



03

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

Criminal Revision No. 358 OF 2003

(Memorandum of Criminal Revision U/s 397/401 of Cr.P.C.)

PETITIONER
INJURED
COMPLAINANT

: Lalit Mahana S/o Shrivats Mahana,
aged 25 years, resident of Pusore,
P.S. Pusore, District Raigarh, At
present residing at Jarha Bhata
Manjhwapara, Mini Basti, Bilaspur,
Tehsil and District Bilaspur (CG).

Versus

RESPONDENTS
ACCUSED
1 to 6

- : 1. Santosh Sav S/o Krishn Lal Sav,
aged 22 years, r/o Magarpara,
Marargali, Bilaspur.
2. Ganga Ram S/o Late Kirtan Sav,
aged 32 years, r/o Magarpara,
Marar Gali, Bilaspur (CG).
3. Subhadra @ Sahodara Bai W/o
(Wd/o) Late Kirtan Sav, aged 60
Years, resident of Magar Para,
Marar Gali, Bilaspur.
4. Ku. Savita Sav D/o Late Kirtan
Sav, aged 23 years, resident of
Magar Para, Marar Gali, Bilaspur.
5. Ram Bai W/o Nityanand Sav, aged
43 years, resident of Village
Pussore near Jagannath Temple
Raigarh, at present residing at
Marar Gali, Bilaspur, District
Bilaspur (CG).
6. Smt. Kanti Bai W/o Ganga Ram
aged 25 years, resident of
Magar Para, Marar Gali, Bilaspur
Tehsil and District Bilaspur (CG)
7. The State of Chhattisgarh
Through the District Magistrate
Bilaspur (CG).

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Filed on 31/12/03
by Shri [Signature]
Advocate

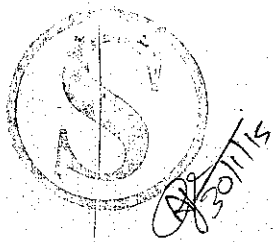
R.L.P.R.(J)

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CLERK TO THE COURT

MEMORANDUM OF CRIMINAL REVISION UNDER SECTION 397/401 OF
Cr.P.C.



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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.358 of 2003

PETITIONER/:
(Injured)/
(Complainant)

Lalit Mahana

Versus

RESPONDENTS/:
(Accuseds 1 to 6)

1. Santosh Sav
2. Ganga Ram
3. Subhadra @ Sahodara Bai
4. Ku. Savita Sav
5. Ram Bai
6. Smt. Kanti Bai
7. The State of Chhattisgarh

{Criminal revision under Section 397/401 of the Code of Criminal Procedure, 1973}

Present:

Mr. Anil Singh Rajput, counsel for the applicant.

Mr. Malay Kumar Bhaduri, counsel for non-applicants No.1 to 6.

Mr. Mahesh Mishra, Panel Lawyer for the State/non-applicant No.7.

Division Bench: -

Hon'ble Mr. T.P. Sharma and

Hon'ble Mr. C.B. Bajpai, JJ

ORDER
(27-1-2015)

T.P. Sharma, J: -

1. By this revision, the applicant has challenged legality and propriety of the judgment of acquittal dated 5-7-2003 passed by the 5th Additional Sessions Judge, Bilaspur, in Sessions Trial No.313/2001, whereby the trial Court has acquitted non-applicants No.1 to 6 of the charges under Sections 307 read with Section 34 & 302 read with Section 34 of the IPC after giving the benefit of doubt.
2. As per case of the prosecution, some incident took place between non-applicants No.1 to 6 and Smt. Ratna Mahana (PW-2) – sister of the applicant herein & deceased Sanyasi, on 6-6-2001 then she went to Mahila Thana, Bilaspur, and lodged roznamcha sanha vide Ex.P-7 at 11.55 a.m. against Ganga Ram, Savita and mother of Ganga. When the applicant and

the deceased came to know about the incident, they went to the house of Smt. Ratna Mahana (PW-2) and were coming from her house, they were talking with non-applicants No.1 to 6 about the incident at about 6.30 p.m. on same day then non-applicant Santosh caused injury by knife to deceased Sanyasi & Lalit Mahana (PW-1), the applicant herein, and caused fatal injuries. Smt. Ratna Mahana (PW-2) came to the spot. Thereafter, both the injured and the deceased were brought to hospital and police station. Lalit Mahana (PW-1) lodged FIR vide Ex.P-1 at Police Station Civil Lines, Bilaspur.

