. The said conviction and sentence has been set aside by the High Court vide impugned judgment and order dated 20.11.2008.

3. Aggrieved by the acquittal of all the six accused, the appellant/complainant Chhote Lal has preferred this appeal.

4. The sole submission of the learned counsel for the appellant is that in matters where the accused persons are convicted and sentenced by the trial court, the appellate court is normally slow in upsetting the conviction, more particularly in the light of the evidence on record, especially, that of the eyewitness (complainant).

5. There is no dispute to the fact that there was serious enmity between the two rival groups which were in fact interrelated. The dispute between the two groups was quite old commencing in the year 1986 in connection with the access to the public road which was being blocked by one party. The said dispute was compromised but still continued to persist which resulted in the murder of Ram Kishan. It is in retaliation to the above dispute, it appears that the rival group now killed the Kishan Sarup (victim). In connection with the above killing of Kishan Sarup, an FIR was allegedly lodged on 04.11.2000 by the appellant/complainant but it was registered on 05.11.2000.

6. According to the FIR, the incident occurred on 04.11.2000 at 7 pm. At that time Kishan Sarup was returning from duty and the appellant/complainant was returning from Faridabad. They met at scooter stand, Badshahpur and the appellant/complainant joined Kishan Sarup on motorcycle to proceed towards the village Aklimpur. When they reached Tikli Road, they saw a car parked on the road side which chased their motorcycle and pushed it to the left side of the road forcing the appellant/complainant and Kishan Sarup to fall in the bushes. The appellant/complainant noticed the accused persons alighting from the vehicle and thereafter attacking Kishan Sarup with knifes, iron rod etc. The accused persons took Kishan Sarup in injured condition in their car and left. A report about the said incident in writing was submitted to the Incharge Police Post Badshahpur under the

signatures of the appellant/complainant.

7. It may be pertinent to point out that the appellant/complainant had worked with Delhi Police and at least three of the accused persons were also in Delhi Police.

8. We have considered the findings of the two courts below and have also gone through the ocular testimony of PW-9 i.e. the sole eyewitness (complainant). His testimony reveals that on 05.11.2000 at about 2 pm when they reached *'Pahar'* with the investigation team, they found a dead body burning which had almost perished. The fire was extinguished and from there one copper ring and the buckle of a belt were recovered which were identified to be that of Kishan Sarup (victim).

9. The appellant/complainant (PW-9) happened to be the sole eyewitness but he had neither seen anyone killing his son Kishan Sarup nor he had deposed that he had seen anyone burning the victim Kishan Sarup. Therefore, he is not actually an eyewitness either to the killing or to the burning of the deceased Kishan Sarup though he may be an eyewitness to the incident which took place on 04.11.2000 at 7 pm wherein a car had chased their motorcycle, pushed them towards the roadside making them fall in the bushes, thereupon assaulting the deceased Kishan Sarup and then taking him away in an injured position in the car.

10. It may be noted that he has not deposed anything as to why he had not tried to intervene and save his son from assault or stop the accused persons from taking him away in the car. He himself had not received any injuries. The statement that he could not do so on account of the threats extended by the accused persons appears to be a bald statement as no one in a situation where his son is being assaulted and carried away would remain a mere spectator.

11. The appellant/complainant (PW-9) stated in the FIR that the accused assaulted his son with a knife and iron rod. He didn't mention about the use of a pistol by the accused. However, the police have recovered empty cartridge. Cause of death as per postmortem is also firing from close range.

12. In view of the above situation and the other evidence on record, the very presence of the appellant/complainant even during the incident of 04.11.2000 appears to be doubtful. He appears to have met Kishan Sarup on the scooter stand per chance whereupon he took lift from Kishan Sarup to travel towards the village.

13. It may not be out of context to mention that the appellant/complainant, a sole eyewitness, happens to be the most interested witness being the father of the deceased and having long enmity with the group to which the accused persons belong, therefore, his testimony was to be examined with great caution and the High Court was justified in doing so and in doubting it so as to uphold the conviction on his solitary evidence.

14. In the light of the evidence on record, both versions as was taken by the trial court and that by the High Court may appear to be the possible views. However, the conviction has to be based on the evidence which proves the accused guilty beyond reasonable doubt. The

prosecution in this case has failed to prove the guilt of the accused both by circumstantial evidence and by means of evidence of the eyewitness. In respect of circumstantial evidence, the chain of events is not complete whereas the presence of eyewitness is also doubtful. Thus, we are of the opinion that the view taken by the High Court in extending the benefit of doubt to the accused persons appears to be the most plausible view.

15. Accordingly, we do not deem it necessary to interfere with the opinion expressed by the High Court.

16. The appeal lacks merit and is dismissed.