

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR BENCH AT JAIPUR**

JUDGMENT

State of Rajasthan
Vs.
Bhanwar Lal
(S.B. Criminal Leave To Appeal No.29/2009)

S.B. Criminal Leave To Appeal under
Section 378 Cr.P.C.

Date of Order :- February 28 , 2011

PRESENT

HON'BLE MR. JUSTICE R.S. CHAUHAN

Ms.Alka Bhatnagar, Public Prosecutor.
Mr.Akhilesh Pareek on behalf of
Mr.Mahesh Gupta, for the respondent.

BY THE COURT:

Aggrieved by the judgment dated 17.01.2008, passed by the Special Judge, SC/ST (Prevention of Atrocities) Cases, Baran, whereby the learned Judge has acquitted the accused-respondent for offences under Sections 354, 456 IPC and for offence under Section 3(1)(x) SC/ST (Prevention of Atrocities) Act, 1989 ('the Act', for short), the State has filed this criminal leave to appeal before this Court.

Ms. Alka Bhatnagar, the learned Public Prosecutor, has vehemently contended that the learned

Judge has erred in acquitting the accused-respondent on hyper technical grounds such as delay in lodging of the FIR, the non-reporting of the incident by the prosecutrix (PW-1) to her other relatives and neighbors, and on the ground that there are contradictions between the testimonies of the prosecutrix (PW-1), her daughter, Vidya, (PW-2) and her husband, Ramesh (PW-3). According to the learned Public Prosecutor, the prosecution has presented a consistent story mentioned in the FIR, and narrated by the prosecutrix (PW-1) and her daughter, Vidya (PW-2). The testimonies of prosecutrix (PW-1) and Vidya (PW-2) has further been corroborated by the testimony of Ramesh (PW-3). Thus, sufficient evidence does exist to convict the accused-respondent of the aforementioned offences.

On the other hand, Mr. Akhilesh Pareek, the learned counsel for the accused-respondent, has raised the following contention before this Court : firstly, the prosecution case is replete with lacunae. Therefore, the prosecution has not been able to prove its case beyond a reasonable doubt. Secondly, there are two different and contradictory explanations given by the prosecutrix (PW-1) and Ramesh (PW-3) for the delay in lodging of the FIR. Thirdly, according to the prosecutrix (PW-1), the FIR was lodged by one Kanhiya Lal. However, Kanhiya Lal has not

been produced as a witness by the prosecution. Therefore, the prosecution has withheld a material witness. Hence, an adverse inference should be drawn against the prosecution. Fourthly, according to the prosecutrix herself, she did not tell Kanhiya Lal about the alleged incident. Thus, it is surprising that Kanhiya Lal was in a position to narrate the incident to the Police. According to Ramesh (PW-3), the Police had merely recorded the incident on its own, but did not read the FIR either to the prosecutrix (PW-1) or to him. Therefore, the facts narrated in FIR cannot form the foundation of the prosecution case. Fifthly, there are glaring contradictions in the testimonies of the three witnesses. Sixthly, although the witnesses are interested witnesses, there is no corroborative evidence other than their own testimonies on oath. Therefore, their testimonies cannot be taken as gospel truth. Lastly, the defence has produced independent witness to probablise its case that in fact Ramesh (PW-3) had borrowed money from the accused-respondent. When the accused-respondent asked him to repay the loan amount, instead of doing so, a false case has been foisted upon the accused-respondent. Thus, sufficient doubt was created in the mind of the learned trial court about the veracity of the prosecution case. Hence, the learned trial court was justified in acquitting the accused-respondent.

Heard the learned counsel for the parties, perused the impugned judgment, and examined the record.

