
(2021) 11 RAJ CK 0031

Rajasthan High Court

Case No: D.B. Criminal Appeal No. 322 Of 2019

Heeraram

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Nov. 15, 2021

Acts Referred:

Code Of Criminal Procedure, 1973 " Section 164, 313, 374(2), 437A#Indian Penal Code, 1860 " Section 34, 201, 302#Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 " Section 3(2)(v), 3(2)(vi)#Evidence Act, 1872 " Section 27

Citation: (2021) 11 RAJ CK 0031

Hon'ble Judges: Sandeep Mehta, J; Sameer Jain, J

Bench: Division Bench

Advocate: K.L. Thakur, M.S. Panwar, J.P.S. Choudhary, N.S. Bhati

Final Decision: Allowed

Judgement

Name of the accused,Offences for which charged

Heera Ram,"Section 302, 302/34 IPC read with Section 3(2)(v) o

the SC/ST Act and Section 201 IPC

Praveen Kumar,"Section 302, 302/34 IPC read with Section 3(2)(v) o

the SC/ST Act

Ramesh Kumar,"Section 201 IPC read with Section 3(2) (vi) of the

SC/ST Act

Raingaram @ Raghunathram,"Section 302, 302/34 and 201 IPC

entire prosecution case is false and fabricated. The prosecution has tried to bring home the charges against the accused on the strength of,

circumstance of last seen as deposed by witness Dinesh (P.W.2) and the recovery of the dead body of Nenaram, but both these circumstances have",

been sought to be proved by cooked up evidence. He urged that there is a serious discrepancy in the prosecution story regarding the time and place,

from where the witness Dinesh allegedly saw the accused persons and the deceased sitting together and consuming liquor. While, in the evidence of",

Dinesh (P.W.2), brick kiln, where he claims to have seen these persons sitting together was alleged to be that of Heeraram, but when the site",

inspection plan was prepared, the place of incident has been shown to be the field of Jagtaram. Taking the court through the evidence of Dinesh",

(P.W.2), Mr. Thakur urged that the place where the bricks were stacked in the field of Jagtaram is at a significant distance from the passage/road",

through which Dinesh was passing and thus, it was impossible for the witness to have seen these persons sitting together and consuming liquor. He",

further urged that Dinesh did not specify the time when he saw Nenaram and the four accused persons sitting together and thus, his evidence is fit to",

be discarded. He further urged that Nenaram went missing on 01.12.2012. All the family members came to know that Nenaram had gone missing,

immediately thereafter, but no effort whatsoever was made to lodge a prompt report with the police. For the first time, the matter was reported to the",

police as late as on 11.12.2012 by way of the missing person report. Significantly enough, the missing person report was intentionally concealed and",

thus, adverse inference needs to be drawn against the prosecution for concealment of material document/evidence. He urged that had there been an",

iota of truth in the prosecution case that Dinesh had seen the accused and the deceased in each other's company, then this fact definitely would",

have been mentioned in the missing person report. However, the concealment of the report brings the entire prosecution case under a cloud of doubt",

and in all probability, this fact was not mentioned in the document which was intentionally concealed to overcome this fatal deficiency. He further",

submitted that Obaram (P.W.1), the first informant, admitted in his cross-examination that he did not cast any suspicion on anyone in the missing",

person report and therefore, it can safely be concluded that the theory of last seen as projected in the F.I.R. and in the evidence of Dinesh (P.W.2) is",

totally cooked up.,

Regarding the evidence of recovery of the dead body of Nenaram at the instance of the accused appellant, Mr. Thakur urged that the entire sequence",

of events by which the Investigating Officer Shyam Singh (P.W.26) claims to have recovered the dead body, is fabricated. He contended that by the",

time the FIR came to be filed, the first informant could not have had any idea about the manner in which the incident took place. In this background,"

the note appended after the written report that the accused indulged into an assault upon his brother after a sudden quarrel makes it clear that the FIR,

is a post investigation document. He further urged that the accused was arrested on 13.02.2012 at 01.00 p.m. vide arrest memo Ex.P/8. The,

information Ex.P/32 under Section 27 of the Evidence Act was recorded at 01.15 p.m. and the dead body was recovered vide exhumation memo,

