

(1)

(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

C.G.CRIMINAL REVISION NO. 327/2004

APPLICANT

2227/04

Filed on 14/6/04
by Shri Anu Kachy
Advocate

Smt. Darasa Bai W/o Late Sakha Ram
aged about 66 years R/o Village
Dhawai pur Police Station Katghora
Dist. Korba (C.G.)

R to D. R. (1)
8/14/6/04

VERSUS

NON-APPLICANT

: 1. Rajesh Kumar Anant @ Bhurva
S/o Asha Ram Anant aged about
32 years R/o Village Dhawai pur
Police Station Katghora Dist.
Korba (C.G.)

2. Lalji S/o Late Mahesh Ram Anant
aged about 36 years R/o Village
Dhawai pur Police Station Katghora
Dist. Korba (C.G.)

3. State of C.G.

CRIMINAL REVISION UNDER SECTION 397/401 OF THE
CODE OF CRIMINAL PROCEDURE



(34)

HIGH COURT OF CHHATTISGARH, BILASPUR

**DB: HON'BLE SHRI T.P. SHARMA &
HON'BLE SHRI C.B. BAJPAI, JJ**

CRIMINAL REVISION No. 327/2004

Applicant

Daras Bai

Versus

Respondents

Rajesh Kumar and others

ORDER

for consideration

**Sd/-
Chandra Bhushan Bajpai
Judge**

Hon'ble Shri T.P. Sharma, J

g. agarwal

**Sd/-
T.P. SHARMA
Judge**

Post for order | 3-2-2015

**Sd/-
T.P. SHARMA
Judge**

HIGH COURT OF CHHATTISGARH, BILASPUR

**DB: HON'BLE SHRI T.P. SHARMA &
HON'BLE SHRI C.B. BAJPAI, JJ**

CRIMINAL REVISION No. 327 OF 2004

Applicant Daras Bai

Versus

Respondent Rajesh Kumar and others

Appearance:

Shri Ravi Bhagat, Advocate for the applicant.

Shri N.L. Soni, Advocate for the non-applicants No. 1 and 2.

Shri Ramakant Pandey, Panel Lawyer for the State.

ORDER

(13-2-2015)

Per C.B. Bajpai, J

1. Applicant has filed this revision challenging the order dated 29-5-2004 passed by the 3rd Additional Sessions Judge, Bilaspur (CG) in S.T. No. 127/2003 in which, accused Rajesh Kumar Anant alias Bhurva is acquitted of the charges under Sections 302, 380 and 380 read with Section 34 of Indian Penal Code (in brevity 'IPC') and accused Lalji is acquitted of the charges under Sections 307, 380 and 380 read with Section 34 of IPC for commission of homicidal death amounting to murder of Sakharam, theft in the house of Sakharam by sharing common intention for three tola gold and about cash of Rs. 6 to 7 thousand, attempted to commit murder of Daras Bai.

2. Challenge to the impugned judgment is on the ground that the trial Court has not appreciated the evidence available on record sufficient to record conviction against the non-applicants and thereby committed illegality and failed to exercise the jurisdiction vested in it.

3. Facts of the case in brief are that on 30-9-2002 informant Sohitdas, village kotwar along with other villagers reached to Police Station, Katghora and recorded FIR that he was informed by

villagers that Sakharam was murdered by some thieves and also P.W. 6 Darasbai was badly injured. The informant when reached to the house of Sakharam, he noticed relatives and villagers of the village. Sakharam died and his wife was injured. Katghora police registered the FIR Ex. P-1 against unknown person at Crime No. 229/2002. Merg intimation is Ex. P-2. The Investigating Officer left for the scene of occurrence. After giving inquest notice to the witnesses, he prepared inquest report vide Ex. P-18. Injured Darasbai was admitted in Community Health Centre, Katghora, where she was examined by P.W. 10 Dr. Suresh Narayan Pandey and found following injuries vide Ex. P-12:

- (i) A lacerated wound 4 x 5 cm x 1 cm x scalp deep obliquely centro posteriorly on right side of head at parietal region;
- (ii) A lacerated wound 7 cm x 1 cm x scalp deep, directed obliquely centro posteriorly over right side of head at 4 cm above injury No. 1.
- (iii) A lacerated wound size 4 cm x 1 cm x skin deep directed transversely oblique through and through the right ear, on right side of head, extending from front of ear to mastoid region;
- (iv) A lacerated wound size 2 cm x .8 cm through and through the pinna of right ear directed longitudinally oblique;
- (v) A lacerated wound size 2.5 cm x .5 cm x skin deep, directed longitudinally oblique on ulnar side of right forearm, middle on 1/3rd part.

Injuries No. 4 and 5 are of simple nature. He referred the patient to Govt. Hospital, Korba.

