

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.2208 of 2000**

The State of Madhya Pradesh (now Chhattisgarh)

---- Appellant**versus**

1. Pintu Chakrawarti, S/o Shri S.K.Chakrawarti, aged about 19 years,
2. Shankar, S/o Shri Heeralal, aged about 21 years,
3. Vinod S/o Shri Heeralal, aged about 21 years,
4. Sumant, S/o Shri Jayshankar Chouhar, aged about 21 years,
5. Jitendra S/o Shri Niwas Karwad, aged about 19 years,

All 1 to 5 are R/o P.P. Yard, Charoda

6. Basant Mandavi, S/o Shri Pharku Mandavi, aged about 44 years, R/o R.P.F. Post Charoda
7. Manod Karware, S/o Shri Niwas Karwade, aged about 26 years, R/o 22, D.P.P. Yard Colony, B.M.Y. Charada, Police Station G.R.P., Bhilai, Madhya Pradesh (now Chhattisgarh)

---- Respondents

For State/Appellant	:	Shri Ashish Shukla, Government Advocate
For Respondents	:	Shri Pawan Shrivastava, Advocate

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board**Per Navin Sinha, Chief Justice****14/9/2015**

1. The present appeal assails acquittal of the Respondents ordered on 29.2.2000 by the Fourth Additional Sessions Judge, Durg in Sessions Trial No.224 of 1997 of the charges under Sections 147, 302, 149 alternately Sections 302/34, 323/149, 323/34 IPC.

2. Deceased Manoj is alleged to have been done to death by the Respondents on 21.5.1997 between 6:30 to 7:30 P.M. FIR, Exhibit P-1 was lodged by his brother PW-4, Dikeshwar stating that his brother had gone to answer nature's call at about 6:00 P.M and when he did not return, the

witness went looking for him. The brother of the witness was lying on the ground near Quarter No.22 surrounded by the Respondents. Respondent No.5, Jitendra had a cable wire with which he was assaulting the deceased while the others were exhorting. Respondent No.6, Basant Mandavi and since deceased Respondent No.7, Tejraj Bahadur, of the R.P.F., shouted that the informant was the brother of the deceased and also a thief. The Respondents prevented the witness from taking his brother to the hospital. By the time he could take his brother to the hospital at 10:00 P.M., the latter died. PW-5, Dr. P.K.Das examined the deceased and pronounced him dead. The post mortem of the deceased, Exhibit P-18 was conducted by PW-7, Dr. Anand Gupta, who found eleven injuries consisting of abrasions and contusions in addition to a lacerated wound in the central parietal region of the head 3"x2" deep to the bone and sub-dural hematoma on the head at the central parietal region opining that it was caused due to a hard and blunt substance.

3. Learned Counsel for the State/Appellant submitted that in view of the evidence of PW-2, Rajesh, the informant, PW-4, Dikeshwar, PW-10, Laxmidevi, PW-3, Gopi, PW-12, Gangabai and PW-14, Ghanshyam, the acquittal was not sustainable as the prosecution had established the Respondents as the assailants beyond reasonable doubt. Any infirmity in the Test Identification Parade was inconsequential as identification in the Court Room had primacy and could safely be relied upon. The Trial Court has wrongly disbelieved the Court identification by merely referring to a defective Test Identification Parade at the police station.

4. Learned Counsel for the Respondents has opposed the appeal submitting that the order of acquittal calls for no interference. It was submitted that the Trial Court has adequately noticed that there were major omissions between the police statements and the Court deposition of the

witnesses. There were vital contradictions between the statements of the witnesses amongst themselves. There had in fact been no Test Identification Parade in accordance with law at all and the Respondents were identified to the witnesses at the police station. The witnesses have admitted not knowing the Respondents by name and yet they have been identified by being named in the police statements of the witnesses because of which the Trial Court has rightly disbelieved the credibility of their evidence. Mere recovery on alleged confession by Respondent No.5 of a cable wire on which even blood may have been found cannot be considered substantive evidence for conviction unless and until the presence of the Respondents and their being the assailants stood established after which it may have worked as corroborative evidence. The Trial Judge has meticulously examined the evidence of all the witnesses to which Learned Counsel for the State/Appellant has referred and by analytical appreciation of the evidence has held each one of them to be unreliable. The injuries to PW-4, Dikeshwar alleged to have been sustained when he went to protect his bother, have also not been believed to have been occasioned during the occurrence. The order of acquittal being well reasoned and considered calls for no interference.

5. We have considered the submissions on behalf of the parties and applied our mind to the judgment of the Trial Court, the evidence as led by the prosecution and placed before us by Learned Counsel for the State and the Respondents.

6. The Appellate Court undoubtedly has the power to re-examine and re-appreciate the evidence in a criminal appeal. But, in a case of acquittal, this is not to be done in a routine manner to arrive at a fresh conclusion on basis of the same evidence merely because another conclusion may also be possible. An order of acquittal is not to be interfered with lightly and easily

unless the Appellate Court comes to the conclusion that there has been gross misappreciation of evidence, admissible evidence has been shut out from consideration, inadmissible evidence has been taken into consideration or that the findings are based on materials which can be termed perverse from the nature of evidence led in the trial.

