

BANWAR LAL

v.

STATE OF RAJASTHAN

September 27, 1984

[Y. V. CHANDRACHUD, C. J., D. A. DESAI AND
M. P. THAKKAR, JJ.]

The Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act 1970 Section 2 (a)—Duty of Supreme Court—Appreciation of evidence—Evidence of independent witness corroborated by his identifying the accused in an identification parade and recovery of the blood stained baniyan worn by the accused and the blood stained knife, value.

The appellant along with Kanahiya Lal, Ram Niwas and Badri Lal was charged under Section 302 read with Section 34 Indian Penal Code and tried for the offence of murder of one Gyanchand by the Sessions Judge, Bhilwara, Rajasthan. The learned Judge convicted and sentenced Kanahiya Lal alone to life imprisonment and acquitted the rest. In appeal, the High Court of Rajasthan, while confirming the conviction of Kanahiya Lal as also the acquittal of two out of the three persons, convicted and sentenced the appellant also to life imprisonment. Hence the appeal under the Supreme Court Enlargement of Criminal Appellate Jurisdiction Act, 1970.

Dismissing the appeal, the Court,

HELD : Since the High Court set aside an order of acquittal and sentenced the appellant to life imprisonment it is necessary for the Supreme Court to consider whether two views of the evidence are reasonably possible and whether, the High Court was justified in setting aside the order of acquittal passed by the trial Court in favour of the appellant. Approaching the case and assessing the evidence from that point of view, it is clear, that the conviction of the appellant in view of the evidence of Bodu Lal as corroborated by the discovery of the blood stained baniyan and knife is unassailable. He is an independent and the most important witness in whose cycle rickshaw the appellant and the co-accused Kanhiya Lal travelled from the hotel of Shankar Maharaj to the scene of offence. Bodu Lal identified the appellant in the identification parade and his evidence as to the colour of baniyan worn by the appellant at the time of the incident tallied with that of the one stained with human blood and recovered from the accused. A knife stained with human blood also recovered from his person confirmed his guilt. [860E-F, 861-B-C]

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 224 of 1974.

From the Judgment and Order Dated 8.1.73 of the Rajasthan High Court in Criminal Appeal No. 776 of 1970.

Naunit Lal & Kailash Vasdev, for the appellant.

B *B.D. Sharma* for the respondent.

The Judgment of the Court was delivered by

C CHANDRACHUD, C.J. Four persons were tried by the learned Sessions Judge, Bhilwara, under section 302 read with section 34 of the Penal Code. The learned Judge acquitted three out of the four accused and convicted only one of them, namely, Kanahiya Lal. The High Court of Rajasthan confirmed the conviction of Kanahiya Lal, as also the acquittal of two out of the three persons who were acquitted by the Sessions Judge. The High Court, however, set aside the acquittal of the appellant, convicted him under section D 302 read with section 34 of the Penal Code and sentenced him to life imprisonment.

E Since the High Court has set aside an order of acquittal and has sentenced the appellant to life imprisonment, it is necessary to consider whether two views of the evidence are reasonably possible and whether, the High Court was justified in setting aside the order of acquittal passed by the trial Court in favour of the appellant. Having approached the case and assessed the evidence from that point of view, we are of the opinion that it is impossible to agree with the view taken by the trial court. The High Court has specifically dealt with reasons given by the trial court in support of F the order of acquittal and has demonstrated in a good measure as to why those reasons cannot be accepted. We concur in the High Court's appreciation of evidence.

G The incident out of which the prosecution arose happened at about 8 p.m. on September 29, 1968 at Bhilwara Rajasthan, leading to the death of one Gyanchand. The motive for the offence is alleged to be that Gyanchand's brother, Nemi Chand, owed money to accused Nos. 3 and 4, Ram Niwas and Badri Lal. Nemi Chand was evading to pay the debt which created bitterness between the two brothers on one hand and accused Nos. 3 and 4 on the other. The latter, it is alleged, procured the help of the appellant and H of Kanahiya Lal in doing Gyanchand to death.

The prosecution examined a few witnesses in support of its case but it is unnecessary to refer to the evidence of each one of them. The most important witness in the case is Bodu Lal (P.W. 2). He is an independent witness, in whose cycle rickshaw the appellant and the co-accused Kanahiya Lal travelled from the hotel of Shankar Maharaj to the scene of offence. Bodu Lal identified the appellant in the identification parade. According to his evidence, the appellant was wearing a yellow baniyan at the time of the incident. When the appellant was arrested, a yellow baniyan was found on his person and it was stained with human blood. A knife stained with human blood was also recovered from his person.

The High Court has convicted the appellant relying on the evidence of Bodu Lal, as corroborated by the discovery of the blood stained baniyan and knife. This evidence seems to us unassailable. Accordingly, we dismiss this appeal and confirm the judgment of the High Court:

S.R.

Appeal dismissed.