

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 618 of 2006**

Badri Prasad Garhewal, aged 57 years, son of late Shri Moti Lal Suryawanshi, resident of Jatiya Talab, Jarhabhata, Bilaspur, police station Civil Line Bilaspur, tehsil and district Bilaspur (CG)

---- Revisioner

Versus

1. Mohan Suryawanshi, aged 20 years, son of Shri Ram Kishun Suryawanshi, resident of Jarhabhata, Bilaspur, police station Civil Line Bilaspur, tehsil and district Bilaspur (CG)
2. Ram Kushal Suryawanshi, aged 35 years, son of Shri Bakhari Suryawanshi, resident of Jarhabhata, Bilaspur, police station Civil Line Bilaspur, tehsil and district Bilaspur (CG)
3. Darash Lal Suryawanshi, aged 28 years, son of Shri Gajanand Suryawanshi, resident of Jarhabhata, Bilaspur police station Civil Line Bilaspur, tehsil and district Bilaspur (CG)
4. Narad Suryawanshi, aged 21 years, son of Shri Deen Dayal Suryawanshi, resident of Jatiya Talab, Jarhabhata, Bilaspur, police station Civil Line Bilaspur tehsil and district Bilaspur (CG)
5. Ganesh Suryawanshi, aged 32 years, son of Shri Hardeo Suryawanshi, resident of Jatiya Talab, Jarhabhata, Bilaspur, police station Civil Line Bilaspur, tehsil and district Bilaspur (CG)
6. Guddu alias Shiv Dayal Suryawanshi, aged 35 years, son of Jarhabhata, Bilaspur, police station Civil Line Bilaspur, tehsil and district Bilaspur (CG)
7. State of Chhattisgarh through the police station Civil Line Bilaspur, District Bilaspur (CG)

---- Respondents

For revisionist	:	None.
For Respondents No. 1 to 6	:	Mr. A.K. Yadav, Advocate.
For Respondent No. 7	:	Mr. Vivek Sharma, Govt. Adv..

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Chandra Bhushan Bajpai

CAV ORDER**Per Chandra Bhushan Bajpai, J****18/1/2016**

1. Being aggrieved by the judgment dated 10-8-2006 passed by the 1st Additional Sessions Judge, Bilaspur whereby and whereunder learned

trial Court has acquitted respondents No. 1 to 6 of the charges framed against them under Sections 147, 148, 452/149, 302/149, 323/149 (for 4 counts) of the Indian Penal Code by affording benefit of doubt, the applicant, father of deceased Ramu @ Ramkumar has filed the instant criminal revision under Section 401 of the Cr.P.C.

2. The revision is filed on the ground that the order of acquittal in favour of respondents is very lenient, insufficient, against law and facts. The prosecution has proved the case against the respondents beyond reasonable doubt. The prosecution witnesses are trustworthy. Common object of the culprits have been proved and the circumstances of the case are speaking the truth. Ocular evidence is trustworthy, reliable and finds corroboration from the medical evidence and prompt FIR and therefore, the finding of acquittal of the respondents could not safely be recorded by learned trial Court. The respondents who are close relatives entered into the house of the deceased in the night armed with sharp edged and other deadly weapons, inflicted multiple injuries causing multiple fracture on the vital parts of the body of the deceased and fled from the spot together which goes to demonstrate their common object. There were prior inimical terms, they were searching opportunity for revenge. Hence the trial Court should have convicted them with the aid of Section 149 of the IPC. Eye-witnesses are trustworthy, natural and trial court ought to have believed the version of injured eye-witnesses. The trial Court has erred in holding that there are contradictions in the statements of witnesses. The trial Court ought to have held that contradiction is minor in nature. A young man has been brutally murdered. The trial Court ought to have awarded capital punishment to the accused. The prosecution has duly proved that 11 accused persons assembled unlawfully armed with deadly weapon. Hence the revision may be allowed and the respondents be awarded capital punishment for the charges leveled against them.
3. Brief facts of the case are that on 26-11-2004 at about 8 pm near Jatia Talab, Jarhabhata, PS Civil Lines, Bilaspur, all the 11 accused persons had formed an unlawful assembly armed with deadly weapon axe, hockey stick, steel plate and other arms on account of earlier dispute

