

**The State of Madhya Pradesh Vs. Gorishankar**

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**SooperKanoon Citation :** [sooperkanoon.com/1045355](http://sooperkanoon.com/1045355)

**Court :** Madhya Pradesh

**Decided On :** Aug-26-2013

**Appellant :** The State of Madhya Pradesh

**Respondent :** Gorishankar

**Judgement :**

Misc.

Criminal Case No.650/2012 26.8.2013 Per : B.D.Rathi, J.

Shri S.K.Kashyap, learned Government Advocate for the applicant-State.

Heard on admission.

This is an application for grant of leave to appeal under Section 378(3) of the Code of Criminal Procedure (Code.

for short) against the acquittal of respondent of the offence punishable under Sections 302/34, 394 and 201 of the Indian Penal Code (for short, 'the IPC') and 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short the Act.).The corresponding judgment was passed by Special Judge (under the Act) at Tikamgarh in Special Sessions Trial No.16/2010 on 12.8.2011.

Prosecution story, in brief, is that on 17.10.2009 at about 12 noon Kamlapat Ahirwar, resident of Harpura informed at Police Station Budera, District Tikamgarh that when he was at home, his uncle, Chitua Ahirwar informed him that when he had gone to answer the call of nature at about 8:30 am, he saw a dead body in semi-burnt condition near the location of Narsingh Baba.

The complainant also visited the spot and found the same.

Thereafter, he informed Swarup Singh and other villageRs.who told him to lodge report.

Morgue intimation was recorded at his instance and during investigation, it was found that the dead body was of one Gorelal.

Learned Government Advocate submitted that the impugned judgment was passed without proper appreciation of evidence on record and the same deserves to be interfered with.

Having regard to the arguments advanced by the learned Government Advocate, we have gone through the impugned judgment and record of the trial Court.

Entire case of the prosecution is based upon circumstantial evidence.

Twelve witnesses were examined by the prosecution to prove its case, but only Parvati Bai (PW11).widow of Gorelal, had testified against the respondent, but her evidence, being hearsay, was discarded by the trial Court as not admissible.

She deposed that she came to knot afterwards that her husband had been taken by the respondent, but she did not disclose as to who had informed her.

Though in her cross-examination she deposed that she had herself seen the respondent accompanying her husband, but this fact did not find place in her Police Statement (Ex.D/1).Witnesses of last seen namely Hiralal (PW5).Katau (PW6).Dharamdas (PW9) and Laxman (PW10) were declared hostile and no other evidence was available against the respondent.

In the aforesaid premises, the trial Court found that the chain of circumstantial evidence was not complete and the prosecution had failed to prove its case beyond a reasonable doubt.

After appreciation of evidence, it has been held by the trial Court that prosecution has failed to establish the case against the respondent/accused and he is liable to be acquitted.

It is well settled that the judgment of acquittal should not be disturbed unless the conclusions drawn on the basis of evidence brought on record are found to be grossly unreasonable or manifestly perverse or palpably unsustainable.

Taking into consideration the reasons assigned on the face of evidence on record establishing the aforesaid facts and circumstances, the view taken by the learned trial Court was apparently a possible view.

As such, no interference is called for with the order of acquittal in question.

The application, therefore, stands dismissed in limine.

(AJIT SINGH) (B.D.RATHI) JUDGE JUDGE (and)

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