

**Court No. - 46**

**Case :-** CRIMINAL APPEAL No. - 1804 of 2022

**Appellant :-** State of U.P.

**Respondent :-** Khannu S/O Chetan Mishra And Another

**Counsel for Appellant :-** Shiv Kumar Pal

**Hon'ble Mrs. Sunita Agarwal,J.**

**Hon'ble Vikas Kunvar Srivastav,J.**

Heard learned A.G.A. for the State-respondent on the point of admission of the appeal preferred against the judgment of acquittal of the accused-respondents '*Khannu and Jhilmit*' passed by the learned Special Judge, Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, Varanasi dated 1.10.2021 in the Sessions Trial No.280/1997 arisen out of Case Crime No.103/1991 under Sections 304, 304-A, 308, 287, 504 of the I.P.C. and Section 3(1)(x) and 3(2)(v) of the SC/ST Act, Police Station- Jansa, District Varanasi.

Learned A.G.A. on behalf of the State has challenged the impugned judgment under appeal on the ground that the learned trial court has given undue advantage to the evidence of defence and has totally ignored the prosecution witnesses and circumstantial evidence adduced by the prosecution alongwith other grounds inter alia setforth in the memo of appeal and argued that the order and judgment of acquittal of accused-respondents is illegal.

The prosecution case is based on the direct evidence of the incident reported by the P.W.1, wife of the deceased (Devnath). According to the prosecution case, on 01.08.1991 at about 7:00 a.m., in the morning, the accused respondent Khannu and Jhilmit came to her house and forcibly took away her husband and Khettal (father-in-law in relation with her) for the work of extracting out the section pipeline of their pumping set. The accused persons assured that the electric current was disconnected and there was no risk of current but when the pipeline was being extracted on the spot, her husband alongwith Khettal and one Ram Khelawan were giving support to the pipeline raising the same upward as the accused-respondents Khannu and Jhilmit were pulling the pipeline towards upside from the first floor of the room of tubewell. Suddenly, the pipeline slipped and touched to the electric wire due to which current ran into the pipeline. Ram Khelawan was thrown away by the shock of the electric current, whereas the husband of the informant namely 'Devnath' and her relative Khettal died on the spot due to shock of electric current. The prosecution has

proposed the P.W.1 informant as eye witness of the incident alongwith the injured witness 'Ram Khelawan' as P.W.2.

P.W.1 while stating the incident in her examination-in-chief narrated that the accused-respondents forcibly took away the deceased Devnath with them for doing their work of extracting the pipeline of the tubewell and reiterated the entire incident as reported in her F.I.R. but when she was cross examined, she admitted that Khettal, who was professionally working as tubewell mechanic, went to the tubewell of the accused-respondents and deceased Devnath subsequently followed him. She has further stated that she reached on the spot after hearing the news of death of her husband and Khettal from electric current. As such, she proved herself that she was not on the spot when the incident occurred, therefore, as an eye witness, her statement was not reliable for holding the guilt of the accused-respondents.

On the other hand, P.W.2, Ram Khelawan has also stated that the deceased Devnath and Khettal were not forcibly dragged by the accused-respondents for their work in the tubewell and the incident happened by virtue of an accident on the spot. Both the witnesses, as such, have not deposed before the trial court anything against the accused-respondents which may be considered sufficient so as to make conviction under the relevant sections with which the accused-respondents were arraigned for trial.

From the perusal of the judgment impugned in this appeal, it is apparent on the face of record that there is no evidence much less sufficient evidence for recording conviction of the accused-respondent by the trial court. The appeal appears to have been preferred without any reasonable ground of challenge to the judgment.

The appeal is, therefore, liable to be dismissed at the admission stage itself.

**Dismissed** as such.

Before parting this judgment, we are compelled to note that in the list of fresh cases today, two criminal appeals have been filed by the State against the orders of acquittal.

In the present appeal and in an Criminal Appeal No.1783 of 2022, we find that both the cases were of No evidence, meaning thereby the prosecution could not bring any evidence much less cogent evidence before the trial court for conviction of the accused persons implicated there. But, we do not understand as

to under whose opinion/advice both the government appeals have been filed.