and entered into the house of Ramu @ Ramkumar, dragged him out, assaulted him by axe and other weapons. They also caused injuries to P.W. 5 Ku. Naina, P.W. 6 Dev Kumari , P.W. 7 Badri Prasad and Vinay Kumar. Injured Ramu @ Ramkumar was taken to CIMS, Bilaspur and thereafter while shifting to a nursing home, Ramu @ Ramkumar succumbed to his injuries. P.W. 5 Ku. Naina, sister of injured Ramu alias Ramkumar lodged FIR (Ex. P-8) before Civil Lines police which in turn registered the Crime No. 1038/04 under Sections 307, 147, 148, 149 and 323 of IPC at about 8.00 pm against all the 11 accused persons. After death of Ramu @ Ramkumar at about 10.30 pm on 26-11-2004, P.W. 6 Devkumari intimated about death to the police. Police recorded merg vide Ex. P-9 on 27-11-2004 at 2.00 am. During investigation, P.W. 5 Ku. Naina, P.W. 6 Devkumari, P.W. 7 Badri Prasad and Vinay were sent for medical examination. P.W. 3 Dr. B.K. Vaishnav examined above injured persons and noticed following injuries :-

- (I) Injured Ku. Naina (P.W. 5) – Ex. P-4
Lacerated wound over occipital region 1 x ½ x ½ cm, pain in body.
- (ii) Badri Prasad (P.W. 7)- Ex. P-5
Abrasion over left scapular region ½ cm x ½ cm.
- (iii) Vinay Ex. P-6
Abrasion over right foot (calcaneal region) ½ cm x ½ cm.
Abrasion over left leg.
- (iv) Devkumari (P.W. 6) Ex. P-7
Abrasion on right wrist joint
Contusion over right shoulder joint
- 4. The body of the deceased was sent for autopsy. Dr. Pritam Sahani (P.W. 17 in first phase of trial) conducted autopsy on the body of the deceased and vide Ex. P-19 noticed following injuries :-
 - i. LW 7 cm long- 2 cm to right of mid line in sagital plane, 5 surgical stitches.
 - ii. LW 5 cm long, behind right ear, running downwards and backwards

overlying right mastoid process, 3 surgical stitches.

- iii. LW 5 cm x 1 cm x bone deep on vertex of skull, no surgical repair
- iv. LW 5.4 cm long, 5 surgical stitches overlying occipital protuberance
- v. LW 5 cm perpendicular to injury No. 4 and terminating over occipital protuberance 4 surgical stitches
- vi. LW 4 cm long 3 stitches vertical along long axis of arm on lateral aspect of right arm just over insertion right deltoid.
- vii. Contusion 6 cm x 1 cm transversely oriented overlying left acromion process
- viii. Contusion 6 cm x 2 cm transversely overlying medial end of upper border of left scapular.
- ix. Multiple small contusions overlying right scapula
- x. L.W. 11 cm long vertical oriented, skin deep, right side of back 9.5 cm to right of mid line over mid scapular line.
- xi. Contusion 6.5 cm x 0.5 cm along long axis of right forearm just below right cubital fossa 3.5 cm to left of mid line.
- xii. Grazed abrasion 10 cm x 5 cm over lateral aspect upper ½ of right forearm.
- xiii. Multiple contusions and laceration over left knee and lower ½ of both legs and dorsum of both feet.

The autopsy surgeon opined that cause of death is extensive craniocerebral injury hemorrhage and coma, injuries are homicidal in nature caused by a combination of sharp heavy cutting weapon and hard and blunt weapon.

5. The doctor also answered to the query vide Ex. P-20 regarding two axes sent for examination and opined that the injuries noticed over the body of Ramu alias Ramkumar may be caused by those axes.
6. Police during investigation recovered weapons used, blood stained clothes etc. from the accused persons. After completion of investigation, charge sheet was filed before the Additional Chief Judicial Magistrate, Bilaspur who in turn committed Criminal Case No. 413/2005 (State -v- Mohan and 10 others) to the court of Sessions.

Learned Additional Sessions Judge, Bilaspur received the case on transfer for trial.