3. Applicant Lalit Mahana (PW-1) was sent for medical examination vide Ex.P-2. He was examined by Dr. Lakhan Singh (PW-10) vide Ex.P-34 and following injuries and symptoms were found on his person: -

1. General condition very poor.
2. Pulse not recordable.
3. Blood pressure 90.
4. Conscious / oriented / restless.
5. Punctured wound 1 c.m. x ½ c.m. on left supra scapular region.
6. Punctured wound 1 c.m. x ½ c.m. on left inter scapular region.
7. Punctured wound 1½ c.m. x ½ c.m. on left infra scapular region.

4. Injured Sanyasi was also examined by Dr. Lakhan Singh (PW-10) vide Ex.P-12 and following injuries and symptoms were found on his person: -

1. General condition very poor.
2. Pulse not recordable.
3. Blood pressure not recordable.
4. Pupil semi-diluted.
5. Unconscious / no verbal response.
6. Punctured wound over right infra scapular region 1½ c.m. x ½ c.m.
7. Punctured wound over left infra scapular region 1 c.m. x ½ c.m.
8. Punctured wound two in number 1 c.m. x 1 c.m. and 1 c.m. x ½ c.m. over right side lumbar vertebral region.

5. Applicant Lalit Mahana (PW-1) was admitted in the hospital and he was treated vide Ex.P-15. During the course of treatment, Sanyasi died. After

summoning the witnesses vide Ex.P-3, inquest over the dead body of the deceased was prepared vide Ex.P-4.

6. Dead body of the deceased was sent for autopsy to the Government Hospital, Bilaspur vide Ex.P-16A. Dr. G.L. Arora (PW-12) conducted autopsy vide Ex.P-16 and found following injuries: -

1. Penetrating wound 1 c.m. x 0.5 c.m. on left infra scapular area.
2. Penetrating wound 1 c.m. x 0.7 c.m. on right infra scapular area.
3. Penetrating wound 1.2 c.m. x 0.5 c.m. on right lumbar area near L4 trans. process.
4. Penetrating wound 1 c.m. x 0.6 c.m. near L4 spinal process.
5. Abrasion 1.3 c.m. x 0.5 c.m. just below chin.
6. Abrasion 2 c.m. x 2 c.m. over lateral aspect of right elbow.
7. Incised wound on right lung 1 c.m. 0.7 c.m. near entrance of main bronchus (right).
8. Incised wound on left lung 0.5 c.m. x 0.5 c.m. lower lobe, post aspect near medial border.

Cause of death was cardio respiratory arrest and death was homicidal in nature.

7. During the course of investigation, bloodstained cloth of the applicant was seized vide Ex.P-5. Patwari prepared spot map vide Ex.P-6. Non-applicant Santosh was taken into custody, he made disclosure statement of knife vide Ex.P-10 and same was recovered at his instance vide Ex.P-11. Bloodstained cloth of non-applicant Santosh was seized vide Ex.P-18. One wooden plank was seized from non-applicant Ganga Ram vide Ex.P-19. One shirt was seized from non-applicant Ganga Ram vide Ex.P-20. One wooden plank was seized from non-applicant Savita vide Ex.P-21. Clothes of non-applicant Savita were seized vide Ex.P-22. Cloth of non-applicant Ram Bai was seized vide Ex.P-23. Sealed clothes of deceased Sanyasi were seized vide Ex.P-24. Seized articles were sent for chemical examination to the Forensic Science Laboratory vide Ex.P-32 and presence of blood upon the knife has been affirmed by the FSL vide Ex.P-33. Statements of the witnesses were recorded under Section 161 of the CrPC.
8. After completion of investigation, charge sheet was filed before the Court of Chief Judicial Magistrate, Bilaspur, who committed the case to the Court of

Sessions, Bilaspur from where the 5th Additional Sessions Judge, Bilaspur received the case on transfer for trial.

