

# **SUPREME COURT OF INDIA**

State of Rajasthan

Vs.

Chhote Lal

Crl.A.No.897 of 2006

(B.S. Chauhan and Swatanter Kumar JJ.)

08.06.2011

## **ORDER**

1. The challenge in the present appeal is to the judgment of the High Court of Judicature of Rajasthan at Jaipur dated 1st September, 2005 whereby the High Court granted the benefit of doubt to the accused and returned finding of acquittal in favour of the convicted accused, namely, Chhote Lal, Peeru Shah and Shafi Shah, upsetting the judgment of the learned Sessions Judge dated 20th July, 2002.

2. The story of the prosecution was that on 11th December, 1998 at 12.15 p.m., complainant Ram Kishan, submitted the First Information Report to the Police Station, bandi Kuin to the effect that his uncle sharvan Lal was missing. He came home and enquired from his aunt Lali about the whereabouts of his uncle. However, she told him that he along with two other persons had gone to treat someone on a motor-cycle. Ram Kishan got suspicious by the answer given to him by his aunt and then he told his aunt that on 19.12.1998, somebody has stuck a paper on the wall of the temple in the village mentioning that Sharvan Lal had been murdered and his body had been thrown in a well. Hearing this, she was little embarrassed. It is further the case of the prosecution that the two accused made an extra-judicial confession to the P Ws that they have murdered Sharvan Lal and thrown his body in a well. They prayed for forgiveness. The police registered an FIR upon statement by Ram Kishan and a case under Sections 302, 201 read with Section 34 and under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. During investigation, dead body of the deceased was recovered from a well. Four accused including Lali were charged for the above offences. After trial and by a detailed judgment dated 20th July, 2002, the Trial Court convicted the three accused of offences under Section 302, 42, 449,

201 and 202 of the Indian Penal Code (IPC). They were punished to undergo life imprisonment for an offence under Section 302 as well as to pay fine of Rs. 5,000/- while under Section 201 IPC, they were fined Rs. 1,000/-. All the awarded sentences to these accused were ordered to run accordingly. However, the Trial Court acquitted Lali of the offence under Sections 302 and 449 but convicted her of an offence under Sections 201 and 202 of the Indian Penal Code.

3. On appeal, the High Court found that the prosecution had miserably failed to prove its case beyond any reasonable doubt as the story of the prosecution was concocted and lack trustworthiness. Resultantly, the High Court acquitted all the three accused of offences under Section 302 IPC. Aggrieved from the judgment of acquittal of the High Court, the State has filed the present appeal.

4. It will be important for us to notice that the High Court, while granting the benefit of doubt to the accused, noticed certain factual altercations and circumstances which according to the High Court were nothing but conjectures and the finding of fact recorded by the Trial Court was not based upon proper appreciation of evidence. The High Court observed as under:

11. Factual situation emerges from the material on record may be summarized thus:

(i) Bare reading of paper (Ex.P- 4 2 ), which was pasted on a temple, reveals that it was written by a person, who saw the incident from his own eyes and minute details of the incident were incorporated in it;

(ii) It was also stated in the paper that dead body of Shravan was lying in Bamanwala well;

(iii) Alok Srivastava, Investigating Officer, did not investigate as to who was the author of the paper. Even he did not choose to go to the place where the paper was pasted.

(iv) According to Ramkishan, Sunder and Sitaram, the accused Peeru and Chhote Lai came to the office of Ram Kishan and confessed that they along with Lali killed Shravan;

(v) Although the paper was pasted on December 9, 1998 disclosing the names of the accused, the written report was submitted by Ram Kishan on December 11, 1998 at 12.15 P.M.;

(vi) The Appellants were in their village and they did not try to escape despite the fact that they were named as the offenders in the paper;

(vii) The dead body of Shraavan got recovered at the instance of Appellants from a well on December 11, 1998;

(viii) The weapons that were recovered at the instance of Appellants were not stained with blood;

12. A perusal at the impugned judgment of the learned trial court goes to show that the following circumstances were taken into consideration in convicting the Appellants -

(a) Appellants made confession before the witness that they had killed the deceased;

(b) The dead body was recovered at the instance of the Appellants;

(c) The weapons of offence were recovered at the instance of the Appellants.

5. Furthermore, the High Court also noticed that the extra-judicial confession, alleged to have been made by the accused to PW3, was neither reliable nor worthy of credence. There was no occasion or attendant circumstances for the accused to make the extra-judicial confession to the witnesses. The FIR itself was lodged after a period of two days from the date of knowledge. The recovery of dead body after a considerable delay at the disclosure statement of the accused would lose its significance and evidentiary value inasmuch as in Exhibit P-42 (the paper pasted on the temple wall), it was stated that the dead body was lying in a well. Thus, this was a fact commonly known.

6. The learned Counsel appearing for the State contended that these findings are not correct and are not based upon proper appreciation of evidence. We do not find any merit in this contention primarily for the reason that Exhibit P-42 had disclosed two very important facts. First that the deceased had been killed and second that the dead body was lying in a well. This itself was sufficient indication to fact that the dead body was lying in the well and the Investigating Officer ought to have recovered the body at the very initial stage of the investigation rather to await of making of the alleged disclosure statement by the accused of a fact which was publically known. Another aspect of the case is that even the recovery of the

weapon is doubtful. The way the recovery has been shown is correctly held by the High Court as not reliable.

7. Besides all this, the Court overlooked the fact that the Investigating Officer made no effort to find out who was the author of Exhibit P-42 as in all probability the said person could be an eye-witness to the entire occurrence. For reasons best known to the prosecution, this aspect of the case has completely been ignored. This aspect attains greater significance for the reason that PW9, daughter of the deceased, had turned hostile and did not support the case of the prosecution. She was stated to be the only eye-witness of the case. We are unable to accept the contention that the High Court has failed to appreciate the evidence in its correct perspective or that the findings recorded by the High Court are not based upon cogent and proper evidence.

8. We may also notice that against the acquittal of the wife Lali, the State did not file any appeal before the High Court and accepted the judgment of the learned Trial Court in convicting her only of an offence under Sections 201 and 202 IPC. This is another factor which would create a serious dent in the case of the prosecution.

9. In view of the above discussion and the circumstances afore-referred, it is very difficult for us to trace any element of error in law or in appreciation of evidence in the impugned judgment. Consequently, the appeal is dismissed being without any merit.

10. The appeal is dismissed being without any merit in terms of the signed order.