7. During first phase of trial, the respondents No. 1 to 6 were charged under Sections 147, 452, 302/149 and 323/149 (for four counts), IPC as other five accused persons were absconding.
8. During trial, 18 witnesses were examined by the prosecution, thereafter statements of the respondents No. 1 to 6 were recorded under Section 313 of the Cr.P.C. in which they denied the circumstances appearing against them in the prosecution's case, pleaded innocence and false implication in the crime in question.
9. The court below after hearing respective parties and considering the material available on record, by the impugned judgment dated 10-8-2006 acquitted respondents No.1 to 6 by affording them benefit of doubt. As per trial Court, the prosecution failed to prove its case beyond reasonable doubt.
10. After pronouncement of the impugned judgment, co-accused persons namely Sharad, Chhota @ Ramdayal, Smt. Sita Bai, Smt. Devki Bai and Smt. Sarita Bai surrendered before the trial Court and charges were framed against them under Sections 147, 148, 452, 302/149, 323/149 (for four counts), IPC and thereafter in the second phase of trial 12 prosecution witnesses and one defence witness were examined. The trial Court convicted and sentenced the accused person under different sections and sentenced accordingly. Cri. A. 713/2008 (Sharad and anr. -v- State) and Cri. No. 697/2008 (Sarita Bai -v- State) have also been heard and are being disposed of by the common judgment separately.
11. The revisionist/father of the deceased had preferred the instant criminal revision against the respondent No. 1 to 6. This court admitted the revision for consideration and fixed for hearing on 3-11-2006. Thereafter no one represented the revisionist. As the revision had been admitted for consideration, as per provisions of Section 401 of the Cr.P.C., 1973, the powers of the appellate court as provided in the Section 386 of the Cr.P.C. are applicable and attracted. Hence the revision has to be disposed of on its merit. Same cannot be dismissed

for want of prosecution. Also learned counsel for the respondent No. 7/ State submitted that as they prosecuted the respondents No. 1 to 6 before the court below therefore, they are supporting the revision.

12. Heard learned counsel for the respondent No. 7/State and respondent No. 1 to 6 and perused the record.
13. Learned counsel for the state submitted that eye-witnesses P.W. 5 Ku. Naina, P.W. 6 Devkibai and P.W. 7 Badriprasad gave detailed description of the incident that the accused/respondents along with other co-accused committed trespass in the house of the deceased and dragged him out and thereafter assaulted by sharp edged weapon and hard and blunt object. The witnesses who attempted to save the deceased were also beaten by the accused/respondents and other co-accused persons. MLC of eye-witnesses and one Vinay Ex. P-4, 5, 6 and 7 are duly supported by P.W. 3 Dr. B.K. Vaishnav. The doctor corroborated the injuries noticed on the body of P.W. 5 Naina, P.W. 6 Devkumari, P.W. 7 Badriprasad and one Vinay. Thereby the statements of the eye-witnesses and injured eye-witnesses are duly corroborated by medical evidence. P.W. 17 Dr. Pritam Sahni conducted post mortem vide Ex. P-19 and noticed multiple injuries, multiple fractures on the body of the deceased and also opined cause of death as homicidal, injuries were antemortem caused by sharp edged weapon and hard and blunt object thereby the statements of the eye-witnesses were corroborated by the post mortem Report Ex. P-19, query report Ex. P-20. The presence of all the accused/respondents, their participation, formation of unlawful assembly is proved. Presence of the accused/respondents is not suspicious, duly supported by medical evidence. Looking to prompt FIR naming all the accused/respondents, they ought to have been convicted with the aid of Section 149 of the IPC which provides that in case of offence committed by any member of an unlawful assembly every other member of such assembly shall be guilty of the offence. The court below was very technical and the same is without any proper appreciation, foundation of facts. It would be hard to discredit the prosecution witnesses. Mere non-filing of spot map does not make the case suspicious. Statement of P.W. 3 Dr. B.K. Vaishnav cannot be

doubted simply due to wrong mentioning the date in the receipt by the concerned constable. The arguments made by the accused/ respondents cannot be accepted looking to the entire facts and circumstances. Witnesses are not expected to narrate each and every act of the incident as they are hardly literate, labours. Both the parties are neighbour. Identification is not questioned. Incident started all of a sudden. Hence minor contradiction in the statements of the witnesses as to who was holding which weapon is natural and not fatal. There is no substance in the argument that if the injured had not been shifted to another hospital, he could have survived. Learned counsel further submitted that manipulation in the FIR for the material part is not proved. Compliance of Section 157 of the Cr.P.C. is proved. In the absence of any specific question for the same, it may not be held that copy of the FIR was not sent to concerned Magistrate. The injured eye-witnesses remained very firm. They are duly corroborated and also supported by PM report and the MLC report. Their common object and motive was also proved. Few days back, there was quarrel and dispute regarding use of cracker. It is further submitted that the judgment passed by the trial Court is illegal, perverse and improper hence by invoking the jurisdiction vests with the High Court for revisional power, the judgment be set aside and the court below be directed to do needful as per provision of the Cr.P.C.