(Ex.P/2) prepared at 01.50 p.m. He drew the court's attention to the statements of the two medical officers Dr. Mahendra Dabi (P.W.19) and,

Dr. Hitendra Vagoriya (P.W.23) and pointed out that the Investigating Officer had already given information to the medical officers for conducting the,

postmortem even before the recovery memo Ex.P/2 was prepared. Thus, as per Mr. Thakur, the dead body had already been recovered and the",

information Ex.P/32 as well as the recovery/exhumation memo Ex.P/2 are fabricated post investigation documents, which deserve to be discarded.",

Mr. Thakur vehemently and fervently drew the court's attention to the findings recorded by the learned trial court in the impugned judgment,

contending that the same are totally conjectural and superficial.,

Mr. Thakur further pointed out that the first informant Obaram admitted in his cross-examination that the accused had no animosity whatsoever with,

Nenaram. Thus, as per him, there was no reason at all as to why they would indulge in violence with the deceased. He further submitted that the",

prosecution led the evidence of Dinesh (P.W.2) to prove the circumstance of last seen against all the four accused persons. The trial court, however,"

acquitted the three co-accused persons by distinguishing the case of the appellant solely on the basis of the evidence of recovery of the dead body,"

which by itself is fabricated. Thus, as per Mr. Thakur, the trial court was totally unjustified in segregating the case of the appellant and convicting him",

while disbelieving the evidence of the prosecution qua the acquitted accused persons. On these grounds, Mr. Thakur implored the court to accept the",

appeal, set aside the impugned judgment and acquit the appellant of the charges.",

Per contra, learned Public Prosecutor, vehemently and fervently opposed the submissions advanced by Mr. Thakur and urged that the prosecution has",

proved its case as against the appellant by leading cogent and convincing evidence forming a complete unbroken chain of circumstantial evidence. The,

witness Dinesh (P.W.2), gave wholesome and convincing evidence establishing the fact that the deceased was lastly seen in the company of the",

accused while consuming liquor in the field near the brick kiln of the accused Heeraram, whereafter he was not seen alive. After being arrested, the",

accused Heeraram gave voluntary information Ex.P/32 to the Investigating Officer Shyam Singh (P.W.26) and in furtherance of such information, the",

dead body of Nenaram was unearthed buried inside a sand pit. Only the accused appellant could have known about the place, where the dead body",

was secreted and his exclusive knowledge regarding the dead body leads to the only inference that the accused was the perpetrator of the murder. He,

urged that if at all the appellant had received the information regarding concealment of the dead body from some other source and he himself was not,

the perpetrator of the offence, he was required to take such defence and prove the same by preponderance of probabilities, but rather than making",

any such effort, the appellant did not even take such a plea in his statement under Section 313 CrPC. On these submissions, learned Public Prosecutor",

sought dismissal of the appeal and affirmation of the impugned judgment.,

We have given our thoughtful consideration to the submissions advanced at bar and have gone through the impugned judgment and carefully re-,

appreciated the evidence available on record. Suffice it to say that the case of the prosecution is based purely on circumstantial evidence in the form,

of last seen and recovery of the dead body. The fact regarding Nenaram having been murdered by use of violence was not disputed by Mr. Thakur,

and is well-established from the circumstance that the dead body was recovered buried underground. In addition thereto, we have gone through the",

evidence of the medical jurists Dr. Mahendra Dabi (P.W.18) and Dr. Hitendra Vagoria (P.W.23) and the postmortem report Ex.P/18, which clearly",

establishes that the cause of death of Nenaram, aged 25 years, was mechanical violence. However, the prosecution would have to prove the complete",

chain of circumstances to establish that the appellant was solely responsible for the murder of Nenaram. In this regard, the prosecution projected two",

circumstances so as to bring home its case. The first being last seen by virtue of the evidence of Dinesh (P.W.2) and the second being the recovery,

of the dead body allegedly made in furtherance of the information provided by the accused under Section 27 of the Evidence act.,