9. In order to prove the guilt of the accused, the prosecution has examined as many as 13 witnesses. The accused/non-applicants No.1 to 6 were examined under Section 313 of the CrPC in which they denied the circumstances appearing against them, pleaded innocence and false implication in the crime in question. They have taken specific defence that both the injured and the deceased namely Lalit Mahana (PW-1), the applicant herein, and Sanyasi, respectively, entered into the house of non-applicants No.1 to 6, they were holding knife and they tried to assault non-applicant Gangaram and others, then with a view to save themselves, non-applicants No.1 to 6 used some force. They have also taken defence that the injured and the deceased assaulted non-applicant Savita Sav which also gave rise for exercise of the right of private defence.
10. After providing opportunity of hearing to the parties, learned Additional Sessions Judge arrived at a finding that the right of exercise of private defence was available to non-applicants No.1 to 6 and the trial Court has acquitted non-applicants No.1 to 6 by extending the benefit of doubt.
11. We have heard learned counsel for the parties, perused the judgment and record of the trial Court.
12. Learned counsel for the applicant vehemently argued that the trial Court has acquitted non-applicants No.1 to 6 on extraneous and illogical consideration. Chandni Patel (PW-7) & Faguram Patel (PW-8) were present on the spot, but they have not supported the case of the prosecution and they have been declared hostile. Their evidence clearly reveals that they were suppressing the truth, but the trial Court has placed reliance upon their evidence and thereby committed grave illegality. The trial Court has completely ignored the evidence of Lalit Mahana (PW-1), who is the applicant herein & the injured witness, and Smt. Ratna Mahana (PW-2), who is sister of the deceased, and thereby committed an illegality. As per Ex.D-3, two linear abrasions of 5" and 1" on back of left forearm and on left side of neck, respectively, have been noticed upon the body of non-applicant Ganga Ram. Considering the fact that it was trivial in nature the prosecution was not under obligation to explain the injury. Even otherwise, there was no evidence to show that the applicant and his brother entered into the house of non-applicants No.1 to 6 and have caused injuries to them. In absence of such proof and absence of availability of the right of

exercise of private defence, the trial Court ought to have convicted and sentenced non-applicants No.1 to 6 for commission of murder of Sanyasi and attempt to commit murder of the applicant.

13. On the other hand, learned counsel for non-applicants No.1 to 6 opposed the revision and submitted that this is criminal revision at the instance of private party in which the State has not chosen to file appeal. Therefore, evidence of the prosecution witnesses require minute scrutiny. Normally, finding of the trial Court is not required to be disturbed unless grave illegality is established. In the present case, the trial Court has taken the view which was possible on the basis of evidence. Therefore, by taking the view favourable to the accused, the trial Court has not committed any illegality. This is not the case in which only the conviction of non-applicants No.1 to 6 is possible. Therefore, the revision at the instance of private party has no force. Learned counsel further submitted that evidence of Chandni Patel (PW-7) & Faguram Patel (PW-8) clearly reveal that the applicant and his brother entered into the house of non-applicants No.1 to 6 and have caused injuries to them by knife and also caused injuries to non-applicant Ganga Ram and in exercise of the right of private defence, non-applicants No.1 to 6 have used some force. Therefore, the trial Court has rightly considered and acquitted non-applicants No.1 to 6.
14. The State counsel also opposed the revision.
15. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.
16. In the present case, death of deceased Sanyasi as a result of injuries sustained by him has not been substantially disputed on behalf of non-applicants No.1 to 6. Likewise, fatal injuries caused to the applicant namely Lalit Mahana (PW-1) have also not been substantially disputed on behalf of non-applicants No.1 to 6. On the other hand also, same stand established by evidence of Lalit Mahana (PW-1), Smt. Ratna Mahana (PW-2), FIR Ex.P-1, evidence of Dr. Lakhan Singh (PW-10), injury reports Exs.P-34 & P-12, evidence of Dr. G.L. Arora (PW-12) and autopsy report Ex.P-16.
17. This is criminal revision at the instance of private party. The State having right to file appeal against the judgment of acquittal has not chosen to file appeal against the judgment of acquittal. Although the revisional Court is competent to set aside the judgment of acquittal, as held by the Supreme

Court in the matter of **K. Chinnaswamy Reddy v. State of A.P.**¹, but this jurisdiction should be exercised by the High Court only in exceptional cases. While dealing with same question, the Supreme Court in the matter of **Bindeshwari Prasad Singh v. State of Bihar**² has held that in revision against acquittal at the instance of a private party, the Court would not re-appreciate evidence.

18. Admittedly, the scope of revision at the instance of a private party against the judgment of acquittal is limited and is required to be exercised in exceptional cases.
19. In the light of aforesaid proposition of law, we have to examine the evidence adduced on behalf of the prosecution.
20. While convicting the accused, the trial Court has heavily relied upon the evidence of Chandni Patel (PW-7) & Faguram Patel (PW-8). As per their evidence, they were present on the spot.
21. As per para 2 of the evidence of Chandni Patel (PW-7), he heard some sound of quarrel in front of the house of non-applicant Ganga Ram but he did not see anybody. He was declared hostile. In para 3 of his evidence, he has supported the case of the prosecution, but in para 6, he has deposed that applicant Lalit & deceased Sanyasi were holding knife, they entered into the house of Ganga Ram and were telling that they will kill non-applicant Savita and will commit rape on her, thereafter, Savita shouted for help then non-applicant Ganga Ram came out from his room and went inside the room of Savita. Faguram Patel (PW-8), another alleged eyewitness, has also substantially deposed same thing.
22. As per their evidence, firstly, they did not enter into the house of non-applicants No.1 to 6, they only heard some sound of quarrel, but in their cross-examination they have deposed that the applicant and his brother were holding knife, they entered into the house, thereafter, Ganga Ram came out from his room and entered into the room of Savita.
23. A person standing outside of the house would not be in a position to see the incident which took place inside different rooms and which by itself is sufficient to falsify their evidence. However, unfortunately, the trial Court has heavily relied upon the evidence of these two witnesses and considering the right of exercise of private defence V.K. Mishra (PW-13) has admitted that he has prepared requisition form Ex.D-3 for examination