14. Learned counsel for the State placed reliance on **Kumar and others -v- Karnataka Industrial Cooperative Bank Limited and another** reported in (2013) 11 SCC 668 wherein Hon'ble Apex Court has held in para 6 that :

“6. The revisional jurisdiction of a High Court is conferred by the provisions of Section [397](#) read with Section [401](#) of the Code of Criminal Procedure. While Section [397](#) empowers the High court to call for the record of any proceeding before any inferior criminal court within its jurisdiction to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order and such power extends to suspension of execution of any sentence or order and also to release the accused on bail Under Section [401\(3\)](#) Code of Criminal Procedure there is an express bar in the

High Courts to convert a finding of acquittal into one of conviction. While the revisional power under the Code would undoubtedly vest in the High Court the jurisdiction to set aside an order of acquittal the same would not extend to permit the conviction of the accused. The High Court may, however, order a retrial or a rehearing of the case, as may be, if so justified. [vide **Sheetala Prasad and Ors. v. Sri Kant and Anr.** 2010 (2) SCC 190 and **Johar and Ors. v. Mangal Prasad and Anr.** 2008 (3) SCC 423]. In view of the above we do not see how the orders of the High Court dated 16/11/2010 and 22/3/2011 converting the acquittal of the accused Appellants to one of conviction and the sentences imposed on each of them can be sustained in law.”

15. Further reliance is placed on **Sheetala Prasad and others -v- Sri Kant and another** reported in (2010) 2 SCC 190 where Hon'ble Apex Court held in para 12 as under :

“12. The High Court was exercising the revisional jurisdiction at the instance of a private complainant and, therefore, it is necessary to notice the principles on which such revisional jurisdiction can be exercised. Sub-section (3) of Section 401 of Code of Criminal Procedure prohibits conversion of a finding of acquittal into one of conviction. Without making the categories exhaustive, revisional jurisdiction can be exercised by the High Court at the instance of private complainant (1) where the trial court has wrongly shut out evidence which the prosecution wished to produce, (2) where the admissible evidence is wrongly brushed aside as inadmissible, (3) where the trial court has no jurisdiction to try the case and has still acquitted the accused, (4) where the material evidence has been overlooked either by the trial court or the appellate court or the order is passed by considering irrelevant evidence and (5) where the acquittal is based on the compounding of the offence which is invalid under the law.”

16. Further reliance is placed on **Suryakant Dadasaheb Kitali -v- Dilip Bajrang Kale and another** reported in (2014) 13 SCC 496 wherein Hon'ble Apex Court has held that the scope of revisional jurisdiction is limited. It is only where the material evidence has been overlooked by

the trial Court or the Sessions Court, the High Court in revisional jurisdiction can interfere with the finding of acquittal. The High Court should confine itself only to the admissibility of the evidence and should not go further and appraise the evidence. Further reliance is placed on **Johar and others -v- Mangal Prasad and another** reported in (2008) 3 SCC 423.

17. Learned counsel for the State submitted that in the present case admissible evidence is wrongly brushed aside. Admissible evidence has been overlooked by the trial Court and the judgment of acquittal is based on considering irrelevant evidence. Hence the court below may be directed to rehear the matter and to pass judgment afresh.
18. Per contra, learned counsel for the respondents No. 1 to 6/ accused opposed the arguments advanced on behalf of the State and argued that if the evidence of the court below is perverse then only the High Court is required to interfere. No perverse finding is recorded by the court below. The findings are recorded on the basis of appreciation of entire evidence. There are 3 FIRs but only one FIR has been adduced in evidence. Hence case is doubtful. Copy of the FIR is not sent to the concerned Magistrate. Hence there is no compliance of Section 157 of the Cr.P.C. The FIR is ante dated. There is overwriting in the time of the incident. The FIR is not written on the numbered pages thereby it is doubtful. Hence the court below held the FIR as suspicious. Statements of the witnesses under section 161 of the Cr.P.C. were recorded after 13 days. It makes their statements suspicious. The statements of the eye-witnesses were contradictory. There are material omission and contradiction. The place of incident is changed. The benefit for contradiction in the statements of witnesses should go to the respondents. P.W. 7 Badriprasad does not say regarding his MLC examination. Injured Vinay was not examined. Prosecution has failed to prove common intention of the respondents and other co-accused. All the respondents and co-accused are close relatives. Even those who were residing at other places were also falsely implicated. How the incident started, who assaulted whom is suspicious. Different witnesses have stated different facts. Bedu Suryavanshi whose name was mentioned as eye-witness was not

