

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.1355 OF 2011

**STATE OF MADHYA PRADESH
Versus**

Appellant(s)

KALLA JATAV

Respondent(s)

ORDER

This appeal by special leave preferred by the State of Madhya Pradesh is directed against the judgment and order dated 2.2.2009 passed by the High Court of Madhya Pradesh, Bench at Gwalior, in Criminal Appeal No. 636 of 2003, whereby the High Court while setting aside the judgment dated 1.10.2003 passed by the Additional Sessions Judge, Shivpuri, in Sessions Trial No. 197 of 2002 convicting the respondent herein under Sections 302 and 436, IPC, and acquitted him of the charges.

2. This is a case of circumstantial evidence, where the accused-respondent's wife was alleged to have been burnt to death. The prosecution case is that the accused burnt his wife alive by keeping her in the house and by locking the door of the house from outside. To establish the case of prosecution, a number of witnesses

(in all 19) were examined. P.Ws.2, 3, 4 and 5 have supported the case of the prosecution to some extent and stated that they saw the respondent lighting the house on fire, in which the wife of the respondent (since deceased) was locked, and he ran away with an axe in his hands. However, P.Ws. 1, 5, 6, 7, 8, 9, 10, 11 and 17 turned hostile.

3. The trial court convicted the respondent-accused and found him guilty under Sections 302 IPC and sentenced him to undergo life imprisonment with fine of Rs.1000/-, in default, to further undergo rigorous imprisonment for six months and also convicted him under Section 436 IPC and sentenced to undergo rigorous imprisonment for five years and fine of Rs.1000/-, in default, to further suffer rigorous imprisonment for six months.

4. Aggrieved by the judgment passed by the trial Court, the respondent-accused preferred appeal before the High Court. Taking into consideration the facts and circumstances, the High Court acquitted the accused on the ground that there was exaggeration of the witnesses in deposing their evidence and prosecution has failed to establish the guilt of the accused—respondent beyond reasonable doubt. Aggrieved thereby, the appellant-State is in appeal before us.

5. We have heard learned counsel for the parties and gone through the material available on record.

6. Relying upon the evidence, learned counsel appearing on behalf of the appellant – State has tried to defend the prosecution case. Whereas, the amicus curiae—learned counsel appearing on behalf of the respondent-accused, on the other hand, defended the order of the High Court.

7. This is a case of circumstantial evidence and there is no reliable eyewitness to the incident. Hence, the burden heavily lies on the prosecution to establish the guilt of the accused beyond reasonable doubt by connecting the chain of events perfectly. Before convicting a person purely on the basis of circumstantial evidence, it is also necessary on the part of Court to ensure that the prosecution has satisfactorily established the chain of circumstances so as to bring home the guilt of the accused. Merely seeing the accused—respondent with an axe in his hands after the incident, cannot establish the overt act against him. Undisputedly, there was some quarrel existing between the accused—respondent and PWs 7 and 15 over the purchase of a house and they were not in good terms.

8. The materials on record clearly shows that there are certain contradictory and inconsistent statements made by the prosecution witnesses vitiating their reliability. Particularly, an important prosecution witness, the informant Brijesh Jatav (PW 2) in his cross examination clearly stated that PW1 reached his house after hearing the hue and cry of the deceased and when they (PWs 1, 2 and 3) reached the spot, appellant ran away after lighting the fire. Evidently, this very fact was omitted in his police complaint (Ext. P2) as also in the police diary (Ext. D-1). Whereas PW3 (Kailash Bai) deposed that she and PW1 (Latur Bai) did not go to the spot. Significantly, Latur Bai (PW1) did not support the prosecution case and she categorically stated that she saw fire in the house of accused but could not know who lit it. On the other hand, prosecution has also failed to establish motive of the accused. Simply making an allegation that the accused used to harass his wife, without valid and lawful evidence, cannot infuse in the minds of Court that the accused might have committed the offence.

9. In view of the facts and circumstances of the case, it can be said that the prosecution has not come up with strong circumstantial evidences. Taken into consideration, contradictory

statements by the prosecution witnesses in the absence of reliable eyewitness to the incident and looking at the admitted rivalry between the respondent and PWs 7 and 15, the accused is entitled for benefit of doubt. We are, therefore, of the opinion that the view taken by the High Court in acquitting the accused was a plausible one and High Court has rightly acquitted the accused-respondent.

10. For the foregoing reasons, we are not inclined to interfere with the impugned judgment and hence the appeal stands dismissed. Resultantly, pending applications, if any, shall also stand disposed of.

.....J.
(N.V. RAMANA)

.....J.
(AMITAVA ROY)

New Delhi,

October 10, 2017

ITEM NO.107

COURT NO.8

SECTION II-A

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). 1355/2011

THE STATE OF MADHYA PRADESH

Appellant(s)

VERSUS

KALLA JATAV

Respondent(s)

Date : 10-10-2017 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)

Ms. Prachi Mishra, Adv.
Mr. Arjun Garg, AOR
Mr. Chaitanya, Adv.
Ms. Pragya Garg, Adv.

Mr. C. D. Singh, AOR (Not present)

For Respondent(s)

Dr. Charuwali Khanna, (A.C.)
Mr. Dharmendra Pal Singh, Adv.UPON hearing the counsel the Court made the following
O R D E R

This 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)