

CRA-715-2015

(SANTOSH PATEL Vs ASHOK)

31-08-2016

Shri H.K. Sharma, learned counsel for the appellant.
Shri Pushyamitra Bhargava, learned counsel for the respondent.

Heard learned counsel for the parties on I.A. No.2630/2016, an application under Section 378(3) of the Code of Criminal Procedure, 1973 seeking leave to appeal against judgment and order dated 16.04.2015, passed by 1st Additional Sessions Judge, Dewas in S.T. No.300/2013, whereby the respondents were acquitted for the offences under Sections 307 r/w 120-B of IPC.

The leave has been sought on the ground that the learned trial Court without properly appreciating and evaluating the evidence laid by the prosecution, has recorded acquittal. It is further submitted that the learned trial Judge did not carefully examine the statement of complainant injured Santosh Patel (PW-10) and Pappu @ Bhojraj (PW-8), who have clearly spoken about the presence of respondent Ashok Mishra on the spot and have further stated that Santosh Patel (PW-10) asked the assaultants to kill the complainant by Pistol. It is also submitted that Santosh Patel (PW-10) sustained two bullet injuries on the back side and on the thigh and thus the ocular evidence stood corroborated by medical evidence. It is argued that there was sufficient evidence on record to come to the conclusion that the respondents were in conspiracy with two other assaultants who had fired on the complainant.

Per contra, learned counsel for the respondents had submitted that the learned trial Judge after considering the entire evidence in proper perspective has come to the conclusion that charge for offence under Sections 306 and

120-B of IPC is not established against the respondents beyond reasonable doubt. Mere suspicion, howsoever grave, may not take the place of proof. It is further submitted that the view taken by the learned trial Court, being not perverse, does not call for any interference.

We have carefully considered the rival submissions made by learned counsel for the parties and have gone through the record including the impugned judgment. There are material variations in First Information Report (Ex.P/4) and the testimony of Santosh Patel (PW-10). In his deposition, Santosh Patel (PW-10) has made improvement to the effect that Ashok Mishra exhorted the unidentified assailants to fire at the complainant, something conspicuously missing in Ex.P/5. It is further found that Shekhar Patel (PW-7), who is said to be present at the scene of the occurrence, has not stated that complainant Santosh Patel (PW-10) stated about any exhortation made by respondent Ashok Mishra. Pappu @ Bhojraj (PW-8), who as per prosecution, was also present at spot, has not supported the version put-forth by the complainant Santosh Patel (PW-10) that Ashok Mishra exhorted the assailants to fire at him. Apart this, in para 5 of his deposition, Santosh Patel (PW-10) has stated that he saw Ashok Mishra when he was fleeing away from the spot, which goes to indicate that unidentified persons fired at him before he could see respondent - Ashok Mishra. Further it is noticeable that despite interrogation of Ashok Mishra and her wife Chintamani (respondent No.2), the Investigating Officer could not trace out the assailants, who in fact fired at Santosh Patel (PW-10).

The learned trial Court after considering all the aforesaid aspects of the matter recorded acquittal against the petitioners. Though it has come in evidence that the complainant and respondent had a previous enmity and it further transpires that the complainant had the serious suspicion regarding complicity of Ashok Mishra in the

conspiracy, however, as argued by the learned counsel for the respondents, suspicion howsoever strong, cannot take the place of proof and that the guilt has to be proved beyond reasonable doubt.

In view of the aforesaid, it cannot be said that acquittal recorded by the learned trial Court is unmerited, hence, no ground is made out to grant leave to appeal.

(S.C.SHARMA)
JUDGE

(VED PRAKASH SHARMA)
JUDGE