

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.196 OF 2008

STATE OF RAJASTHAN

APPELLANT

VERSUS

SANJAY

RESPONDENT

O R D E R

1. This appeal is directed against the judgment and order passed by the High Court of Rajasthan at Jaipur in Criminal Appeal No.662 of 2003, dated 24.02.2006. By the impugned judgment and order, the High Court has reversed the findings and the conclusion reached by the Sessions Court in Sessions Case No.70 of 2001 dated 13.09.2002.

2. The facts in brief are: The accused - Sanjay is a distant relative of the deceased who was aged about 10 years at the relevant date of the incident. The accused, on the other hand, was aged about 24 years. On 16.10.2000, the deceased had gone near the cinema hall for the purpose of selling biscuits. It was a routine affair for the deceased to return home in and around 8:00 p.m. It is when the deceased did not return home within the anticipated time, the deceased's father, the informant in this case had gone in search of the deceased. While searching, the informant met P.W.10 who had informed him that he saw the deceased going along with the accused person. However, the dead-body was recovered only on the next date.

3. On the information so lodged by the informant and after

completion of the investigation, a charge-sheet had been filed against the accused for the offence under Section 302 of the Indian Penal Code, 1860 ("the IPC" for short). Since the accused did not plead guilty, the trial had commenced before the learned Sessions Judge after committal of the case by the learned Magistrate.

4. In the Trial, the Prosecution had examined nearly 14 witnesses in support of its case and the defence had not examined any witnesses.

5. The two star witnesses according to the prosecution are, one Dinesh (PW-10) and Mahesh (PW-13). According to the prosecution, P.W.10 had seen the deceased going along with the accused person. P.W.13, also speaks to the effect that he saw the deceased talking to the accused person. The other witness, namely, Nilam (P.W.6), the sister-in-law of the accused in her statement under Section 161 of the Code of Criminal Procedure, 1973 had stated that the accused had confessed to the commission of crime. However, the said witness had turned hostile at the time of the recording of the evidence.

6. The Trial Court after appreciating the evidence on record has come to the conclusion that the prosecution has proved its case beyond all reasonable doubt and, accordingly, had convicted the accused for life imprisonment for an offence under Section 302 I.P.C. and also had levied fine and, in default, to undergo further imprisonment.

7. Being aggrieved by the conviction and sentence so passed by the Trial Court, the accused had filed an appeal before the High Court. The High Court, after re-appreciating the evidence on record and, in particular, the evidence of P.W. Nos.10 and 13, has come to the conclusion that the prosecution has miserably failed to prove its case and, accordingly, has reversed the findings and the conclusions reached by the Trial Court.

8. Being aggrieved by the said judgment and order passed by the High Court, the appellant -State is before us in this appeal.

9. With the able assistance of learned counsel for the parties to the *lis*, we have carefully perused the evidence of P.W.Nos.10 and 13 once over again. As pointed out by the High Court, there exists a contradiction in the statement made by P.W.No.10 in his examination-in-chief and in his cross-examination before the Trial Court. To the same effect is the evidence of P.W.No.13. In view of total contradiction in their evidence, the High Court has dis-believed the evidence of these two witnesses for the purpose of the last seen theory of the prosecution.

10. We have also carefully analyzed the evidence of P.W.Nos.10 and 13. In our opinion, the High Court is justified in coming to the conclusion that based on the evidence of P.W.Nos.10 and 13, the chain of events leading to the commission of crime is not said to be complete and therefore the accused could not have been convicted by the Trial Court.

11. After going through the entire judgment and order of the High Court as well as the Trial Court, we are of the considered opinion that the High Court has not committed any error whatsoever, which would call for our interference in this appeal. Accordingly, while rejecting the appeal, we confirm the order passed by the High Court.

12. The fee of the *Ld. amicus curiae* is assessed at Rs. 7000/-.

Ordered accordingly.



.....J.
(H.L. DATTU)

.....J.
(DIPAK MISRA)

NEW DELHI;
FEBRUARY 19, 2013.

JUDGMENT