

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN  
AT JODHPUR

**: JUDGMENT:**

**D.B. CRIMINAL LEAVE TO APPEAL NO.142/2014**  
**(State of Raj. Vs. Sanjay Rana & Anr.)**

Date of Order :: 31.10.2014

**P R E S E N T**

**HON'BLE MR JUSTICE GOPAL KRISHAN VYAS**  
**HON'BLE MR. JUSTICE BANWARI LAL SHARMA**

Mr. C.S. Ojha, Public Prosecutor.

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**BY THE COURT: (PER HON'BLE MR. JUSTICE G.K. VYAS)**

The instant criminal leave to appeal has been filed by the State of Rajasthan under Section 378 (iii) & (i) of Cr.P.C. against the judgement dated 18.4.2014 passed by learned Addl. Sessions Judge, Abu Road, District Sirohi in Sessions Case No.49/2012 whereby the learned trial Court acquitted the accused – respondent Sanjay Rana for offence under Sections 302 read with Section 34 and 120-B I.P.C. and accused Raju for offence under Section 302 read with Section 120-B I.P.C.

As per brief facts of the case, on 28.05.2012, the complainant Toshik Berwa submitted a report at about 3.15 p.m., before the SHO, Police Station, Mount Abu stating therein that on 28.05.2012 at about 2.20 a.m., he along with Narpat Singh @ Tiniya were coming back to home on Activa. At that time, near Appu Ghar, Hotel Severa Palace, one Wala Ram, Sanjay Rana and two other persons obstructed their way and

Wala Ram forcibly attacked upon the head of Narpat Singh by Lathi and due to the said injury blood came out from the head of Narpat Singh. At that time, the complainant after rescue immediately called the wife of Narpat Singh on the spot and informed the Police. The injured Narpat Singh was brought to the Hospital where he died during treatment.

On the basis of the aforesaid report, FIR No.31/2012 was registered under Section 302/34 and 120-B I.P.C. and after investigation, a challan was filed against two accused namely Sanjay Rana and Raju in the Court of ACJM, Mount Abu from where the case was committed to the Court of Addl. Sessions Judge, Abu Road, District Sirohi.

The trial Court commenced the trial and from prosecution side, the statement of 12 prosecution witnesses were recorded and 15 documents were exhibited to prove the prosecution case.

The trial Court after recording the evidence of prosecution recorded the statement of both the accused persons under Section 313 Cr.P.C. in which they stated that they have been falsely implicated in this case and produced two witnesses namely Bhavesh DW-1 and Ishwar DW-2 in their defense.

After recording the entire evidence, the case was finally heard by the learned trial Court and the learned trial Court acquitted both the accused non-petitioners from the charges levelled against them vide judgment dated 18.4.2014 and the

State Government is challenging the validity of the said judgment in this criminal leave to appeal.

Learned Public Prosecutor vehemently argued that a gross error has been committed by the trial Court in acquitting both the accused non-petitioners in spite of the fact that cogent evidence was produced before the trial Court by the prosecution, therefore, it is submitted that the judgment impugned may be quashed.

Learned Public Prosecutor further argued that the finding given by the trial Court while discrediting the statement of PW-6 Toshik (complainant) is contrary to the basic principles of law because the learned trial Court erroneously held that the story narrated by him is concocted one whereas the version mentioned in the FIR was corroborated by him so also by PW-7 Laxmi. In the statement of PW-7 Laxmi, there is no contradiction, therefore, it is a case in which the trial Court is discrediting the whole prosecution evidence without any ground, therefore, it is a case of miscarriage of justice.

Learned Public Prosecutor appearing on behalf of the appellant State submits that a bare perusal of the documentary evidence as well as the circumstantial evidence the present of both the accused respondents is proved and the fact of beating is also proved, therefore, the finding of acquittal given by the trial Court may be quashed.

After hearing learned Public Prosecutor, we have

perused the entire evidence on record and the finding given by the learned trial Court.

Admittedly from the prosecution side, two star witnesses namely Toshik PW-6 and Laxmi PW-7 were produced as prosecution witnesses. Upon perusal of the statement of Toshik PW-6, it is abundantly clear that the said witnesses has categorically stated in his cross-examination that Sanjay Rana did not inflict any injury to Narpat Singh and further did not disclose the name of accused Raju, more specifically as per his statement, one Wala Ram inflicted injury upon the head of Narpat Singh, meaning thereby, the said witness did not corroborate the prosecution story, therefore, the trial Court gave finding on the basis of the such statement is not proper to convict both the accused respondents. Likewise in the statement of Laxmi PW-7, she has stated that on 28.5.2012, at about 2-2.30 p.m., Toshik PW-6 rushed to her home and stated that all the accused persons inflicted injury upon the head of Narpat Singh. At that time, Toshik PW-7 went on spot from where she saw that all the accused persons were running away from the place of occurrence. Learned trial Court after considering the important aspect of the fact that PW-7 Laxmi specifically stated in her statement that she was not present at the time of occurrence took place, acquitted the accused non-petitioners on the ground that the prosecution has failed to prove its case beyond reasonable doubt.

In our view, the finding given by the trial Court after assessing the statement of Toshik PW-6 who is eye witness and

Laxmi, PW-7 has rightly held that the prosecution has failed to prove its case beyond reasonable doubt. The specific allegations is levelled against one Wala Ram for inflicting injury upon the head of deceased Narpat Singh.

In view of above, we are of the opinion that the finding given by the trial Court does not require any interference because the judgment impugned is based upon the sound appreciation of evidence and as per basic principle of law, it is the duty of the prosecution to prove its case beyond reasonable doubt but herein this case, two witnesses namely PW-6 Toshik (complainant and eye witness) and PW-7 Laxmi – wife of deceased were examined from the prosecution side and both these witnesses did not allege that any injury was inflicted by both the accused respondents or they participated in the incident, therefore, the finding given by the Judge, trial Court that the prosecution has failed to prove its case beyond reasonable doubt for alleged offence does not require any interference. Hence, there is no force in this criminal leave to appeal filed by the State, therefore, the same is hereby dismissed.

**(BANWARI LAL SHARMA), J.      (GOPAL KRISHAN VYAS), J.**