

THE STATE OF MADHYA PRADESH

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v.

NANDE @ NANDKISHORE SINGH

(Criminal Appeal No. 624 of 2016)

JANUARY 23, 2018

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[N. V. RAMANA AND S. ABDUL NAZEER, JJ.]

Penal Code – ss.304, Part-I and 307 – Prosecution case that some women were attending marriage celebration when the accused-respondent hurled a burning cow dung cake at them and caused serious burn injuries to them – While undergoing treatment two women died – Accordingly, charges u/ss.307, 302 were levelled against the accused-respondent – However, trial Court upon finding that there was no proof that the accused had intentionally killed the deceased made him liable to be punished u/s.304, Part-I instead of s.302 and convicted him u/ss.307 and 304,Part-I – High Court acquitted the accused-respondent of the charges – On appeal, held: In instant case, admittedly there was no enmity between the accused and the victims – Out of 12 prosecution witnesses, 5 witnesses (including two injured) did not support the case of prosecution and turned hostile – There were material contradictions in the statements of prosecution witnesses (PW-5, PW-7) on which the State has heavily relied on – FIR was lodged 13 days after the incident and there was no plausible explanation for this inordinate delay – Further, there was huge delay in recording the statements of the witnesses with no explanation for the same – High Court has thoroughly considered all aspects of the case and rightly taken them into account and reached the correct conclusion that this is certainly not a case where the guilt of the accused could be said to have been established beyond reasonable doubt.

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Dismissing the appeal, the Court

HELD: 1. In the instant case, admittedly there was no enmity between the accused and the victims. Out of the 12 prosecution witnesses, injured (PW 1), (PW 3), (PW 4), injured (PW 6) and (PW 8), did not support the case of prosecution and they turned hostile. As far as the statements of alleged

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A eyewitnesses P.W.5 and P.W.7 are concerned, on which counsel for the State has heavily relied on, there were material contradictions inasmuch as PW 5 in her cross examination stated that when the incident took place it was moonless night, the area was surrounded in darkness as there was no light and one cannot identify another. She also admitted that she heard the name of the accused for the first time after the incident. However, (P.W.7) contradicted the same. In his deposition he stated that in the light of the gas light all persons were visible. It did not happen that electricity supply was cut and it became dark. [Para 9][500-G-H; 501-A-B]

C 2. Another discrepancy in the prosecution case is that the First Information Report was lodged on 16.06.1994 i.e. 13 days after the incident and there is no plausible explanation coming forth from the prosecution for this inordinate delay. Also, the statements of the witnesses were recorded on 28.06.1994 and there is no explanation of such huge delay in recording the statements.[Para 10][501-B-C]

E 3. In the instant case, the High Court has thoroughly considered all aspects of the case and rightly taken them into account. Only after considering the credibility of the eyewitnesses and the circumstances in which the incident occurred, the High Court reached to the correct conclusion that this is certainly not a case where the guilt of the accused could be said to have been established beyond reasonable doubt and in a great detail, expressed the reasons for its conclusion. [Para 11][501-D-E]

F CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 624 of 2016.

From the Judgment and Order dated 22.04.2009 of the High Court of Madhya Pradesh Judicature at Jabalpur, Bench at Gwalior in Criminal Appeal No. 349 of 2009.

G Ms. Swarupama Chaturvedi, B. N. Dubey, Arjun Garg, Advs. for the Appellant.

Ms. Nidhi, Adv. for the Respondent.

The Judgment of the Court was delivered by

H **N. V. RAMANA, J.** 1. This appeal by special leave arises out

of a judgment dated 22nd April, 2009 of the High Court of Madhya Pradesh, Bench at Gwalior, passed in Criminal Appeal No. 349 of 2002. By the said judgment, the High Court reversed the order of conviction against the respondent herein for the offences punishable under Section 304, Part I and 307, IPC passed by the learned trial Court, and acquitted him of the charges.

2. According to the prosecution, on 1st June, 1994 at about 9.30 p.m. Rajendra Pathak (PW 12), the SHO of P.S. Singhonia on receiving a telephone call from Khariyaha hospital that some women belonging to the village Kotla Ka Pura were admitted in the hospital with serious burn injuries, rushed to the hospital and conducted inquiry. In the investigation, it was revealed that on the said date, the victims, namely, Parvesh, Deepa, Maya, Rekha and Baby were attending marriage celebrations at the house of Nathi Singh (PW 3), when the accused—respondent herein hurled a burning cow dung cake at them and caused serious burn injuries to them. After recording the statements of injured witnesses, the I.O. prepared spot map, recovered a can of kerosene oil and registered the crime case.