Before analyzing the evidence of Dinesh (P.W.2), we would like to address the contention of the defence counsel regarding the delay in lodging of the",

report and the concealment of the missing person report. In this regard, we have carefully gone through the evidence of Obaram (P.W.1), the first",

informant. He categorically stated that he lodged the missing person report on 11.12.2012 at the Police Station mentioning therein that his brother had,

not returned home since 01.12.2012 and that there was no suspicion regarding his disappearance. He asked his younger brother Dinesh, who replied",

that he had seen Nenaram at the brick stack of Heeraram in the night at about 7 to 8 o'clock. In cross-examination, Obaram admitted that he",

received information regarding Nenaram having gone missing on third day of the month, but for the first time, he reported the matter to the police on",

11th. Manifestly, if Dinesh had seen the deceased sitting with the accused persons consuming liquor and thereafter he was not seen alive, then natural",

human conduct demanded that this fact would be mentioned in the missing person report. However, Obaram categorically admitted in his cross-",

examination that it was not mentioned in the missing person report that anybody was under suspicion for the alleged disappearance of Nenaram. In,

addition thereto, the police officer who received the report appended a note below the written report (Ex.P/1) that the Missing Person Report No.15",

dated 11.12.2012 was being annexed with the file. However, SHO Dashrath Singh (P.W.25) admitted in his cross-examination that the missing person",

report was not available on the record. The concealment of this report by the prosecution agency brings a grave cloud of doubt on the fairness of the,

Investigating Officer's action and would definitely persuade the court to draw an adverse inference against the prosecution.,

On analyzing the evidence of Dinesh (P.W.2), the alleged witness of last seen, it comes forth that he stated that on the day Nenaram disappeared, he",

was going towards the brick stack. He saw Nenaram with Heeraram, Raingaram and Praveen besides the brick stack. Two to three days later, he",

came to know that Nenaram was missing. The witness did not state the time, at which he saw these persons sitting together. Obaram stated in his",

evidence that Dinesh told him that he had seen the accused and the deceased together at about 7 to 8 o'clock in the night. Definitely, darkness",

would have fallen between 07.00 p.m. and 08.00 p.m. as the incident took place in December. Dinesh was allegedly returning home from the field of,

Banshilal, where he worked. He admitted in his cross-examination that Jagtaram's field, where these persons were sitting, is at a significant",

distance from the path through which he was passing. Therefore, apparently, there was no possibility whatsoever that Dinesh would have been in a",

position to see the accused and the deceased sitting besides the brick kiln. Furthermore, from a perusal of the statements of Obaram (P.W.1) and",

Dinesh (P.W.2), it becomes clear that a serious contradiction regarding location of the brick stack, where these persons were allegedly seen sitting",

together. While Obaram alleged that Nenaram was seen sitting at the brick stack of Heeraram, on the contrary Dinesh stated in his evidence that he",

had seen Nenaram sitting at the field of Jagtaram. In addition thereto, we are prompted to observe that the trial court itself did not find the",

circumstance of last seen to be incriminating against the co-accused persons, namely, Ramesh Kumar, Praveen Kumar and Raingaram @",

Raghunathram, and acquitted them and thus, we are of the firm opinion that the evidence of Dinesh regarding the circumstance of last seen is not",

convincing and he is clearly an unreliable witness. It cannot be believed that if Dinesh had seen his brother Nenaram with the accused persons on,

01.12.2012 and he was not traceable thereafter, despite that the relatives would have kept on searching for Nenaram in the village and should have",

immediately reported the matter to the police. In addition thereto, had there been any iota of truth in the testimony of Dinesh then, there was no",

occasion for filing of the missing person report and the family members would immediately be expected to lodge the report of something untoward,

having befallen the victim. Thus, the evidence of Dinesh (P.W.2) regarding the circumstance of last seen deserves to be discarded.",