That appeal against the acquittal is not to be entertained in a mechanical manner and, moreover, the appellant being a State machinery cannot act as a private litigant.

On a query made by the court, Sri Patanjali Mishra, learned Advocate was not in a position to bring before us the opinion/advice of the competent person to file the instant appeal.

Learned A.G.A. prays for and is granted three days time to bring before us the opinion given by the concerned/competent officer, if any, to file this appeal.

The relevant government orders/circular which governs the procedure for filing the government appeal against the order of acquittal shall also be placed before the court.

On the said question only, let this matter be posted on **4.4.2022**.

**Order Date :- 30.3.2022**

Gaurav

**Court No. - 46**

**Case :-** CRIMINAL APPEAL No. - 1783 of 2022

**Appellant :-** State of U.P.

**Respondent :-** Vasdev Chauhan S/O Brahmchari And Another

**Counsel for Appellant :-** Shiv Kumar Pal

**Hon'ble Mrs. Sunita Agarwal,J.**

**Hon'ble Vikas Kunvar Srivastav,J.**

Heard learned A.G.A. Sri Patanjali Mishra, learned Advocate on behalf of the State on the admission of appeal against acquittal of the respondent 'Vasdev Chauhan' vide judgment dated 3.2.2021 of the Special Judge, Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, District- Siddharth Nagar.

The accused/respondent was arraigned with charge under Section 302 of the I.P.C. read with Section 3(2)(v) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 in Case Crime No.404 of 2014 registered in Police Station Golhaura, District- Siddharth Nagar. The informant of the case 'Bahadur' informed the police that the accused/respondent 'Vasdev Chauhan' on 15.6.2014 came to the house of informant at about 5:00 p.m. in evening, called his son Bhola @ Amar Nath (aged about 25 years) and took him away. His son did not return home and then the informant began his search. Ultimately the dead body of his son was found lying in a ditch in village 'Sekhui'. The dead body had severe injuries on face particularly in the ear and eyes. 'Vasdev' the accused/respondent though was present in his home but did not inform the first informant about him.

After registering the F.I.R. on the above information, the inquest proceeding was conducted and body was sent for post-mortem examination. Apparently, there is no direct evidence or eye witnesses account with regard to the commission of offence and the prosecution case depends upon the circumstantial evidence. The dead body was found at an open place.

As to the attending circumstances, conduct of the accused and the last seen evidence, on perusal of the judgment of acquittal impugned in the appeal it comes out that the prosecution has produced two witnesses of fact; the informant father of the deceased (P.W.1) and the real uncle of the deceased (P.W.8) who had last seen the accused with the deceased alive. Other witnesses are formal and produced before the court to prove the relevant documents prepared during the investigation of the case and the post-mortem examination of the dead body.

Motive specifically neither set forth in the written information nor proved by the prosecution witnesses in the course of their examination in the trial court. To the contrary, P.W.1, the first informant stated on oath that the deceased and accused/respondents were friends and he was not aware of any dispute or altercation between them at any point of time before the unfateful incident. The lack of motive behind the offence is material as the same would have relevance with the suspected guilt of the accused/respondent, in the absence of direct evidence as to his complicity in the killing of the deceased.

The dead body was found approximately 1 k.m. far away towards south of the village of the accused/respondent in a ditch. P.W.1 has proved the condition of dead body with multiple severe injuries on it's person with blood profused from the wounds. The place where the dead body was found, was situated 1/2 k.m. away from the village of the informant and 1 k.m. far from the village 'Kolhua'. On the spot of the scene it appeared that several persons would have been present there and consumed ganja and liquor.

