

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 1260 OF 1999

The State of M.P. (now Chhattisgarh), through the District Magistrate,
Sarguja (Ambikapur)

... Appellant

Versus

1. Chamanram, S/o Motka Ram, aged 52 years,
 2. Shriram, S/o Chamanram Rajwar, aged 20 years,
 3. Rambharos, S/o Moharsai Rajwar, aged 28 years,
 4. Ram Sureti alias Amrut, S/o Moharsai Rajwar, 22 years,
 5. Sukhdev S/o Dhooran Rajwar, aged 20 years,
- All Respondents R/o Village Parsodi, P.S. Ambikapur, District
Sarguja.

... Respondents

For Appellant-State	:	Mr. Anupam Dubey, Dy. Govt. Advocate.
For Respondents	:	Mr. Sushil Dubey, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

05/07/2016

1. The present Criminal Appeal has been preferred challenging the judgment dated 10.8.1998 passed by the Judicial Magistrate Second Class, Ambikapur in Criminal Case No.211 of 1998, acquitting the Respondents of the charges under Sections 147, 325, 149, 323, 149 IPC.
2. Case of the prosecution in brief is that on the date of incident i.e. on 1.1.1996 in the night at around 9:00 pm, the Respondents-accused persons is said to have assaulted the complainant, Khulur Ram (PW-1) causing injuries upon him. An FIR in this regard was lodged before the Police Station, Ambikapur on 2.1.1996 at around 4:45. Subsequently, a case was registered against the accused persons and put to trial in Criminal Case No.211 of 1998 before the Judicial Magistrate Second Class, Sarguja. The Court below after recording of the evidence, vide impugned judgment dated 10.9.1998 acquitted the accused persons of the

charges that were levelled against them, leading to the filing of the present appeal by the State.

3. Assailing the impugned judgment, learned Counsel for the Appellant-State submits that there were ample evidence led on behalf of the prosecution but the Court below has not properly appreciated the same and has in a mechanical manner taken a liberal view and acquitted the Respondents/accused persons. He further submits that the complainant (PW-1) himself has been examined before the Court below and he has specifically named the accused persons to have assaulted him and his deposition also has not been properly considered by the Court below. It was further submitted that the medical evidence has also been led by the prosecution to substantiate the injuries sustained by the complainant Khulur Ram (PW-1) which also has not been properly appreciated by the Court below.

4. Learned Counsel for the State next submitted that the delay in lodging of the FIR which has been taken as one of the vital factors for acquittal is not proper, legal and justified for the reason that the incident is of the night of 1.1.1996 and the report was lodged on the very next day and therefore apparently there is no delay in the lodging of the FIR and the finding in this regard is therefore bad in law.

5. Per contra, Shri Sushil Dubey, learned Counsel for the Respondents/accused persons submits that after a period of about 18 years after the impugned judgment of acquittal having been passed, it would not be proper at this juncture for taking an adverse view against the Respondents. He further submits that even otherwise on merits it is a case where there were discrepancies found by the Court below in the evidence of the prosecution so far as identifying each of the accused persons who

have allegedly assaulted the complainant thus creating doubt in the mind of the Court.

6. It was further submitted that the delay in the lodging of the FIR is a vital factor as the FIR was lodged on the second day and that too had been lodged in the evening and there is no proper explanation for not lodging the FIR during the day time. It was again submitted that the evidence which has come before the Court below evidently establishes the fact that there was some property dispute between the two groups for long which was pending and therefore that itself shows that there were inimical relationships between the two groups and there were all possibilities of the accused persons to have been falsely implicated in the case hence there is no proper, cogent evidence to convict the accused persons. He further submits that taking into consideration the discrepancies which the Court below has found there is a great element of doubt which arose in the mind of the Court, and the law so far as a criminal case is concerned the benefit of doubt always goes to the accused persons and the Court below having exercised the same it cannot be said to be bad in law.

7. Considering the rival contentions put forth by the Counsel for the parties and taking note of the finding of the Court below particularly the fact that there is a contradiction so far as the statement of the complainant, Khulur Ram (PW-1) in respect of Rambharos attacking him with a *tangi* whereas Banafar Ram (PW-2) has deposed before the Court that Rambharos was armed with a *lathi* is a clear indication that they have not clearly seen the accused persons. Further, the incident was of the night at around 9:00 pm which shows that it was dark at that time for the accused persons to have clearly identified. Furthermore, the delay in the lodging of the FIR has not been properly explained and taking all these facts into consideration, if the Court below has extended the benefit of doubt to the

accused persons the same cannot be said to be bad in law or contrary to the evidence which has come on record. Accordingly, in the opinion of this Court, no good case has been made out by the State for interfering with the impugned judgment.

8. The Criminal Appeal being devoid of merits, the same is dismissed.

Sd/-
(P. Sam Koshy)
Judge

/sharad/