4. On the same day, the dead body of Sakharam was sent for autopsy vide Ex. P-19. P.W. 11 Dr. Hosiyar Das Dahire conducted autopsy and found following injuries vide Ex. P-14:-

- (i) Incised wound size 1.5 x 1" on front side of right ear parietal and temporal region deep to the bone.
- (ii) Incised wound 2 x 1 x 1 cm on right right side of back of ear and mastoid region.

On internal examination the doctor noticed fracture of right



temporal bone.

Injuries were caused by hard and blunt object and were ante mortem. Cause of death was shock due to hemorrhage and head injury.

5. Blood stained soil and plain soil were seized from the spot vide Ex. P-3. Blood stained clothes of accused Rajesh was seized vide Ex. P-4 and blood stained cloth from accused Lalji was seized vide Ex. P-5. Non-applicant No. 1 and Non-applicant No. 2 gave disclosure statements vide Ex. P-7 and Ex. P-8 and an axe and a battle axe were recovered at their instance vide Ex. P-9 and 10 respectively. The doctor opined vide Ex. 15 that the injuries found could be caused from the seized weapon. Patwari prepared spot map vide Ex. P-23.

6. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure (in brevity 'Code'). The seized articles were sent for chemical examination to FSL vide Ex. P-27. The FSL confirmed presence of blood in the weapon seized from the non-applicants and other articles. Origin of blood could not be determined as they are disintegrated as per serologist report Ex. P-31.

7. After completion of investigation, police filed charge sheet before the Judicial Magistrate First Class, Katghora who in turn committed the case to the Court of Sessions, Bilaspur. Learned Additional Sessions Judge received the case on transfer and conducted trial.

8. * In order to prove the guilt of the non-applicants, prosecution examined 19 witnesses in all. Statements of non-applicants were recorded under Section 313 of the Code wherein they denied the circumstances appearing against them, pleaded innocence and false implication in the crime in question. Non-applicants also examined two defence witnesses namely D.W. 1, Asharam Satnami and D.W. 2 Vishnu Prasad Satnami. As per both these defence witnesses, Shanni Kumar informed them in the night that some thieves entered into his house and murdered Sakharam and injured Darasbai.

9. After hearing both the parties, learned Additional Sessions Judge acquitted both the non-applicants by giving them benefit of doubt and further as the prosecution failed to prove its case against the non-applicants, against which the injured victim P.W. 6 Darasbai preferred this revision and challenged the legality and propriety of the order.

10. Challenge is made on the ground that the trial Court committed illegality in passing the order of acquittal. The trial Court ignored the material available on record which is sufficient to prove the guilt of the non-applicants as P.W. 2 Shanni Kumar and P.W. 6 Darasbai have categorically stated that the non-applicants killed deceased Sakharam and injured Darasbai. Police recorded statement under Section 161 of the Code of injured Darasbai on the same day which goes to show that P.W. 6 Darasbai without undue delay disclosed the guilt of the non-applicants to the police. There was no reason for false implication as she well identified the non-applicants. The eye-witness also saw and deposed in categorical terms against the non-applicants. His police statement was also recorded without any delay which also goes to show that the evidence of both the witnesses inspires confidence and is trustworthy, reliable and admissible. The trial Court failed to appreciate the entire evidence and merely on the basis of minor discrepancies rejected the evidence of eye-witness and injured witness. There was glaring evidence against the non-applicants. The judgment is completely erroneous and against the law resulting into miscarriage of justice. Hence the injured victim P.W. 6 Darasbai by filing this criminal revision prayed that the judgment of acquittal passed by the trial Court be set aside and suitable order in the interest of justice may be passed.

11. I have heard learned counsel for the parties and perused the judgment and record of the Court below.

12. Learned counsel for the applicant duly supported the revision petition and submitted that by ignoring the evidence of P.W. 2 Shanni Kumar and P.W. 6 Darasbai the trial Court committed glaring illegality. Statements of the witnesses were

recorded without undue delay wherein they specifically stated about the role of the non-applicants before the police. There was no reason for false implication. Though the FIR and merg were lodged against the unknown persons but as the informant was not the eye-witness or before lodging the FIR and merg, eye-witness did not inform him regarding the incident, the informant merely informed regarding the commission of the offence to set the wheels of law into motion. On the same day the police examined material witnesses including injured eye-witness. Their statements under Section 161 of the Code are duly corroborated by their Court statements which also goes to show that they have not falsely implicated the non-applicants.

13. Learned counsel for the applicant further submitted that no specific question was put to the non-applicants under Section 313 of the Code regarding the incriminating piece of evidence narrated against them by P.W. 2 Shanni Kumar and P.W. 6 Darasbai. Therefore, the non-applicants were not having reasonable opportunity to answer the same. The trial Court acquitted the non-applicant without putting all those evidence to non-applicants in the statement under Section 313 of the Code, merely on the basis of some minor omission and contradiction. Acquittal is not well founded. The trial Court committed illegality and impropriety while acquitting the non-applicants. Hence revisional court may pass suitable orders.

