

Dataram Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Aug-16-2007

Reported in : 2007(4)MPHT303

Judge : A.K. Gohil and; Sheela Khanna, JJ.

Appellant : Dataram

Respondent : State of M.P.

Advocate for Pet/Ap. : Shri. S.M.A. Naqvi

Disposition : Appeal allowed

Judgement :

A.K. Gohil, J.

1. Being aggrieved by the judgment dated 8-10-2000 of conviction under Section 302/34, IPC and sentence of life imprisonment and fine of Rs. 5,000/- and in default of payment of fine further two years' RI passed by Fourth Additional Sessions Judge, Bhind, in S.T. Nos. 87/95 and 232/94, the appellant has filed this Criminal Appeal under Section 374, Cr.P.C.

2. As per prosecution story, on 24-11-1993 one Suresh Sharma (P.W. 1) lodged FIR at P.S. Baraso at 7 p.m. that on the same day at about 5.30 p.m. he was sitting at the door of his house along with his grandfather Jeevaram. At the same

time appellant Dataram came at their house with 12 bore gun along with Naresh Mohan, Manoj Kumar, Ashok Kumar, Munnalal, Mansharam and Suresh and they started throwing stones at their house and they were also abusing. It was alleged that Jeevaram was having enmity with Dataram on account of some dispute of boundary of the land. Because of fire he and his grandfather Jeevaram both went on the roof of the house from where his grandfather asked them not to throw stones and asked why they are throwing stones. Thereafter all the accused persons surrounded their house and when his grandfather moved forward to see underneath from therof and to say that what you are doing and will you not stop, at the same time Dataram fired at him from his 12 bore gun. Jeevaram sustained firearm injury in the middle of skull and he fell down. He stained with blood and died. The fire was made by Dataram from the ground towards the roof. At that time Dataram was carrying gun of Chhotelal. Munnalal was carrying gun of Kedar, Naresh Mohan was carrying gun of Gendalal and Mansharam was carrying mouzer gun. Pooran was also there and he was carrying Topidar gun. It was his contention in the FIR that all fired from by their guns and thereafter when he saw that his grandfather has succumbed to the injuries, he also made two fires from his 12 bore gun and only then all the accused ran away from the spot. At the same time, Bheekaram and Rameshwar Dayal came on the spot, who had seen the incident. On the basis of the aforesaid report, Crime No. 22/93 was registered and after investigation, charge sheet was filed against ten accused persons. Before the Trial Court all the accused persons abjured their guilt. Their defence was that they are innocent and they have been implicated falsely. The defence of Gendalal was that he was not present on spot. The defence of Dataram was that because Jeevaram was intending to give his land to his sister's son, but Suresh was interested in grabbing his land, therefore, it is Suresh who has committed the murder of Jeevaram. His defence was also that in that day he was busy in assembly election and being Polling Agent his duty was on Polling Booth at Simar where he remained present upto 8 p.m. and only after the ballet boxes were dispatched, he came back from the polling booth and he has been implicated falsely due to enmity and political rivalry. Mansharam, Suresh, Ashok, Munnalal, Manoj Kumar, Pooranalal, Naresh Mohan also took the same defence that they were not present on the spot.

3. Prosecution examined as many as 19 witnesses and six witnesses were examined in defence. Dataram examined himself as defence witness under Section 351, Cr.P.C. Trial Court found that there is no consistency in the evidence of the prosecution witnesses so far as the other accused persons are concerned and held that the prosecution has failed to prove the case of unlawful assembly but found that the prosecution has successfully proved that appellant Dataram fired at deceased and he died and Trial Court acquitted all other accused persons from the charges under Sections 148, 302/149, IPC, but only convicted the appellant under Section 302, IPC after discarding the defence evidence, against which the appellant has filed this appeal.

