

-(1)- CRR No. 4569/2018
Patiram Kaithele vs. State of MP & Another

HIGH COURT OF MADHYA PRADESH

BENCH AT GWALIOR

(Single Bench)

Criminal Revision No. 4569/2018

Patiram Kaithele PETITIONER
State of MP & Another RESPONDENTS
Versus

CORAM

Hon. Shri Justice Rajeev Kumar Shrivastava

Appearance

Shri Rishikesh Bohre, learned counsel for the petitioner.

Shri Ravindra Sharma, learned Public Prosecutor for the Respondent No.1/State.

Shri Arshad Ali, learned counsel for the Respondent No.2.

Reserved on : 20/06/2019

Whether approved for Reporting : Yes

Law laid down	Relevant paras
<i>'Alibi'</i> is a latin word, which means, 'elsewhere'. It is used when the accused takes the plea that when the occurrence took place, he was elsewhere. In such situation, the prosecution has to discharge the burden satisfactorily.	Para 8

<p>Once the prosecution has successfully discharged its burden, it is incumbent on the accused, who takes the plea of alibi, to prove it with absolute certainty. The rule of 'plea of alibi' is a rule of evidence recognized by Section 11 of the Evidence Act. When an accused takes plea of alibi, the burden to prove that plea lies on him under Section 103 of the Evidence Act and it has to be proved to the satisfaction of the Court.</p>	Para 9
<p>As the plea of alibi is a rule under the Evidence Act, therefore, such plea should be accompanied by strong independent and impartial evidence led before the Court.</p>	Para 11

ORDER

(Passed on 19th July, 2019)

This criminal revision has been filed by the petitioner under Sections 397, 401 of the Criminal Procedure Code, 1973 (CrPC), assailing the order dated 30.7.2018, passed by Special Judge (Atrocities), Gwalior in Criminal Case No. 762/2018, whereby closure report in connection with Crime No. 129/2017 registered by Police Station Bilaua, district Gwalior, has been accepted.

2. The facts in nutshell are that an FIR was lodged against the respondent No.2 at the Police Station Bilaua, District Gwalior, which was registered in Crime No. 129/2017 under Sections 353, 332, 186 of IPC read with Section 3(1)(r) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, mainly on the allegations that the petitioner is posted as a Line Helper at the Electricity Distribution Centre, Tekanpur. On 11.10.2017, as a member of vigilance team constituted for checking electricity theft he reached the house of consumer, namely, Smt. Rubi Rajawat W/o Anil Singh Rajawat (respondent No.2), where it was found that the electricity line of said house was damaged and electricity meter was showing low consumption in comparison to actual electricity load in the said house, therefore the electricity meter from the said house had been removed and was installed on an electricity poll situated in front of said house. As soon as the petitioner finished said work, the respondent No.2 reached there and started abusing and beaten the petitioner and threatened to deprive him from discharging his duty and terrorized to kill him. As the respondent No.2 is working in BSF, due to his undue influence the closure report has been filed before the Special Judge (Atrocities) Gwalior on the ground that as per the information gathered from the BSF Office, the respondent No.2/accused was present on duty on the date of said incident. The

petitioner had filed objection along with affidavit before the Special Judge. Despite, the Court below has passed the impugned order dated 30.7.2018 and accepted the closure report holding that on the date of incident the respondent No.2 was not present on the spot. Feeling aggrieved by the impugned order, the petitioner has preferred this revision petition.

3. It is submitted by learned counsel for the petitioner that the impugned order is arbitrary, illegal, malafide and contrary to the statutory provisions contemplated under the Code of Criminal Procedure. The Court below has overlooked the material fact that the respondent No.2/accused is employed and posted at the Office of BSF, Tekanpur district Gwalior and the BSF Office and respondent No.2's house are situated in the same vicinity and it cannot be denied that he could have arrived on spot soon after getting information of checking electricity connection by the vigilance team. The order passed is without application of mind, without jurisdiction and liable to be set aside. The Court below has erred in law in overlooking the well-settled law that plea of alibi can only be considered after recording of evidence and the accused cannot be discharged on the ground of such defence. Hence, the order passed is not sustainable. The police authority has not discharged its duty fairly but has acted under the influence of respondent No.2.

4. Per Contra, learned Public Prosecutor appearing for the State as well as learned counsel appearing for the respondent No.2 have opposed the submissions and have submitted that no illegality or perversity is found in the impugned order. Hence, prayed for rejection of the revision.

5. Considered the submissions put forth by learned counsel for the parties and perused the record.

6. Basically the impugned order has been passed depending upon the plea taken by the accused that at the time of incident he was on his duty and was not present at the place of occurrence.

7. In the present case, the point for determination is that, whether the plea of alibi could be considered at the time of considering closure report ?

8. '*Alibi*' is a latin word, which means, 'elsewhere'. It is used when the accused takes the plea that when the occurrence took place, he was elsewhere. In such situation, the prosecution has to discharge the burden satisfactorily. Once the prosecution has successfully discharged its burden, it is incumbent on the accused, who takes the plea of alibi, to prove it with absolute certainty. The rule of 'plea of alibi' is a rule of evidence recognized by Section 11 of the Evidence Act. When an accused takes plea of alibi, the burden to prove that plea lies on him under Section 103 of the Evidence Act and it has to be proved to the satisfaction of the

Court.

9. Plea of alibi is a rule of evidence recognized under Section 11 of the Indian Evidence Act, 1872, which reads as under :-

“11. When facts not otherwise relevant become relevant.-- Facts not otherwise relevant are relevant--

- (1) if they are inconsistent with any fact in issue or relevant fact;
- (2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

10. Further, Section 103 of the Evidence Act provides for 'burden of proof as to particular fact', which states that the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

11. As the plea of alibi is a rule under the Evidence Act, therefore, such plea should be accompanied by strong independent and impartial evidence.

12. From a bare perusal of the impugned order, it is apparent that the closure report has been accepted only on the police report submitted by the police wherein the plea of alibi was the defence of respondent No.2/accused. At the time of considering the closure report, the Judge/Magistrate has no occasion to record the evidence of the accused person/s, despite the closure report has

been accepted only on the basis of plea of alibi of the accused. The aforesaid plea has been recorded by the prosecution in its closure report merely on the basis of enquiry made by the police, thereby it was gathered from the BSF Office that the respondent No.2/accused was present on duty on the date of said incident. It is settled position of law that burden to prove plea of alibi lies upon the accused, that could only be done by leading evidence in the trial, not based upon the information gathered or affidavits filed.

13. This Court is astonished how the closure report has been accepted in such a manner without recording of evidence with regard to plea of alibi. For considering the closure report application of judicial mind is necessary. In the present case, the impugned order is lacking the application of judicial mind and the closure report is accepted beyond the norms of judicial ethics.

14. Resultantly, the revision is allowed and the impugned order dated 30.7.2018 passed in Criminal Case No. 762/2018 (State vs. Anil Singh Rajawat) is hereby set aside. The respondent No.1 is directed to investigate the matter in connection with Crime No. 129/2017 fairly and proceed further in accordance with law.

Let a copy of this order be sent to the concerning Court as well as Police Station concerned for information and compliance.

(yog)

(Rajeev Kumar Shrivastava)
Judge.