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Crl.A.No. 833 OF 1998
ITEM No.103

Court No.11

SECTION IIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No.833 of 1998.

RAJA RAM Appellant (s)

VERSUS

STATE OF CHHATTISGARH Respondent (s)

[With applns.for correcting the cause title and exemption from filing OT and with office report]

Date : 10/03/2004 This petition was called on for hearing today.

CORAM :

HON'BLE MR.JUSTICE B.N. AGRAWAL
HON'BLE MR.JUSTICE D.M. DHARMADHIKARI

For Appellant (s)Mr.SB Sanyal,Sr.Adv.
M/s Prakash Shrivastava,Nitin Bhardwaj,PP Singh,
Pratibha Jain,Advs.

For Respondent (s)Ms.Geetanjali Mohan,Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard the parties for some time.
The appeal is allowed in terms of the signed order.
The application for correcting the cause title is allowed.

[Naresh Kumar]
AR-cum-PS

[Kanwal Singh]
Court Master

[Signed order is placed on the file.]

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.833 OF 1998

RAJA RAM
...
APPELLANT (S)

VERSUS

STATE OF CHHATTISGARH
...
RESPONDENT (S)

O R D E R

Heard the parties.

The sole appellant was convicted by the trial court under Section 302 of the Penal Code and sentenced to undergo imprisonment for life and to pay fine of Rs.500/-; in default, to undergo further imprisonment for a period of three months. The sentences were, however, ordered to run concurrently. On appeal being preferred before the High Court of Madhya Pradesh the conviction and sentence of the appellant have been confirmed. Hence this appeal by special leave. Undisputedly in the present case there is no direct evidence but it is a case of circumstantial evidence. The prosecution has relied upon the following three circumstances against the accused:

- (1) the deceased Dhalu Ram was last seen in the company of the appellant,
- (2) the button of shirt and the broken chain of wrist watch belonging to the appellant were recovered from near the dead body, and
- (3) the extra judicial confession of the appellant made in the panchayat in presence of police personnel.

So far as the trial court is concerned it has placed reliance upon the aforesaid three circumstances but the High Court was of the view that it was not possible to place reliance upon the extra judicial confession, i.e., the third circumstance, in view of the fact that the police personnel was present. Thus the High Court has upheld the conviction only upon the first two circumstances referred to above.

Mr.SB Sanyal, learned senior counsel in support of the appeal submitted that so far as second circumstance, i.e., recovery of shirt-button and a broken chain of wrist watch from near the dead body is concerned the prosecution has failed to prove the same by credible evidence. The prosecution has attempted to prove the circumstance by the evidence of PWs 2 & 3. PW2 stated that the police seized the button and a piece of chain of wrist watch which were lying at the spot near the dead body. This witness has nowhere stated that any of these two articles belonged to the accused. PW3 who was nobody else but the father of the deceased was not a witness of seizure of the aforesaid articles but he has simply stated that when the police had completed the inquiry then at that time the appellant Raja Ram said that the button and piece of chain which were found near the dead body belonged to him. During cross-examination this witness had no option but to admit that Raja Ram made the aforesaid statement on being threatened by the police. That apart the statement which is said to have been made by the appellant being a confessional statement cannot be used against him as the same was made before the police which is not admissible. This being the position the evidence of this witness that the appellant admitted that these articles belonged to him cannot be relied upon. This witness has nowhere stated that these articles belonged to the appellant. There is no other evidence to show that the aforesaid recovered articles belonged to the accused. Apart from the aforesaid statement PW3 stated that the deceased and the appellant were good friends which shows that there could not have been any motive for the appellant to kill the deceased. In view of these facts, we are of the view that the prosecution has failed to prove the second circumstance which has been used against the appellant.

Now there remains the solitary circumstance that the deceased was last seen in the company of the appellant which alone cannot be used to convict the appellant especially in view of the statement of PW3 that relationship between the deceased and the appellant was cordial. This being the position, in our view, the prosecution has failed to prove its case beyond reasonable doubt and the High Court was not justified in upholding the conviction.

Accordingly, the appeal is allowed, the conviction and sentence of the appellant are set aside and he is acquitted of the charge. The appellant who is on bail is discharged from the liability of bail bonds.

.....J.
(B.N. AGRAWAL)

.....J.
(D.M. DHARMADHIKARI)
New Delhi,
March 10, 2004.