After excluding the evidence of last seen, the only circumstance which remains in the hand of the prosecution to bring home is the charge of murder is",

in the form of recovery of the dead body because the so-called eye-witness Yashwant (P.W.14) did not support the prosecution case and was,

declared hostile.,

When we peruse the written report (Ex.P/1) submitted by Obaram (PW.1) to the SHO, Police Station Nana on 13.12.2012 at 10.30 a.m., undisputably",

by that time, neither the witness nor the Investigating Officer had any clue that Nenaram had been murdered. In this background, mentioning of the",

fact in the report that the three accused had joined hands to murder Nenaram after a sudden quarrel and had secreted the dead body, creates a grave",

doubt in the mind of the court that the FIR came to be registered after the dead body had been recovered and was thus, rightly branded as a post",

investigation document by the learned defence counsel. For drawing this conclusion, we are persuaded by numerous circumstances as appearing in the",

evidence of the material prosecution witnesses. The procedure of recovery of the dead body was sought to be proved in the evidence of Shyam Singh,"

Additional S.P., Bali (P.W.26), who conducted investigation. The witness stated in his evidence that the accused Heeraram was arrested vide arrest",

memo (Ex.P/8) (prepared at 01.00 p.m.). Thereafter the accused gave the information Ex.P/32 under Section 27 of the Evidence Act to the,

Investigating Officer, which was recorded at 01.15 p.m. and in this information, the accused allegedly disclosed that he had secreted the dead body of",

Nenaram in a trench near the brick stacks in the field of Jagtaram. In furtherance of such information, the accused allegedly led the police team to the",

field of Jagtaram from where the dead body was dug out/exhumed in the presence of the SDO. The exhumation memo (Ex.P/2) was prepared at,

01.50 p.m. It can safely be concluded that only after the dead body was dug out, could the prosecution be sure that Nenaram had been murdered.",

Thus, mentioning of the fact in the written report (Ex.P/1) that Nenaram had been murdered by the accused gives rise to a strong indication that the",

dead body had already been recovered beforehand. In addition thereto, we would like to refer to the evidence of Medical Jurist Dr. Hitendra",

(P.W.23), one of the members of the medical board, who admitted in his cross-examination that on 13.12.2012, he was on OPD duty between 09.00",

a.m. and 01.00 p.m. The police gave the memorandum for postmortem to his senior Dr. Mahendra Dabi, who in turn informed him at about 01.18 p.m.",

for participating in conducting postmortem. Manifestly, as the doctor had been informed to conduct the postmortem at around 01.18 p.m., the claim of",

the Investigating Officer that the dead body was recovered at 01.50 p.m. in furtherance of the information provided by the accused is clearly falsified.,

The prosecution claims that a SDO was also present at the spot when the dead body was exhumed. However, the said SDO was not examined in",
evidence.,

In wake of the discussion made hereinabove, we are of the firm opinion that the prosecution theory regarding the dead body of Nenaram having been",

recovered in furtherance of the information provided by the accused Heeraram to the Investigating Officer under Section 27 of the Evidence act is,

totally cooked up and the said circumstance cannot be read in evidence against the accused. The entire sequence of recovery of dead body of,

Nenaram at the instance of the appellant Heeraram is a sheer piece of fabrication. The trial court committed a grave error while appreciating the,

evidence and recording the findings of guilt against the accused appellant and convicting him by the impugned judgment, which does not stand to",

scrutiny.,

As a consequence, the instant appeal deserves to be and is hereby allowed. The impugned judgment dated 16.10.2019 passed by the learned Special",

Judge, SC/ST (Prevention of Atrocities) Cases, Pali in Sessions Case No.11/2013 is hereby quashed and set aside. The accused appellant is acquitted",

of all the charges. He is in custody and shall be released from prison forthwith if not wanted in any other case.,

However, keeping in view the provisions of Section 437-A CrPC, the appellant is directed to furnish a personal bond in the sum of Rs.40,000/- and a",

surety bond in the like amount before the learned trial court, which shall be effective for a period of six months to the effect that in the event of filing",

of a Special Leave Petition against the present judgment, on receipt of notice thereof, the appellant shall appear before the Supreme Court.",