4. Learned Counsel for the appellant vehemently argued and submitted that there is no reliable and clinching evidence against the appellant. Trial Court has wrongly discarded defence evidence. The prosecution has failed to prove the allegations' against appellant. No gun was seized from appellant. Kedar has deposited one gun but that gun was not referred for examination by ballistic expert. No gun was also seized from Mansharam. Court has also found that prosecution has failed to prove that Gendalal and Kedar both gave their licensed gun to co-accused Dataram to commit murder of deceased and has also acquitted Gendalal and Kedar from the charges under Sections 29 and 30 of the Arms Act. Shri S.M.A. Naqvi, learned Counsel for the appellant submitted that the Trial Court has wrongly discarded the defence version and the evidence of Dataram who was examined under Section 315, Cr.P.C. as defence witness and the other witnesses those who are Government officers to prove the plea of alibi. From the defence evidence it is clear that the appellant Dataram was present at the Poling Booth upto 8 p.m. and he was not involved in commission of crime. It was argued that except Suresh (P.W. 1), with whom Dataram is having inimical relations, evidence of other witnesses is not at all reliable and the conviction cannot be based thereon. Banwarilal (P.W. 8) and Jagadamba (P.W. 9), who is uncle of Suresh and nephew of deceased, both have not supported the prosecution, though they were declared hostile. Prosecution has also not examined Phoolabai, whose presence has been shown in the spot map. There is no compliance of the provisions of Section 157, Cr.P.C. Prosecution story is false and unnatural. Bheekaram (P.W. 2), Munshilal (P.W. 4) and Avdhesh (P.W. 10) though they were cited as eye-witnesses, but

their statements were recorded after more than 20 days of the incident. There is no plausible explanation on record for delay in recording the statements after such a long delay, whereas as per prosecution itself Bheekaram (P.W. 2) is the witness of spot map (Exh. P-2) and Munshilal (P.W. 4) is also the witness of Panchayatnama Lash (Exh. P-4), Avdhesh (P.W. 10) was also cited as eye-witness. He is the brother of Suresh, but neither his name is appearing in the FIR, nor the reason of his presence on the spot has been shown and his statement was also recorded after 20 days. Therefore, the Trial Court has committed illegality in placing reliance on the statement of the aforesaid three witnesses. Shri J.S. Suliya I.O. (P.W. 14) has also not assigned any reason, on the contrary he has submitted that the statement of all the three witnesses Bheekaram (P.W. 2), Munshilal (P.W. 4) and Avdhesh (P.W. 10) were recorded on the same day, which is contrary to record. It was also argued that Dr. Avtar Singh (P.W. 17) has opined that it is not a case of fire from down to up, but looking to the nature of injury it appears that the fire was made parallel from the front side. It was also argued that the statement of witnesses are concocted and how they were knowing that Dataram was having a gun of Chhotelal and Naresh has used the gun of Gendalal and Kedar had used the gun of Munnalal. It was also vehemently argued that as per the evidence of witnesses, 25-30 fires were made on spot but police has not seized any empty cartridges or pallets from the spot. Witnesses of prosecution have failed to explain that where the fires were hit and why the prosecution had not collected the evidence relating to the fires made by the accused persons and Shri Naqvi placing reliance on the various decisions submitted that there is no reliable and clinching evidence against the appellant and on the similar evidence Trial Court has acquitted other concerned persons, therefore this appellant is also liable to be acquitted.

5. Shri B.D. Mahore, learned P.P. for the respondent/State has vehemently supported the judgment and submitted that the appeal is liable to be dismissed.

6. After hearing the learned Counsel for the parties, we have considered the evidence on record. It is true that two witnesses Banwarilal (P.W. 8) and Jagadamba (P.W. 9), who is uncle of Suresh and nephew of deceased Jeevaram, both have not supported the prosecution and turned hostile. So far as the

evidence of Bheekaram (P.W. 2), Munshilal (P.W. 4) and Avdhesh (P.W. 10) is concerned, Bheekaram (P.W. 2) is the witness of spot map (Exh. P-2) and Panchayatnama Lash and Munshilal (P.W. 4) is the witness of Panchayatnama Lash. From this evidence, it is clear that they were present on the spot at the time when spot map and Panchayatnama Lash were prepared, but it is also admitted position on record that the statement of these witnesses were recorded on 15-12-1993 and no reason is assigned by the I.O. for late recording of their statement. Nothing has been mentioned that when these two material witnesses were present on the spot, why their statements were not recorded when they were also the eye-witnesses of the incident. We have also perused the statement of Avdhesh (P.W. 10), who is the brother of Suresh and his statement was also recorded on 15-12-1993. His name is not appearing in the FIR and his presence has not been shown in the document. Therefore the conduct of the I.O. in investigating the matter raises serious doubt on the question that all the aforesaid three witnesses were the eye-witnesses of the incident.

7. There is no dispute that deceased Jeevaram was an issueless person. Suresh is the son of his daughter (grandson) and there was a dispute between Jeevaram and Dataram about the boundary of their land. Suresh has admitted this fact in FIR. Dataram has lodged one FIR against Suresh and other three persons on 4-10-1993 before the incident that Suresh is trying to interfere in his land. The report has been placed on record as Exh. D-12. On 28-10-1993, the land was demarcated by the Naib Tehsildar, Mehgaon in the presence of the agriculturist, which is Exh. D-10. Exh. D-II is the Panchayatnama of demarcation prepared by Patwari Halka No. 56. From these documents it is clear that there was some dispute between Jeevaram and Dataram on the land. Suresh (P.W. 1) in Para 40 of his cross-examination has admitted that there was a dispute between them on account of the demarcation of the land. He has admitted that Dataram had filed an application for demarcation and land was demarcated, which proves this fact that there was enmity between Jeevaram and Dataram on account of boundary of land.

8. Bheekaram (P.W. 2) has admitted in Para 22 of his cross-examination that during life time Jeevaram has given his land to Vidyaram and father of Suresh had

filed a case against Jeevaram in which later on there was compromise and Jeevaram during his life time has not given the land to Suresh and Jeevaram had executed a will in the name of Avdhesh and Satish. It has also come in the evidence that Jagadamba, who is another claimant of the land of Jeevaram, is fighting a case of mutation against Suresh of the same land of Jeevaram. This also shows that Suresh was also claiming some right in the land of Jeevaram.

9. Banwarilal (P.W. 8), who was cited as an independent witness though was declared hostile, but he has stated that it was Suresh (P.W. 1), who fired at Jeevaram as he was present on the roof, whereas it is alleged that Dataram fired at Jeevaram from the ground. It was also the defence of appellant Dataram that it was Suresh (P.W. 1), who was interested in getting the land of Jeevaram, had fired at the roof.

10. Dr. Avtar Singh (P.W. 17) has admitted this fact that fire was made at the parallel direction and was not made from the ground floor. Though the Trial Court has not found this fact proved, but certainly this has raised serious doubt about the prosecution evidence.

11. Suresh (P.W. 1) in Para 35 of his cross-examination has admitted that he also made two fires but police has not seized either the gun or the two empty cartridges from him. He has also admitted that police had also not enquired from him that why the fires were made by him. He has also admitted that in his presence police has not seized any pallets or empty cartridges from the spot though the spot map was prepared by the police. He has stated that two empty cartridges, which were fired from his gun, were removed by him from spot. In Para 36 he has admitted that the distance between the Hanuman Mandir, from where the fire was made, and the roof, where Jeevaram received fire arm injuries, is 10-12 hand away. He has further admitted in Para 41 that the height of the wall of the house of Jeevaram is 8 ft. from the road and width from north to south is 40 ft. and there is parafit wall of bricks of around two hand height. He has further admitted that around 500-600 bricks were also kept on the wall. He has admitted that when Jeevaram tried to see towards lower side from the place where bricks were kept, he bend himself towards the lower side and received fire arm injury in middle of his

skull and thereafter 20-25 fires were also made. Though a suggestion was made that he himself fired at Jeevaram with a view to grab the land, but he denied the suggestion. In the cross-examination this witness has admitted that on that date there was polling of election in the village, though he denied that Dataram was election agent of Koksingh Narwariya, who was candidate of BJP in the election. Looking to his evidence, conduct and the fact that his evidence is not corroborated by any witnesses and particularly Dr. Avtar Singh (P.W. 17) that the fire was not made from down to up but it was made in the parallel direction, this also raises a serious doubt about the truthfulness of the evidence of Suresh (P.W. 1) because two witnesses Banwarilal (P.W. 8) and Jagadamba (P.W. 9) have not supported the evidence of Suresh. Jagadamba (P.W. 9) is the uncle of Suresh and nephew of deceased Jeevaram.

