

PART - II

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

CRIMINAL APPEAL NO. 803 of 2007

ROOP RAM & ANR.

..... APPELLANT

VERSUS

STATE OF M.P.

..... RESPONDENT

O R D E R

This appeal arises out of the following facts:

On the 10th of September, 1991, the deceased Gajraj went to the nallah outside village Hydarganj early morning to answer the call of nature. Sometime later Kewal P.W. 2 was going towards his fields and as he passed through the nallah he saw Gajraj lying unconscious with injuries on the stomach and the head. He raised an alarm on which Leela Kishan and Babu Lal PWs reached the spot. They sent Pappu alias Ram Swaroop to the house of the injured Gajraj to inform his brother Hukum Singh PW 1 and his father Sukh Ram Singh PW 5 and sister Leelabai who all immediately rushed to the place. They put Gajraj in a charpai to take him to the District Hospital, Sehore. While on the way Gajraj asked for water and on enquiry made by Hukam Singh PW 1 he informed him as well as PW 5 and PW 11 that the appellants had beaten him and a short while later he lapsed into unconsciousness and died thereafter. As per

the prosecution story, there was enmity between the parties as the deceased Gajraj was suspected of having illicit relations with the wife of appellant - Roop Ram. A First Information Report was lodged under Section 302/34 of the IPC against the appellants and they were brought to trial for the aforesaid offence. The trial court noted that the primary evidence against the accused were dying declarations made at one point of time to PW 1 Hukam Singh, PW 5 Sukhram and PW 11 Babu Lal. Reliance was also placed on the evidence of doctors though they had given conflicting statements as to the time which would have elapsed between the receipt of the injuries and the death of the victim. The trial court relying on this evidence, accordingly, convicted and sentenced the two accused under Section 302/34 of the IPC and sentenced them to undergo imprisonment for life. An appeal taken to the High Court by the accused was dismissed. The accused are here before us after the grant of special leave.

As would be apparent the only evidence against the appellants is the dying declaration made to PW 1, PW 5 and PW 11. The question that arises is whether the deceased was in a position to make a statement and whether such a statement had in fact been made. We have examined the prosecution story and find it to be highly unnatural. As per the evidence on record, Kewal PW had

seen Gajraj lying in an injured condition in the nallah and he had thereafter called the other witnesses from their residence. As per the prosecution story Gajraj had been unconscious at the time when he had been found but he became conscious for a very short time on having some water, made his declaration and then again became unconscious and ultimately died while he remained in that condition. To our mind, this story lacks credibility. It is also relevant that PW 11 Babulal is the brother in law of Roop Ram appellant as his sister Sahodrara Bai was married to him. It has come in defence that Babulal was annoyed with Roop Ram as his wife was not being permitted to return home. PWs. 1 and 5 are father and son and are the closest relatives of the deceased. Some corroboration for the dying declaration could perhaps have been found in the medical evidence. Dr. Nayazi and Dr. Satpathi who had examined the dead body were discrepant with regard to the time lag between the causing of the injuries and the time of death. This makes it difficult to believe that Gajraj had been in a condition to make his statement. We are, therefore, of the opinion that the appellants are entitled to be given the benefit of doubt. We, accordingly, allow the appeal direct their release forthwith if not wanted in any other case.

.....J
[HARJIT SINGH BEDI]

.....J
[CHANDRAMAULI KR. PRASAD]

NEW DELHI
MARCH 29, 2011.



PART - I

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CRIMINAL APPEAL NO. 803 of 2007

ROOP RAM & ANR.

..... APPELLANTS

VERSUS

STATE OF M.P.

..... RESPONDENT

O R D E R

We have heard the learned counsel for the parties.

Vide our separate reasoned order, we have allowed this appeal. The appellants who are stated to be in custody shall be set at liberty forthwith if not required in connection with any other case.

The reasoned order shall be separately placed on record.

.....J
[HARJIT SINGH BEDI]

.....J
[CHANDRAMAULI KR. PRASAD]

NEW DELHI

APRIL 13, 2011.