According to the prosecutrix (PW-1), in her cross-examination, she had clearly admitted that the FIR was lodged by Kanhiya Lal. She had further admitted that she did not reveal the incident to Kanhiya Lal. Even, Ramesh (PW-3) is silent on this point; he does not tell the court that he had revealed the incident to Kanhiya Lal. Thus, the learned trial court is certainly justified in concluding that since Kanhiya Lal was not told about the incident either by the prosecutrix (PW-1), or by the Ramesh (PW-3), her husband, then it is highly improbable that he would have known about the incident. Moreover, since he has not been produced as a witness, there is no explanation as to how Kanhiya Lal came to know about the incident. Yet, despite his ignorance, he managed to narrate the incident to the Police. It was incumbent on the prosecution to produce Kanhiya Lal, who is the author of the FIR, as a witness before the Court. However, the prosecution has failed to do so. Therefore, the prosecution has withheld a material witness. Hence, an adverse inference should have been drawn against the prosecution case.

According to the prosecutrix (PW-1), Bhanwar Lal, the accused-respondent, had prevented her from

reporting the matter to the Police. According to Ramesh (PW-3), he was threatened by Bhanwarlal (DW-1). Thus, there is a contradiction between the two witnesses about the reason for the inordinate delay in lodging of the FIR. Moreover, surprisingly, neither the prosecutrix (PW-1), nor her husband, Ramesh (PW-3), shared the incident with any member of the family, who allegedly live close to their house. Their silence within the family also casts doubt over the veracity of their story.

Even Vidya (PW-2) does not inspire confidence as a witness. For, she claims that she had told various facts to the Police. Yet, those facts do not find any mention in her statement under Section 161 Cr.P.C. Thus, it is unlikely that those facts were ever mentioned; the mentioning of these facts, during the course of trial, seems to be a tutored. Moreover, on the one hand, Ramesh (PW-3) admits that Bhanwar Lal, the accused-respondent, was a frequent visitor to their house, yet on the other hand, Vidya (PW-2) claims that Bhanwar Lal was stranger to her. She further claims that it is her father who had told her the name of Bhanwarlal. It would be highly unlikely that a child would not know the name of a person, who is the frequent visitor to the family.

It is, indeed, a settled principle of law that the trial court is equally duty bound to pay attention to the evidence adduced by the defence, as it was duty bound to pay attention to the evidence produced by the prosecution. According to the accused-respondent, Bhanwar Lal, who has examined himself as DW-1, and according to the testimony of Ram Charan (DW-2), both of them have clearly stated that when Bhanwar Lal (DW-1) had sold off *Soya bean* crop, Ramesh (PW-3) had come to him and had borrowed Rs.5,000/- in front of Ram Charan (DW-2). Bhanwar Lal (DW-1) further informs that Ramesh (PW-3) had promised him that the money shall be repaid in the month of March. Even after Ramesh (PW-3) sold off his crop, and even after he was asked to repay the loan amount, he refused to do so. When Bhanwar Lal told Ramesh (PW-3), that he is likely to file a report against him for non-payment of the loan amount, a false case has been foisted upon him. This testimony has further been corroborated by the testimony of Ram Charan (DW-2).

Ramsh (PW-3) clearly admits, in his cross-examination, that Bhanwar Lal (DW-1) was a frequent visitor to his house. It clearly shows the close relation between two. Ram Charan (DW-2) informs the Court that Ramesh (PW-3) had borrowed money from Bhanwar Lal (DW-1) and had

promised to repay the money in the month of March. He further tells the Court that once the money was demanded, Ramesh (PW-3) refused to repay. Thus, there is a great possibility that a false case has been foisted upon Bhanwar Lal (DW-1) by Ramesh (PW-3) and his wife, the prosecutrix (PW-1). Hence, sufficient doubt was created in the mind of the learned trial court. Thus, the learned trial court has neither committed any illegality, nor perversity in acquitting the accused-respondent, Bhanwar Lal, by giving him the benefit of doubt.

Hence, this Court does not find any perversity or illegality in the impugned judgment. This criminal leave to appeal is devoid of any merit. It is, hereby, dismissed.

(R.S.CHAUHAN)J.

Manoj Solanki-