12. Considering the fact that statements of Bheekaram (P.W. 2), Munshilal (P.W. 4) and Avdhesh (P.W. 10), who is the real brother of Suresh, were recorded after more than 20 days and there is no explanation on record for this delay, therefore we are of the view that merely on the shaky statement of Suresh (P.W. 1), the conviction of the appellant cannot be affirmed.

13. In comparison of the evidence of prosecution, evidence of defence appears to be more weighty. Jagat Narayan (D.W. 1), who was the Head Master in Secondary School Igosa, Raipura and was posted on duty at Polling Station No. 122 at Village Simar as a Presiding Officer, has admitted that Dataram was polling agent of BJP candidate. He had given his agent form at 6.50 a.m. in the morning to him and he remained present upto 8 p.m. in the night at polling station and he only left the polling station after the ballot papers and box were closed. The ballot papers were closed at about quarter to 7. In the cross-examination he has admitted that polling time was from 8 a.m. to 5 p.m., but the polling officer is bound to allow all the voters to cast their votes, those who are present in the periphery of polling station. In Para 7 of the cross-examination he has admitted that from 7 a.m. to 8 p.m. appellant was present at the polling station. He has denied his relationship with appellant Dataram.

14. Ramprakash (D.W. 3), who was Patwari of Halka No. 56, Village Simar was also on duty at the polling station at Village Simar Polling No. 122. He has also affirmed that appellant was polling agent of BJP candidate and he has correctly identified Dataram in the Court. He has also stated that Dataram was present in the polling station from 7 a.m. to 8 p.m. and from where other police personnels and Chowkidar were also on duty. Being a Patwari he was also knowing deceased Jeevaram and he had seen the house of Jeevaram but in the cross-examination he has supported the defence evidence and there is nothing adverse in his evidence to disbelieve him.

15. Koksingh Narwariya (D.W. 4), who was BJP candidate in the Vidhan Sabha Election, has also affirmed that he had appointed Dataram as polling agent for the polling booth at Village Simar. After closure of the polling of polling station he also came on this polling station at about 5.30 p.m. At that time around 40-50 voters were present at the polling station and he stayed there upto 6.30, till then polling was going on and Dataram was also present there upto 6.30 p.m. The ballot box was also sealed in presence of Dataram. Though it was argued that no Panchnama was prepared for polling upto 6.30 to that effect that 40-50 voters were present within the periphery of polling area but according to us, there is no provision for preparation of any such Panchnama. If it is mentioned by the Presiding Officer that he allowed the voters those who were present within the permissible area to cast their votes, that is sufficient.

16. Dataram himself examined as D.W. 5 and in nutshell his evidence was that he was polling agent on 24-11-1993. He remained present at polling station upto 8 p.m. and he has stated that he has been falsely implicated on account of political rivalry as well as dispute over the land. He was also cross-examined that even for attending the natural call and even for taking food he did not come out from the Polling Booth. His answer was that food was made available to him inside the Polling Station and other facilities were available within the polling booth area.

17. In the background of the aforesaid prosecution evidence, defence evidence of Jagat Narayan (D.W. 1) corroborated by Ramprakash Shrivastava (D.W. 3) and Koksingh Narwariya (D.W. 4) and the evidence of Dataram (D.W. 5) cannot be

discarded, which appears to be more reliable. If Dataram was polling agent and he remained present on the polling booth from 7 a.m. to 8 p.m. in this case as per prosecution story, the incident took place at about 5.40 p.m. in the house of Jeevaram and report of the incident was lodged at 7 p. m. This shows that at the relevant time, the appellant Dataram was present at the Polling Station and this evidence in comparison to prosecute evidence of Suresh (P.W. 1), with whom Dataram was having inimical relation, appears to be more reliable and more trustworthy.