7. The confession of Respondent No.5, Jitendra was marked Exhibit P-13 and the recovery of the cable wire pursuant to that, Exhibit P-14. The FSL Report regarding presence of blood on it was marked Exhibit P-21. The spot-map was marked Exhibit P-11. The blood stained earth seized from the place of occurrence was marked Exhibit P-15 and the inquest report was marked Exhibit P-10.

8. PW-1, Khorbahrin, the mother of the deceased and PW-4, Dikeshwar, who allegedly went to the place of occurrence also, has stated that she could not identify any one as it was dark and therefore she could not even identify the Respondents in the Court Room.

9. PW-2, Rajesh, who claimed to have gone to the place of occurrence along with PW-4, Dikeshwar has been disbelieved by the Trial Court considering the omissions in his 161 Cr.P.C. statement with his Court deposition that he had gone to the place of occurrence with PW-4 after he was chased away by the Respondents earlier. In his cross-examination in Court, he specifically deposed that he did not see the Respondents assaulting the deceased, but presumed that they were the ones who were assaulting. The witness further acknowledged that he did not know the names of the Respondents from before and that he never disclosed their names to the police and yet the Respondents were named. Likewise, the Trial Court from the evidence of PW-4, Dikeshwar has arrived at the conclusion that PW-2, Rajesh did not go to the place of occurrence with him contrary to the claim made by the latter while PW-4 claims the presence of

Respondent No.6, Basant Mandavi and since deceased Respondent No.7, Tejjraj Bahadur, PW-2, Rajesh had not spoken of their presence. There was thus vital contradictions between the evidence of PW-2 and PW-4.

10. PW-4, Dikeshwar claimed to have met the Respondents and made inquiries about his brother and when he was returning he suspected that the Respondents had misled him and went back to the place of occurrence claiming that he had mentioned these facts in his police statement, but which were not to be found in the same leading the Trial Judge to conclude that the witness was trying to spin a new yarn in the Court. Contrary to the fact that PW-4 named Respondent No.6 and since deceased Respondent No.7, in his cross-examination, he acknowledged that he did not recognise the Respondents from earlier. If that were so, it remained unexplained how the Respondents came to be named in the FIR. The explanation perhaps is to be found from the admission by the witness that the police had shown the Respondents to him at the police station and on basis of which he claimed Court identification.

11. PW-14, Ghanshyam claimed to have gone to the place of occurrence with PW-2, Rajesh. But, in his police statement, he had made no such disclosure and PW-2, Rajesh had not supported that PW-14 had gone with him. While PW-14 talked of meeting four boys, PW-2 talked of presence of six boys. The witness denied having named Respondents Shankar and Vinod to the police. He also talked of identification of the Respondents made by the police in the jail. The witness has also deposed that due to the darkness of the night, he could not identify the assailants at the place of occurrence. PW-10, Laxmidevi, who claimed to have gone with PW-1, Khorbahrin to the place of occurrence has rightly been disbelieved. If PW-1 had stated that due to the darkness of the night, she could not identify any one of the assailants, the claim of PW-10 for identification automatically

becomes doubtful. Likewise, PW-12, Gangabai also could not claim identification in the darkness having gone with PW-1 leading the Trial Judge to conclude that they were witnesses interested in securing the conviction of the Respondents being close to PW-1 and PW-4.

12. While PW-4, Dikeshwar claimed that he took his brother to the hospital on his cycle, PW-12, Gangabai claimed that he was taken on a rickshaw. For like reasons, the statement of PW-4 under Section 161 Cr.P.C. naming the Respondents along with Respondents No.6 and 7 is doubtful in view of his own statement that he did not recognise any one of them since earlier.

13. The Trial Court has adequately summed-up its conclusions that alleged identification of the Respondents despite the evidence of the prosecution witnesses of not knowing them since earlier and alleged identification contrary to the law held at the police station where the Respondents were shown as the accused to the prosecution witnesses, the omissions in the police statements and the Court depositions, the unreliability of the evidence of the prosecution witnesses, the recovery on any confession of the cable wire could not be considered as substantive evidence for conviction merely because some blood may have been found on it, are conclusions with which we find no reason to interfere. Insofar as the injuries of PW-4 alleged to have been suffered in the same occurrence are concerned, the Trial Judge has rightly held that in view of the unreliability of the evidence of the prosecution witnesses, the theory was not acceptable and PW-5, Dr. P.K.Das in the M.L.C. of PW-4 has found no injuries on him.

14. In conclusion, we find no reason to interfere with the order of acquittal after consideration and analytical discussion of the evidence led by the prosecution to arrive at the conclusion that the charges have not been

proved beyond reasonable doubt.

15. The appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE