

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO. 2138 OF 2010**

**STATE OF RAJASTHAN**

...Appellant(s)

Versus

**BHIMLA @ BHINYA RAM AND OTHERS**

...Respondent(s)

**ORDER**

This appeal by special leave is directed against the judgment and order dated 04.09.2008 in D. B. Criminal Appeal No. 326 of 1982, passed by the High court of Judicature for Rajasthan at Jodhpur, whereby the High Court allowed the appeal filed by the respondents herein and acquitted them of all the charges leveled against them.

**2.** Out of thirteen accused persons who were sent for trial, three were convicted by the trial court for the offences punishable under Sections 302/34 and 307/34 of the Indian Penal Code [**IPC**] and also under Section 25 (1)(k) of the Arms Act. All the convicted accused were sentenced to undergo life imprisonment for offence under Section 302/34 of IPC; seven years rigorous imprisonment for charges under Section 307/34 IPC with

fine of Rs. 100/- and in default thereof to undergo fifteen days more rigorous imprisonment. They were also sentenced to undergo fifteen days of rigorous imprisonment for charge under Section 25(1)(k) of the Arms Act. All the Sentences were however directed to run concurrently.

**3.** Aggrieved by the judgment passed by the trial Court, the respondents-accused preferred appeal before the High Court. Taking into consideration the facts and circumstances of the case, the High Court allowed the appeal and set aside their conviction by giving them the benefit of doubt. Aggrieved by the judgment passed by the High Court, the State has now come up in appeal before us.

**4.** We have heard learned counsel for the parties at length.

**5.** Going by the materials on record in the light of arguments advanced by the learned counsel for the parties, we are of the considered opinion that the High Court has rightly concluded that as per the evidence of PW-19 ballistics expert (Roop Singh), the Cartridges from which the bullets were fired and hit the victims of complainant party, came from 12 bore double barrel gun and the recovery from the respondents herein was

of single barrel 12 bore gun. Therefore, there is a possibility that the complainant party might have been assaulted by a third party, with a 12 bore double barrel gun. There is no dispute that the presence of deceased Hansraj Singh along with the assailants is admitted by the complainant party. In such situation, suppression of Hansraj Singh's death by the prosecution and the genesis of the incident give rise to reasonable doubt as to the prosecution case. It has come on record that PW-15-I.O. has mentioned in his deposition that Hansraj Singh died in the same incident but no case was registered as the police did not record accused party's report over the murder of Hansraj Singh which also gives rise to reasonable suspicion.

**6.** It appears that the trial court by erroneously relying upon the statement of the complainant PW 12 (Smt. Sarjeet Kaur) and Statements of other two witnesses ignoring the factum of aforesaid circumstance held that the respondents were present on the spot at the relevant time and hence convicted them for the offences. Moreover, going by the record before us, it cannot be said that the prosecution had conducted impartial inquiry into the incident, as evidently it suppressed the relevant materials.

7. Thus, in the facts and circumstances of the case, we are of the opinion that the view taken by the High Court in acquitting the accused persons is a plausible one. Therefore, no interference in the judgment passed by the High Court is called for by us. The appeal stands dismissed being devoid of merit. Pending applications, if any, shall also stand disposed of.

.....J.  
(**N. V. Ramana**)

.....J.  
(**Amitava Roy**)

New Delhi,  
11<sup>th</sup> October, 2017

ITEM NO.101

COURT NO.8

SECTION II

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(s). 2138/2010

THE STATE OF RAJASTHAN

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BHIMLA @ BHINYA RAM &amp; ORS.

Respondent(s)

Date : 11-10-2017 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.V. RAMANA

HON'BLE MR. JUSTICE AMITAVA ROY

For Appellant(s)

Mr. Amit Sharma, Adv.  
Mr. Sandeep Singh, Adv.  
Mr. Ankit Raj, Adv.  
Ms. Ruchi Kohli, AOR

For Respondent(s)

Mr. R.V. Kameshwaran, AOR  
Mr. ram Bankar, Adv.UPON hearing the counsel the Court made the following  
O R D E RThis appeal is dismissed in terms of the signed order.  
Pending applications, if any, shall also stand disposed of.(SUKHBIR PAUL KAUR)  
AR CUM PS(S. SIVARAMAKRISHNA)  
ASST.REGISTRAR

(Signed order is placed on the file)