

Mohan Singh Patel and Others Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Mar-05-2001

Reported in : 2001(2)MPHT313; 2001(3)MPLJ671

Judge : Mr. S.C. Pandey, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 317, 397 and 401;
[Evidence Act, 1872](#) - Sections 30

Appeal No. : Criminal Revision No. 1221/2000

Appellant : Mohan Singh Patel and Others

Respondent : State of M.P.

Advocate for Def. : Shri Wakeel Khan, Panel Lawyer

Advocate for Pet/Ap. : Shri Arun Shukla, Adv.

Disposition : Criminal revision allowed

Judgement :

ORDER

S.C. Pandey, J.

1. This revision under Section 397/401 of the Code of Criminal Procedure is directed against the order dated 27-6-2000, passed by the Special Judge

(appointed under the Scheduled Castes & Scheduled Tribes/Prevention of Atrocities/Act, 1989) (henceforth 'the Act'), as well as Additional Sessions Judge, Narsinghpur, in Sessions Trial No. 122/99.

2. By the impugned order dated 27-6-2000, the applicants were directed to be made accused persons in exercise of powers under Section 319 of the Code of Criminal Procedure, for having committed murder of Jamna Bai wife of Rati Ram.

3. It appears from the prosecution case that in the First Information Report lodged by Rati Ram in (he Police Station, Narsinghpur he had alleged that the murder of Jamna Bai was committed by the applicants. However, the prosecution did not accept the version of Rati Ram and lodged the charge-sheet against the accused Rati Ram, the husband of the deceased Jamna Bai.

4. I have heard the learned counsel for the parties and gone through the record of the case including the impugned order.

5. During the course of the trial, it appears that there was some corroboration to the First Information Report lodged by the accused Rati Ram when P.W. 2 Dayaram, P.W. 3 Bhagwat Singh, P.W. 4 Badri Prasad and P.W. 5 Ghanshyam made a statement that they had heard from Rati Ram when they reached the spot of murder soon after death of Jamna Bai, that it were the petitioners who had caused Farsa injury to her and they had run away from the spot. It appears that the statement made by Rati Ram, as stated by the witnesses, does not amount to extra judicial confession. There can be two objections to the admissibility of the evidence. Firstly, whatever the witnesses are saying, all that is a hearsay evidence. Secondly, much more important fact is that the statement of the accused Rati Ram is not at all self-inculpatory. It is incriminatory so far as the petitioners are concerned. That is what the witnesses are corroborating. Such evidence shall be barred under Section 30 of the Evidence Act and, therefore, cannot be taken into consideration against the petitioners. In fact, if the evidence cannot be taken into consideration against the petitioners and there is no evidence on record within the meaning of Section 319 of the Code of Criminal Procedure to proceed against them. In absence of such evidence, the learned Trial Judge should not have directed issuance of non-bailable warrants of arrest against the

petitioners making them accused persons in the case.

6. As a result of aforesaid discussion, this revision succeeds and is allowed accordingly. The impugned order dated 27-6-2000 is hereby set aside. Consequently, the petitioners Mohan Singh Patel, Fakir Chand Patel and Beni Singh Patel shall not be made accused in this case as directed by the Trial Court.

7. Criminal Revision allowed.

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