

Cr.A. No.1253/2012

31.7.13

As per B.D.Rathi,J

Shri M.Shafiqullah, Advocate for the appellant.

Shri Amit Pandey, Government Advocate for the respondent no.1-State.

Heard on admission.

This appeal has been preferred under Section 372 of the Code of Criminal Procedure (hereinafter referred to as “the Code”) being aggrieved with the judgment dated 8/5/12 passed by I Additional Sessions Judge, Chhatarpur in Sessions Trial No.133/10, whereby respondent nos.2 to 4 have been acquitted of the offences punishable under Section 302 read with Section 34 of the Indian Penal Code (“IPC” for short).

Prosecution case, in brief, is that on 24.2.10, at about 12.40 a.m., Jitendra Chourasiya (PW1), son of respondent nos. 1 & 2, informed at Police Station Maharajpur that, on the same day at about 9.30 p.m., when his father was away and only mother, sister and himself were available at home, his cousin Rajesh came in an inebriated condition, and after abusing his entire family from outside, went away. At about 10.45 p.m, hearing moans, they perched on their rooftop and saw that Rajesh, engulfed in flames, was running towards their house and, thereafter, fell and died on the ground. Morgue intimation No. 03/10 (Ex.P/10) was recorded at Police Station Maharajpur and after investigation Crime No.31/10 (Ex.P/20) was registered against the respondent nos. 2 to 4 and after completion of the investigation, charge-sheet was filed.

Learned counsel for the appellant, while making reference to the evidence on record, submitted that the learned trial Court has not properly appreciated the evidence on record and the impugned judgment deserves to be interfered with.

Having regard to the arguments advanced by the parties, we have gone through the impugned judgment and evidence on record.

On going through the impugned judgment, it is apparent that the cause of incident was that when Rajesh had reached the house

of respondents to return Rs.70,000/- taken as loan by him, the respondents snatched the same along with relevant records (*Rukka*) and, after pouring kerosene oil over him, set him ablaze.

Independent eye-witness Kuldeep (PW1) and Vijaybahadur Chourasiya (PW19), had not supported the prosecution story, and were declared hostile, and the statement given by parents of the Rajesh Durgadevi (PW14) and Lakhanlal (PW15), on the basis of information furnished by Kuldeep and Vijaybahadur, was rightly discarded by the trial Court as hearsay evidence. During the course of trial, Virendra Chourasiya (PW11), brother of the deceased, was examined on an application under Section 311 of the Code of Criminal Procedure by the prosecution. He deposed, purporting to be an eye-witness, but his statement was not believed by the trial Court as he had not given any statement under Section 161 of the Code, as well as, for the reason that he had not stated anything regarding commission of offence in his statement recorded during morgue inquiry, and for the very first time, after a period of two years, had come up with the story before the trial Court incriminating the respondents.

On the aforesaid premises, impugned judgment was passed by the trial Court.

We agree with the findings recorded by the trial Court.

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.

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 order of acquittal in question.

The appeal, being devoid of merit and substance, stands dismissed.

(AJIT SINGH)
JUDGE

(B.D.RATHI)
JUDGE

(and)