3. While undergoing treatment, Deepa died on account of burn injuries on 3rd June, 1994 and Maya, another victim, succumbed to the injuries on 18th June, 1994. Accordingly, charges were levelled against the accused—respondent for the offences punishable under Sections 307 and 302, IPC and committed the case to the Court of Sessions.

4. The learned trial Judge, upon finding that there was no proof that the accused had intentionally killed the deceased, came to the conclusion that the burning cow dung cake was carelessly thrown by the accused on the women for which he is liable to be punished under Section 304, Part I, IPC instead of Section 302, IPC. In that view of the matter, the trial Court convicted the accused—respondent and sentenced him to suffer rigorous imprisonment for ten years (two counts) for the offence punishable under Section 304, Part I, IPC and rigorous imprisonment for seven years for the offence punishable under Section 307, IPC, with default clause.

5. Against the order of conviction and sentence passed by the trial Court, the respondent—accused approached the High Court in appeal. The High Court, by the judgment impugned herein, allowed the appeal of the accused observing that the prosecution has failed to establish

A the crime beyond all reasonable doubts, and acquitted him of the charges. Hence the State is in appeal.

6. The case of the State is that the judgment of the trial Court convicting the accused was passed after accurate appreciation of the facts and law duly analyzing the statements of prosecution witnesses in a prudent manner. But, the High Court, on erroneous appreciation of facts and overlooking the evidences set aside the trial Court judgment and acquitted the accused by applying a flawed appreciation of law. Learned counsel appearing for the State submitted that the accused had knowingly committed the offence of culpable homicide with due knowledge that his act would cause severe burn injuries to the victims which may lead to their death. The High Court did not give due weightage to the statements of eyewitnesses, but giving more importance to the delay in registering FIR exonerated the accused and wrongly declared that the respondent—accused had no intention to commit the overt act.

7. On the other hand, Ms. Nidhi, learned counsel who was appointed through the Supreme Court Legal Services Committee to represent the accused—respondent, supported the impugned judgment.

8. We have considered the submissions of the learned counsel and perused the material available on record. There is no dispute regarding facts and events in the case. At the same time, both the Courts below have come to the common conclusion that the accused—respondent does not bear an intention to kill a particular person. By going through the record, prima facie it appears that the trial Court passed the order of conviction against the accused—respondent in consequence of statements of alleged eyewitnesses (PWs 5 & 7) and considering the concurrent chain of events. But, the fact remains that the prosecution should be able to prove its case beyond all reasonable doubts, for awarding conviction to an accused.

9. In the instant case, admittedly there was no enmity between the accused and the victims. Out of the 12 prosecution witnesses, Maya—injured (PW 1), Natthi Singh (PW 3), Jugraj Singh (PW 4), Parvesh—injured (PW 6) and Ranjeet Singh Tomar (PW 8), did not support the case of prosecution and they turned hostile. As far as the statements of alleged eyewitnesses P.W.5 and P.W.7 are concerned, on which learned counsel for the State has heavily relied on, there were material contradictions inasmuch as PW 5 (Rekha) in her cross examination stated

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that when the incident took place it was moonless night, the area was surrounded in darkness as there was no light and one cannot identify another. She also admitted that she heard the name of the accused for the first time after the incident. However, Sobaran Singh (P.W.7) contradicted the same. In his deposition at para 8 stated that in the light of the gas light all persons were visible. It did not happen that electricity supply was cut and it became dark. A B

10. Another discrepancy in the prosecution case is that the First Information Report was lodged on 16.06.1994 i.e. 13 days after the incident and there is no plausible explanation coming forth from the prosecution for this inordinate delay. We also find that the statements of the witnesses were recorded on 28.06.1994 and there is no explanation of such huge delay in recording the statements. C

11. Generally, this Court while exercising its jurisdiction under Article 136 of the Constitution, does not interfere with the impugned judgment unless among other things, there is a glaring mistake committed by the court below or there has been an omission to consider vital pieces of evidence. But here in the case on hand, in our considered view, the High Court has thoroughly considered all aspects of the case and rightly taken them into account. Only after considering the credibility of the eyewitnesses and the circumstances in which the incident occurred, the High Court reached to the correct conclusion that this is certainly not a case where the guilt of the accused could be said to have been established beyond reasonable doubt and in a great detail, expressed the reasons for its conclusion. D E

12. In view of the above, we find no cogent reason to disturb the order of acquittal passed by the High Court. The appeal is accordingly dismissed. F