

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P No. 283 of 2016**

Khusiram Agrawal S/o Late Shri Ramswoop Agrawal Aged About 66 Years R/o Deviganj Road, Ambikapur, District Surguja Chhattisgarh.

---- **Petitioner****Versus**

1. Satish Das S/o Keshav Prasad Das Aged About 22 Years R/o Namna Kala, Near Power House Ambikapur, Police Station Ambikapur, District Surguja Chhattisgarh.
2. Rabinson S/o Jeevan Masih Aged About 21 Years R/o Namna Kala, Near Power House Ambikapur, Police Station Ambikapur, District Surguja Chhattisgarh.
3. Jitendra Choudhary S/o Rajendra Choudhary Aged About 22 Years R/o Namna Kala, Near Power House Ambikapur, Police Station Ambikapur, District Surguja Chhattisgarh.
4. Sharawan Soni S/o Arjun Soni Aged About 20 Years R/o Namna Kala, Near Power House Ambikapur, Police Station Ambikapur, District Surguja Chhattisgarh.
5. Manoj Paswan S/o Suresh Aged About 18 Years R/o Namna Kala, Near Power House Ambikapur, Police Station Ambikapur, District Surguja Chhattisgarh.
6. Anuj Singh @ Mundalu S/o Avadesh Singh Aged About 22 Years R/o Namna Kala, Near Power House Ambikapur, Police Station Ambikapur, District Surguja Chhattisgarh.
7. Rajesh Kumar S/o Gaya Prasad Mishra Aged About 20 Years R/o Fundurdihari, Police Station Ambikapur, District Surguja Chhattisgarh.
8. The State Of Chhattisgarh Through Station House Officer, Police Station Ambikapur, District Surguja Chhattisgarh.

-----**Respondent**

For Petitioner:

Shri Sunil Otwani, Advocate.

For Respondent No.8/State:

Shri UKS Chandel, Panel Lawyer.

Hon'ble The Chief Justice**Hon'ble Shri Justice P. Sam Koshy****Order on Board**

Per Navin Sinha, Chief Justice

30/03/2016

1. The present application has been filed for leave to appeal against acquittal of the Respondents from the charge under Section 307 IPC, confining conviction to Sections 452/147 IPC.

2. Learned Counsel for the Petitioner submits that Khushiram Agrawal, PW-3, Ramchandra, PW-4 and Ritesh Agrawal, PW-6 are injured witnesses.. Merely because their MLC may have been done at the Holy Cross Hospital, Ambikapur, a private hospital and not at a Government Hospital, could not have been a ground to doubt the injuries having been caused to them during the occurrence especially when Dr. Amrit Topno, PW-17 from the Holy Cross Hospital was examined and was not disbelieved by the Trial Court. It was next submitted that the injuries on the three witnesses were inter alia in the temporal and occipital region, which are sensitive parts of the human body. There can never be direct evidence of intention or common object and in most cases, it has to be culled out from all surrounding circumstances such as the manner of assault, weapon of assault etc. It was lastly submitted that Dr. Amrit Topno, PW-17 had opined that death could have followed from injuries if proper medical treatment was not given in time as per the query report of the police, Exhibit P-26.

3. We have considered the submissions.

4. An order of acquittal should not be lightly interfered with unless there has been gross miscarriage of justice, mis-appreciation of evidence, the findings are perverse or no reasonable person on basis of the same materials would have come to such a conclusion, apart from any other relevant ground that may be available. Even if two views are possible, in an acquittal appeal

that favourable to the accused should be taken unless it would lead to manifest and gross injustice.

5. The Respondents along with two others are alleged to have entered into the shop and indulged in a fracas causing injuries. Ramrati Devi, PW-13 has deposed that she could not say with certainty how many of the Respondents had actually entered the shop. The mere fact that some of the Respondents may have been present but may not have entered the shop cannot lead to a conclusive presumption of their being the assailants. Moreover, in view of the original nine accused, there is no specific accusation as noticed by the Trial Judge also from the evidence that which one of the accused assaulted which one of the three witnesses, in what manner and with what weapon. The allegations are omnibus. Furthermore, Ritesh Agrawal, PW-6, in his cross-examination, has acknowledged that on the day of the occurrence in the morning, there had been an altercation with certain others also.

6. There would be a difference between an injury caused either with intention to cause death or the knowledge that death was likely to ensue to attract the applicability of Section 307 IPC. True it is that intention will have to be gathered from surrounding circumstances as was submitted on behalf of the Petitioner. But to attract the provision, it is the injury which must be sufficient to cause death. The evidence of Dr. Amrito Topno, PW-17 is not that the injuries caused to the witness were sufficient in the ordinary course of nature to cause death but that if timely medical attention was not given, death could have followed due to excessive bleeding. Nothing prevented the Petitioner to obtain the statement of the prosecution witness that the injuries were sufficient in the ordinary course of nature to cause death if proper medical attention was not given as distinct from death due to bleeding and not

because of the injury itself if that was the case.

7. We therefore find no reason to interfere. The application for leave to appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE

Priya