examined by the prosecution. The spot map is not proved. Bhurva was not made accused. The respondents are falsely implicated. The other two FIRs were suppressed by the prosecution. Constable wrote different dates and time of the MLC while receiving the copy of the same. P.W. 5 Naina says that she had lodged the report. P.W. 6 Devkumari and P.W. 7 Badri Prasad also claimed to have lodged the report. Hence there are contradictory statements. It is submitted on behalf of the respondents that as there is no illegality or impropriety in the judgment of acquittal passed by the trial Court, the revision may be dismissed and the impugned judgment may be affirmed.

19. Learned counsel for the respondents/accused placed reliance on **Bindeshwari Prasad Singh -v- State of Bihar** reported in 2002 Law Suit (SC) 744 wherein in a case of murder, the trial court recorded finding that prosecution had not proved its case beyond reasonable doubt and acquitted the appellants against which an appeal was preferred by State which was also dismissed against which a revision was preferred before High Court. The same was allowed, acquittal was set aside and the case was remitted to the Sessions judge for retrial, Hon'ble Supreme Court allowed the appeal on the ground that unless there is manifest illegality committed by the trial court, the High Court cannot interfere in the order of acquittal, no illegality was committed by the trial Court, there was no justification for High Court to interfere in exercise of its revisional jurisdiction.
20. Further reliance is placed on **Thandu @ Arun -v- State of CG** reported in 2015 LawSuit (Chh) 272 wherein in para 24 it has been held that :-

“24. True it is that in the FSL report blood stains were noticed on almost all the articles seized from the accused/appellants and the same were also sent to the serologist, but no document has been filed by the prosecution to establish that the blood stains were of human blood and further that they were matching with the blood group of the deceased. Undoubtedly, failure to detect the origin of blood does not mean that the blood stuck on seized articles would not have been human blood at all. It would depend on facts and circumstances of each case and effect of above

circumstances has to be judged in the light of facts situation of each case. In the case in hand, we have already held the discoveries and seizure as doubtful and once the dictovery fails, there would be literally nothing which would support the prosecution. Thus, we are of the view that the solitary circumstance of blood stains found over the articles allegedly seized from the possession of the appellants would not be sufficient against the appellants to hold them guilty for an offence like murder.”

21. Further reliance is placed on **Chandrappa -v- State of Karnataka** reported in 2007 LawSuit (SC) 155 wherein Hon'ble Apex Court held that there was no consistency in evidence as to injuries sustained by prosecution witnesses- if two views are possible on the basis of evidence on record and one favourable to the accused has been taken by the trial Court, it ought not to be disturbed by the appellate court.
22. Reliance is also placed on **Venkatesan -v- Rani and anr.** Reported in 2013 LawSuit (SC) 728 wherein in para 6, it has been held that

“6 To answer the questions that have arisen in the present case, as noticed at the very outset, the extent and ambit of the revisional jurisdiction of the High Court, particularly in the context of exercise thereof in respect of a judgment of acquittal, may be briefly noticed. The law in this regard is well settled by a catena of decisions of this Court. Illustratively, as also chronologically, the decisions rendered in **Pakalapati Narayana Gajapathi Raju v. Bonapalli Peda Appadu** (1975) 4 SCC 477, **Akalu Ahir v. Ramdeo Ram** (1973) 2 SCC 583, **Mahendra Pratap Singh v. Sarju Singh** AIR 1968 SC 707, **K. Chinnaswamy Reddy v. State of A.P.** AIR 1962 SC 1788 and **Logendranath Jha v. Polai Lal Biswas** AIR 1951 SC 316 may be referred to. Specifically and for the purpose of a detailed illumination on the subject the contents of paras 8 and 10 of the judgment in the case of **Akalu Ahir v. Ramdeo Ram** (supra) may be usefully extracted below.