The inquest report and the post-mortem report both have opined the involvement of several persons in killing the deceased brutally by violent beating and ultimately strangulating him. The medical witness (Doctor P.W.3) has assessed the death within a day since before the time of the post mortem examination on 16.6.2014. The doctor has opined that the injuries seen on the body of deceased could not be self inflicted. The witness to prove recovery has proved the recovered article alleged to have been used in killing of the deceased, the blood stained 'Brick' and the blood stained clothes of the accused on his body. But the same could not be connected with the killing of the deceased in the absence of result of forensic science examination. Only the confessional statement of the accused is on record which is self inculpatory and could not be used against the accused unless corroborated with some other material evidence.

All the evidences on record cumulatively show that several persons were present and involved on the spot where the body of the deceased was found.

The oral evidence of P.W.1 proved only the fact of accused/respondent 'Vasdev Chauhan' coming to the house of deceased at 05:00 P.M. in evening of 15.06.2014, calling him out and the deceased leaving the house with the accused. The P.W.-8 had turned hostile and did not support the prosecution case as of last seen of the deceased with the accused.

Moreover, the circumstances which might have occurred between the time when the accused left his house and before the date and time when his dead body was found half kilometre away from his house could not be explained or proved. The prosecution even has not produced witnesses who had seen the deceased with the accused/respondent before the proximate time of the incident in the vicinity of the spot where the dead body was found. No witness other than P.W.-1 who had seen the accused/respondent at his house has been produced to prove the fact of last seen the deceased with the accused. The dead body was found in an open place, not in the exclusive custody and possession of the accused, therefore, burden to explain cannot be shifted on the accused so as to relieve the prosecution from discharging its burden to prove the case beyond all reasonable doubts. The prosecution has failed to establish conclusively that the murder of the deceased was committed by the accused/respondent only and no one else.

There is no evidence much less sufficient on record which can be said 'Not Considered' or the evidence which are available but 'misappreciated' by the trial judge.

The appeal against the judgment of acquittal of respondent 'Vasdev Chauhan' in the Session Trial No.46 of 2014 arising out of Case Crime No.404 of 2014 under Section 302 I.P.C. read with Section 3(2)(v) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 registered in Police Station Golhaura, District- Siddharth Nagar is, accordingly, **dismissed** at the admission stage.

Before parting this judgment, we are compelled to note in the list of fresh cases today, two criminal appeals have been filed by the State against the orders of acquittal.

In the present appeal and in an appeal listed on Sr. No.2 of fresh cause list namely Criminal Appeal No.1804 of 2022, we find that both the cases were of No evidence, meaning thereby the prosecution could not bring any evidence much less cogent evidence before the trial court for conviction of the accused persons implicated there. But, we do not understand as to under whose opinion/advice both the government appeals have been filed.

That appeal against the acquittal is not to be entertained in a mechanical manner and, moreover, the appellant being a State machinery cannot act as a private litigant.

On a query made by the court, Sri Patanjali Mishra, learned Advocate was not in a position to bring before us the

opinion/advice of the competent person to file the instant appeal.

Learned A.G.A. prays for and is granted three days time to bring before us the opinion given by the concerned/competent officer, if any, to file this appeal.

The relevant government orders/circular which governs the procedure for filing the government appeal against the order of acquittal shall also be placed before the court.

On the said question only, let this matter be posted on **4.4.2022**.

**Order Date :- 30.3.2022**

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**Court No. - 46**

**Case :- CRIMINAL APPEAL No. - 1804 of 2022**

**Appellant :- State of U.P.**

**Respondent :- Khannu S/O Chetan Mishra And Another**

**Counsel for Appellant :- Shiv Kumar Pal**

**Hon'ble Mrs. Sunita Agarwal,J.**

**Hon'ble Vikas Kunvar Srivastav,J.**

**Order on Criminal Misc. Application No.01/2022**

Sri Patanjali Mishra, learned Additional Government Advocate states that he may be granted further time to verify as to whether the Government Order dated 15.04.2012 is still subsisting or has been modified, varied or altered as the procedure of seeking opinion of the Government Advocate, as laid down therein, is not being followed after 2018.

As prayed, put up this matter in the additional cause list on 08.04.2022.

**Order Date :- 5.4.2022**

Saurabh