¹AIR 1962 SC 1788

²AIR 2002 SC 2907

of accused Ganga Ram and as per medical report, the doctor has noticed one 5" long linear abrasion upon back of left forearm and one linear abrasion of 1" length over left side of neck, both were simple in nature. The injuries reveal that they are trifle in nature, therefore, even as held by the Supreme Court in **Lakshmi Singh and others v. State of Bihar**³, it does not require any explanation at the instance of the prosecution.

24. In the present case, applicant Lalit Mahana (PW-1) was present on the spot and he also sustained fatal injuries. As per his evidence, initially, he along with his brother went to the house of their sister Smt. Ratna Mahana (PW-2) and from the house of their sister they were coming back and while they were crossing in front of the house of non-applicants No.1 to 6, they were stopped by non-applicants No.1 to 6, some altercation took place, thereafter, non-applicant Santosh caused injury by knife upon the back of the deceased and also upon the back of this witness. Other non-applicants assaulted them by hands & fists. The doctor has noticed only injury caused by knife / sharp edged weapon, but has not noticed any other injury by blunt object. Even at the time of causing injury by knife normally, it was not possible for persons to cause injury by hands & fists. Defence has cross-examined this witness at length. This witness has specifically deposed that while they were coming from the house of their sister, the incident took place and non-applicant Santosh caused injury by knife to them. This evidence finds support from the evidence of Smt. Ratna Mahana (PW-2), promptly lodged FIR Ex.P-1 and medical evidence. Alleged act attributed to the non-applicants other than Santosh does not find support from the documentary or ocular or medical evidence. Applicant Lalit Mahana (PW-1) was injured witness. His presence on the spot cannot be doubted. He is brother of the deceased, but only on the ground of relation his evidence cannot be discarded, only it requires minute scrutiny.

25. Virtually, while acquitting non-applicants No.1 to 6, the trial Court has completely ignored the evidence and evidentiary value of Lalit Mahana (PW-1) & Smt. Ratna Mahana (PW-2) and on extraneous and illogical consideration of the evidence of Chandni Patel (PW-7) & Faguram Patel (PW-8), the trial Court has held that right of exercise of private defence was available to non-applicants No.1 to 6 and in exercise of the right of private defence, they have caused injuries. Aforesaid finding is unsustainable under the law. This is not the case in which the only view acquitting the

³1976 SCC (Cri) 671



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accused or availability of right of exercise of private defence was available or the view convicting any accused was not available, inter alia, evidence of Lalit Mahana (PW-1) & Smt. Ratna Mahana (PW-2) are substantive evidence and the Court would have considered their evidence.

26. While deciding the case in prospective manner and instead of considering their evidence in prospective manner, the Court has only relied upon their contradictions and omissions and has acquitted non-applicants No.1 to 6 on the ground of technicality and illegal finding of the right of private defence, and thereby committed grave illegality. Finding of the Court clearly reveals that the Court was not serious in deciding the case, rather it was serious in acquitting non-applicants No.1 to 6. Evidence of Lalit Mahana (PW-1) & Smt. Ratna Mahana (PW-2) are indicative of the fact that non-applicant Santosh was author of the crime. Considering aforesaid facts, we are unable to uphold the judgment of acquittal.
27. Consequently, the revision deserves to be allowed and is hereby allowed. The judgment of acquittal dated 5-7-2003 passed by the 5th Additional Sessions Judge, Bilaspur, in Sessions Trial No.313/2001 is hereby set aside. The case is remitted back to the trial Court for re-appreciation of evidence and after providing opportunity of hearing to the parties for deciding the case afresh
28. Parties shall remain in attendance before the trial Court on 9-3-2015.

Sd/-
T.P. Sharma
Judge

- Sd/-
Chandra Bhushan Bajpai
Judge

Soma