8. This Court, however, by way of illustration, indicated the following categories of cases which would justify the High Court in

interfering with a finding of acquittal in revision:

- (i) Where the trial Court has no jurisdiction to try the case, but has still acquitted the Accused;
- (ii) Where the trial Court has wrongly shut out evidence which the prosecution wished to produce;
- (iii) Where the appellate court has wrongly held the evidence which was admitted by the trial Court to be inadmissible;
- (iv) Where the material evidence has been overlooked only (either) by the trial Court or by the appellate court; and
- (v) Where the acquittal is based on the compounding of the offence which is invalid under the law.

These categories were, however, merely illustrative and it was clarified that other cases of similar nature can also be properly held to be of exceptional nature where the High Court can justifiably interfere with the order of acquittal.

10. No doubt, the appraisal of evidence by the trial Judge in the case in hand is not perfect or free from flaw and a Court of appeal may well have felt justified in disagreeing with its conclusion, but from this it does not follow that on revision by a private complainant, the High Court is entitled to re-appraise the evidence for itself as if it is acting as a Court of appeal and then order a re-trial. It is unfortunate that a serious offence inspired by rivalry and jealousy in the matter of election to the office of village Mukhia, should go unpunished. But that can scarcely be a valid ground for ignoring or for not strictly following the law as enunciated by this Court.”

- 23. Learned counsel for the accused/respondents No. 1 to 6 prayed that the case laws cited above are applicable in the present case and the instant criminal revision may be dismissed as not maintainable.
- 24. As per settled law, if there is admissible evidence wrongly brushed

aside and/or where admissible evidence has been overlooked by the trial Court and the order is passed by considering irrelevant evidence, the High Court can pass orders in such cases for re-hearing under the revisional jurisdiction, High Court can call for the record to satisfy itself as to correctness, legality or propriety of any finding though it is expressly barred to convert a finding of acquittal into that of conviction but the High Court can direct for re-hearing of the matter by the court below if justified and while appreciating the High Court should confine itself only to admissibility of evidence and should not go further and appraise the evidence. If the material evidence has been overlooked by the trial Court then the revisional jurisdiction of the High Court may be invoked.

25. Upon minute examination of the evidence adduced by the prosecution and perusal of order of acquittal passed by the court below, it appears that the court below has overlooked entire material available while recording the findings of acquittal by affording the benefit of doubt to the respondents/accused. The court below got hyper technical while appreciating the material evidence and the findings recorded by the trial Court is perverse and it requires interference. We are of the considered view that the court below failed to appreciate the entire evidence adduced and thereby arrived at a conclusion which cannot be held proper. The prosecution had adduced evidence regarding role of the respondents No. 1 to 6 and their participation. Prosecution has also adduced evidence regarding promptly lodging FIR, MLC, compliance of Section 157 of the Code, injuries noticed in the post mortem report, query report stating certain facts, seizure of the axe and other article from the respondents, formation of assembly for a targeted act, presence of the accused persons, their participation, unquestioned identity, earlier dispute motive and object. The trial Court failed to appreciate the entire evidence. The trial Court failed to appreciate social status, IQ and the fact that the witnesses may notice certain facts only for which they were alert. When an incident took place all of a sudden, the witness is not supposed to narrate the same like a computer. The trial court failed to appreciate that the witnesses are hardly literate, engaged in the job of labour, other likewise job. It

was required from the trial Court to appreciate the entire material before it and thereafter to record its findings.

26. The case law cited on behalf of respondents No. 1 to 6 are not of any help to the respondents at the moment for the reasons that scope of revisional court is limited. The revisional court cannot go into and appreciate entire merits which is the subject matter of the trial Court. We are of the view that the findings and the order of acquittal passed by the court below for the respondents are perverse as the court below overlooked the material on record and not appreciated the entire evidence adduced by the prosecution.
27. Consequently, the revision succeeds. The impugned judgment dated 10-8-2006 passed by the court below is hereby set aside. The matter is remanded back to the trial Court with a direction to the trial court to rehear both the parties and to pass the judgment afresh.

Sd/-
(Pritinker Diwakar)
Judge

Sd/-
(Chandra Bhushan Bajpai)
Judge