14. Per contra, learned counsel for the non-applicants opposed the petition and submitted that on the basis of the entire evidence, learned trial Court rightly acquitted the non-applicants. Non-applicant Rajesh helped the injured Darasbai. He took her to government hospital. If he took part in the incident then there was no reason for him to help P.W. 6 Darasbai which goes to show that he had not committed murder of Sakharam. Statements of P.W. 2 Sanni Kumar and P.W. 6 Darasbai do not inspire confidence that is why the trial Court acquitted the non-applicants. As per settled law, this Court cannot convert the order of acquittal into conviction. Further this Court has no authority to order for retrial. He relied on



the judgment of Supreme Court in Bindeshwari Prasad Singh alias B.P. Singh and others -v- State of Bihar reported in AIR 2002 SC 2007 in which it is held that if an order of acquittal is challenged by private party in the revision, the revisional court is not justified in re-appreciating the evidence and record different conclusion and retrial cannot be ordered. He further relied on Venkatesan -v- Rani and another reported in AIR 2013 SC 3320 wherein it is held that no power is vested in high court to convert a finding of acquittal into one of conviction.

15. Learned counsel further submitted that on the basis of entire evidence, learned trial Court has acquitted them. There is no scope for interference. Hence the revision may be dismissed.

16. In order to appreciate the arguments advanced on behalf of the parties, we have perused the evidence adduced by the parties and record of the trial Court.

17. Sub-section (3) of Section 401 of the Code provides that nothing in this section shall be deemed to authorize a High Court to convert a finding of acquittal into one of its conviction. In the matter of Venkatesan (supra), same legal proposition was reiterated by Hon'ble Supreme Court that high court cannot convert a finding of acquittal into one of conviction.

18. As provided in Section 401 (1) of the Code, the High Court can exercise any of the powers conferred on a court of session. As per provision of Section 397 of the Code, High Court may call for and examine the record of any proceeding before any inferior criminal court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed. Therefore, this court has jurisdiction to look into the correctness and propriety of any finding.

19. So far as Section 313 of the Code is concerned, it shall be the duty of the trial court that an opportunity be given to the accused persons to explain any circumstance appearing in the evidence against him. If any circumstances appearing against accused is not explained by the accused, conviction or acquittal, as



the case may be, may be vitiated. Circumstances of the present case go to show that the trial Court has utterly failed to seek an explanation from the non-applicants about the evidence appearing against them in the prosecution case. By not doing so specifically in view of statements of P.W. 2 Sanni Kumar and P.W. 6 Darasbai, the trial Court has committed an illegality.

20. So far as appreciation of evidence is concerned, the witnesses on the same day without undue delay informed the police about the incident. Therefore, it eliminates the scope for false implication. The evidence adduced by P.W. 2 Sanni Kumar and P.W. 6 Darasbai was not properly assessed by the trial court and thereby trial Court committed illegality. Help by the non-applicants to P.W. 6 Darasbai in her treatment does not itself eliminate the possibility of his taking part in the crime. In our considered view, the trial Court while appreciating the evidence of P.W. 2 Sanni Kumar and P.W. 6 Darasbai has committed illegality and impropriety in reaching to the conclusion that these witnesses are not trustworthy, truthful and reliable.

21. So far as case law in Bindeshwari (supra) is concerned, in asence of any legal infirmity either in the procedure or in the conduct of the trial, high court may not be justified to interfere in exercise of its revisional jurisdiction but this cited case law is distinguishable. If there is legal infirmity or glaring irregularity, High Court is fully justified to remand the case to correct the wrong. In the present case, the trial court committed glaring irregularity therefore interference by this court is required in the interest of justice. Hence the cited case law in the matter of Bindeshwari (supra) is of no help to the non-applicants.

22. As discussed above, it would be proper to exercise revisional jurisdiction and to direct the trial Court to put all circumstances which are appearing against the non-applicants in the statements of P.W. 2 Sanni Kumar and P.W. 6 Darasbai in a specific way under Section 313 of the Code and thereafter if necessary after affording opportunity to adduce evidence, the trial court to pass an order afresh.



42

23. Consequently the revision is allowed. The judgment of acquittal dated 29-5-2004 passed by the trial Court is hereby set aside. The trial is remanded back to the trial Court to afford an opportunity to the non-applicants after procuring their presence to explain the circumstances appearing in the evidence against them particularly in the statements of P.W. 2 and P.W. 6 and thereafter obtain answer as expected under the provisions of Section 313 of the Code. The trial Court may allow the parties to adduce additional evidence with due process of law, if deem fit, and decide the case afresh as per due procedure of law.

Sd/-
T.P. SHARMA
Judge

Sd/-
Chandra Bhushan Bajpai
Judge