18. This defence version may not be true that Suresh (P.W. 1), who himself is the nephew, has made fire at deceased Jeevaram, as the deceased Jeevaram has given his land to some other person and was not inclined to give the land to Suresh. That alone may not be the reason to say that it was Suresh (P.W. 1), who caused fatal injury to the deceased Jeevaram or he is liable for commission of offence. But certainly, the entire prosecution story, which is not corroborated by the independent witnesses has created doubt that it was Dataram, who fired on the deceased or caused the murder of the deceased. Suresh (P.W. 1), himself slated in the Court that he made two fires and himself collected two empty cartridges from the roof and they were kept by him in his pocket but he has not disclosed this fact to the Investigation Officer, nor handed over those empty cartridges to the I.O. The Investigation Officer has not conducted any investigation on the aforesaid line that why Suresh made two fires and what happened to those two fires and in which direction they were made. It was also found that in the spot map (Exh. P2), it was not shown that where Bheekaram, Suresh, Avdhash, Munshilal were standing and from which place they had seen the incident. Nothing has been mentioned about the distance from where fire was made on Jeevaram. Prosecution has not recorded the statement of Vidyaram Sharma, Vinayakram Sharma, Thakur Baba, Baba Banwari, who were present. The height of parafit wall is about 3 and 1/2 ft. and when 20-25 fires were made from down to up, how many fires had hit the wall and spot map (Exh. P-2) is totally silent on that. It was in the prosecution evidence that fires were made towards the eastern side of the house of Jeevaram, but no empty cartridges or pallets were recovered either from the roof of the house of Jeevaram or from the passage (gali) of Jeevaram.

19. It was also pointed out that copy of the FIR was not forwarded to the Magistrate in compliance of Section 157, Cr.P.C. and prosecution has not produced any evidence on that point. Though the Trial Court has not found the same as fatal on the basis that other evidence is available against the appellant for his involvement in commission of crime, but it is true that compliance of Section 157, Cr.P.C. is mandatory. In case where the defence of the accused was that he was in the election duty and was posted at the polling station at the relevant time and he was claiming plea of alibi, under these circumstances it was mandatory on the part of the prosecution to prove the case and to prove the compliance of Section 157, Cr.P.C. Merely on the basis of non-compliance though the prosecution case cannot be thrown out, but it can raise a serious doubt about the truthfulness of the prosecution story and it can be held that in a case of these circumstances according to us the compliance of Section 157, Cr.P.C. is mandatory and non-compliance may be fatal to prosecution and on this count false implication cannot be ruled out and the prosecution has failed to prove the same. Admittedly, it had created doubt in the prosecution story. Trial Court has also considered various omissions and contradictions in the evidence of Suresh (P.W. 1).

20. In the case of State of U.P. v. Ram Bahadur Singh : (2004)9SCC310 , the Supreme Court held that it is found that oral evidence given by the eye-witnesses was inconsistent with the medical evidence given by P.W. 3. As per the oral evidence, the accused was standing at a distance of 18 to 20 feet away from the deceased when he fired. Medical evidence to the effect that tattooing and scorching was present on the adjoining skin, that could have been caused only if the firing had been done from a distance of four feet and on that ground the High Court found that there is no satisfactory explanation regarding inconsistency relating to number of gunshots hitting the deceased and regarding the distance from which gun shot was fired. It is held that it is fatal to the prosecution and prosecution case was found doubtful. Acquittal by the High Court was upheld by the Supreme Court.

21. In the case of Kanwarlal v. State of M.P. : 2003 CriLJ62 , Supreme Court held that there was serious infirmities and contradictions in prosecution case. High

Court had not appreciated the evidence objectively. According to the prosecution, several accused assaulted the D but there was only one injury on head. Considering the serious infirmities and contradictions in the prosecution case, it was held that High Court has not analyzed and appreciated the evidence objectively. It was further held that on appreciation of evidence, unless it was shown that a particular accused caused these injuries, no one can be held responsible by taking recourse to Section 149, IPC.

22. In the case of State of U.P. v. Gambhir Singh and Ors. 2005 (1) Acquittal 639 the incident took place on 15-10-1979 and the statement of P.W. 3 was recorded by the police on 27-11-1979, even though his name was appearing in the FIR as eye-witness. He projected to be independent witness but it was found that he was cousin of the deceased. P.W. 2 claimed to be with deceased since morning and P.W. 3 did not mention about presence of P.W. 1 and P.W. 2 at the time of occurrence. Supreme Court held that presence of all witnesses became doubtful if their evidence was critically scrutinized and found that there is no reason to interfere with order of acquittal recorded by the High Court.

23. In the case of Bachhu Narain Singh v. Naresh Yadav and Ors. AIR 2004 SC 3055, the Supreme Court has considered the delay in recording the statement of the witness, in which occurrence has take place at 6.30 a.m. and the investigation officer reached the place of occurrence at 7.20 a.m. There was no explanation for the delay in lodging the report thereafter, which was lodged at 9.00 a.m. If the Investigating Officer was present at the place of occurrence and the eye-witnesses were also present they would not have kept quiet till about 9.30 a.m. when, for the first time, P.W. 9, appeared before him and lodged the report. It was found that there is, therefore, serious doubt about the presence of the eye-witnesses when the Investigating Officer came to the place of occurrence, and this also casts a serious doubt as to their presence at the time, when the occurrence took place. It is not a case of the prosecution that after the occurrence the eye-witnesses had gone elsewhere and the Court considered such a delay to be fatal to the prosecution. Court further found that the evidence of other eye witness had also not inspired confidence and found that prosecution is guilty of introducing the false facts which have considerably shaken the credibility of prosecution case. Acquittal

of the accused was not found to be interfered by the Supreme Court.

24. In the case of Thanedar Singh v. State of M.P. : 2002 CriLJ254 , the Supreme Court has held that when there is no compliance of the provisions of Section 157, Cr.P.C., that raises a serious doubt about the correctness of the FIR, specially the time and date of its recording. All this would support the defence version that FIR in which the names of the accused were mentioned would have probably come into existence much later and adverse inference can be drawn against the prosecution.

25. In the case of Ashish Batham v. State of M.P. : 2002 CriLJ4676 , the Court has considered the plea of alibi. It was held that accused is presumed to be innocent till charges against him are proved beyond reasonable doubt. Mere heinous or gruesome nature of the crime is not enough to punish the accused. Mere suspicion, howsoever strong it, cannot take the place of legal proof and considering the various facts and circumstances of the case and documents relating to the presence of the accused at some other place acquitted the appellant from the charges.

26. In the case of Juffer Hussain v. State of Maharashtra : 1970 CriLJ1659 , the Supreme Court has considered the question of admissibility of the evidence under Section 27 of the Evidence Act and held:

In order that the section may apply the prosecution must establish that the information given by the appellant led to the discovery of some fact deposed to by him. It is evident that the discovery must be of some fact which the police had not previously learnt from other sources and that the knowledge of the fact was first derived from information given by accused. If the police had no information before of the complicity of accused No. 3 with the crime and had no idea as to whether the diamonds would be found with him and the appellant had made a statement to the police that he knew where the diamonds were and would lead them to the person who had them, it can be said that the discovery of the diamonds with the third accused was a fact deposed to by the appellant and admissible in evidence under Section 27. However, if it be shown that the police already knew that accused No. 3 had got the diamonds but did not know where the said accused

was to be found, it cannot be said that the information given by the appellant that accused No. 3 had the diamonds and could be pointed out in a larger crowd at the waiting hall led to the discovery of fact proving his complicity with any crime within the meaning of Section 27. The fact deposed to by him would at best lead to the discovery of the whereabouts of accused No. 3.

27. In the case of *Jayantibhai Bhenkarbhai v. State of Gujarat* : 2002 CriLJ4734 , it is held about plea of alibi:

Alibi is not an exception (special or general) envisaged in the Indian Penal Code or any other law. It is only a rule of evidence recognized in Section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant. The burden of proving commission of offence by the accused so as to fasten the liability of guilt on him remains on the prosecution and would not be lessened by the mere fact that the accused had adopted the defence of alibi. The plea of alibi taken by the accused needs to be considered only when the burden which lies on the prosecution has been discharged satisfactorily. If the prosecution has failed in discharging its burden of proving the commission of crime by the accused beyond any reasonable doubt, it may not be necessary to go into the question whether the accused has succeeded in proving the defence of alibi. But once the prosecution succeeds in discharging its burden then it is incumbent on the accused taking the plea of alibi to prove it with certainty so as to exclude the possibility of his presence at the place and time of occurrence. An obligation is cast on the Court to weigh in scales the evidence adduced by the prosecution in proving the guilt of the accused and the evidence adduced by the accused in proving his defence at alibi. If the evidence adduced by the accused is of such a quality and of such a standard that the Court may entertain some reasonable doubt regarding his presence at the place and time of occurrence, the Court would evaluate the prosecution evidence to see if the evidence adduced on behalf of the prosecution leaves any slot available to fit therein the defence of alibi. The burden of the accused is undoubtedly heavy. This flows from Section 103 of the Evidence Act which provides that the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence. However, while weighing the prosecution case and the defence case, pitted against each other, if the balance

tilts in favour of the accused, the prosecution would fail and the accused would be entitled to the benefit of that reasonable doubt which would emerge in the mind of the Court.

28. Reverting back to the facts and circumstances of this case and keeping in view of the nature of accusations made against the accused-appellant and weighing the same against the overwhelming defence evidence adduced by the accused-appellant in support of his plea of alibi, in our opinion, a reasonable doubt is created in the prosecution case so far as the participation of the accused-appellant in the incident is concerned. We have already noted, that the only evidence in this case is of Suresh (P.W. 1), who is the grandson of Jeevaram, but as we have already discussed that the evidence of Suresh (P.W. 1) is not of qualitative nature, which is capable to inspire confidence. It is also not corroborated by other ocular or medical evidence. The other witnesses, even his own relatives Jagadamba Prasad (P.W. 9) and Banwari (P.W. 8) have not supported the prosecution case. Evidence of Bhikaram (P.W. 2), Munshilal (P.W. 4) and Avdhesh (P.W. 10) is also not reliable. Though they were present on the spot, but their statements were recorded on 15-12-1993 much after the incident and no reason has been assigned. Dr. Avtar Singh (P.W. 17) has not ruled out the possibility that it is a case of gun shot fire made on the roof itself. Suresh (P.W. 1) has admitted in his evidence that he also made two fires. He did not inform the I.O. about those fires and empty cartridges collected by him from the roof were kept in pocket by him. The gun was also not seized from Suresh (P.W. 1) and no investigation was made by the I.O. on these lines, which has made the present case doubtful.

29. From the evidence of the witnesses, it is clear that around 25-30 fires were made by the accused persons. The Trial Court has also not found proved these fires, as neither pallets nor empty cartridges were recovered from the spot. Some material witnesses were also not examined. Suresh was standing behind the deceased. Doctor has denied this allegation that the fire was made from down to up. Panchayatnama Lash was prepared next date. All these infirmities in the prosecution case shows that I.O. has not investigated the matter on the lines as suggested by the defence that whether Suresh was also involved in commission of crime looking to his conduct that he was also interested in the property of

Jeevaram who is issueless. Admittedly Jeevaram was not willing to part his property with Suresh. All these facts on record create a reasonable doubt and we are of the view that the prosecution has failed to prove the allegation against appellant by producing evidence beyond reasonable doubt. Admittedly, no compliance of Section 157, Cr.P.C. was made, which has also raised a serious doubt about the lodging of the FIR in time and dated. So far as the defence version is concerned, which appears to be more truthful, we are of the view that the appellant is entitled for the benefit of doubt on that ground.

30. Consequently, this appeal is allowed and judgment of the Trial Court is set aside. The appellant is granted the benefit of doubt and accordingly he is acquitted from the charges. He is in custody. He be released forthwith if not required in any other offence.

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