

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 592 of 2006

1. Shivcharan, S/o Bharat Ram, aged about 25 years, R/o Aurapara, P.S. Patna, Distt. Koriya (CG)

---- Applicant/Complainant

Versus

1. Sanjay Kumar, S/o Ram Sajeevan Sahu, aged about 23 years.
2. Ram Sajeevan Sahu, S/o Gopal Ram Sahu, aged about 41 years.

Both residents of village Tendua, P.S. Patna, Distt. Koriya (CG)

3. State of Chhattisgarh, through Station House Officer, P.S. Patna, Distt. Koriya.

---- Respondents

And

Acquittal Appeal No.263 of 2010

1. State of Chhattisgarh, through District Magistrate, Baikunthpur, Distt. Koriya.

---- Appellant

Versus

1. Sanjay Kumar, S/o Ram Sajeevan Sahu, aged about 23 years, Occupation-Student.
2. Ram Sajeevan Sahu, S/o Gopal Ram Sahu, aged about 41 years, Occupation-Service (Shiksha Karmia)

Both residents of village Tendua, P.S. Patna, Tahsil Baikunthpur, Distt. Koriya (CG)

---- Respondents

Appearance:

Shri Sanjay Agrawal & Smt. Reena Singh, Advocates for complainant/ applicant.

Shri Vivek Sharma, Government Advocate for the appellant/State.

Shri Amiyakant Tiwari, Advocate for the respondents.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgement

Per P. Diwaker, J

17/11/2016

1. Since the above acquittal appeal & criminal revision have been filed against the judgment dated 31.7.2006 passed in S.T. No.430/05 by which the Additional Sessions Judge, Baikunthpur, District Koriya (CG) acquitted the respondents No.1 & 2 of the charges under Sections 302/34, 506 (II) & 294 IPC, the same are being disposed of by this common judgment.
2. The brief facts of present case are that there has been long standing land related dispute between the respondents No.1 & 2 and deceased Sukhmaniya Bai. On 16.8.2005 at about 3.00 p.m. on account of said land related dispute, respondent No.- Sanjay Kumar caused single spade injury on the temporal region of the deceased as a result of which she fell down. Respondent No.1 has also assaulted Surendra (PW-6). Matter was reported to the police by Shivcharan (PW-3) based on which FIR (Ex.P-3) for commission of offence under Sections 294, 506, 323/34 IPC was registered against the accused persons. Sukhmaniya Bai was medically examined by the doctor (PW-14) vide Ex.P-13 who noticed one lacerated wound of 2 ½ x ½ x 1" size on the left side of face and blood coming out from the nostrils. Deceased succumbed to the injuries during the course of treatment on 8.8.2005. Merg Intimation (Ex.P-7) was recorded on 8.8.2005 at the instance of Bharatram (PW-8). Inquest (Ex.P-2) was prepared. Body of deceased was sent for post-mortem to the Community Health Centre, Baikunthpur where Dr. A.K. Karan (PW-19) conducted post-mortem examination over the body of deceased on 8.8.2005 and gave his report Ex.P-19 opining that cause of death was

coma due to head injury and the death was homicidal in nature.

3. On completion of investigation, charge sheet was filed against the accused persons for the offence punishable under Sections 302/34, 506 (2) & 294 IPC following by framing of charges by the Court below under above sections.
4. In order to hold the accused persons guilty, the prosecution had examined as many as 20 witnesses. Statements of accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case and pleaded innocence & false implication. They have examined two defence witness in support of their case.
5. After hearing counsel for the parties and considering the material available on record, the trial Court by the impugned judgment, acquitted the accused persons of all the charges levelled against them.
6. Learned counsel for the complainant/applicant and the State counsel submit that;
 - the trial court has erred in law in acquitting the respondents by disbelieving the statements of PW-3 to PW-7. Minor contradictions in the statements of eyewitnesses ought to have been ignored by the trial Court.
 - once the respondents have admitted their guilt in their memorandums leading to recovery of relevant articles, there was no occasion for the trial Court to acquit them of the charges leveled against them.
 - that as per FSL report blood was found on the weapon of offence spade and therefore, the same being a strong incriminating circumstance against the respondents, the trial Court ought not to have acquitted them.

7. On the other hand, counsel appearing on behalf of the respondent No.1 & 2 supported the judgment of acquittal and submits that;-

- none of the prosecution witnesses has supported the prosecution case and it is apparent from their statements that alleged eyewitnesses of the incident reached on the spot after the incident had taken place.
- though as per FSL report, blood was found on the seized articles but in absence of serological report confirming origin of the blood, the said circumstance also loses its significance
- while the deceased was working in the field she fell down along with the spade which she was carrying in her hand and unfortunately suffered injury in her temporal region from the said spade which resulted in her death. The autopsy surgeon (PW-9) also admitted that injuries present on the head of deceased could be possible on account of fall on hard surface from the top in downward direction and thus the possibility of accidental death of deceased cannot be ruled out.
- the trial Court after due appreciation of the evidence on record has rightly acquitted the respondent of all the charges and generally, order of acquittal should not be interfered with because presumption of innocence of accused is further strengthened by acquittal and if two views are possible on evidence adduced in case, one pointing to guilt of accused and other to his innocence, view which is favourable to accused should be adopted.

8. Heard counsel for the respective parties and perused the material on record.

9. Rajesh Kumar (PW-1) is the witness of inquest (Ex.P-2), whereas PW-2 Mahendra Singh is the formal witness.

10. Shivcharan (PW-3) has been though cited as eyewitness by the

prosecution but in Para-3 of the cross-examination this witness has stated that hearing commotion he along with his wife Fulkunwar & Surendra went to the field and all of them lifted deceased Sukhmaniya and made her to sit on the hedge.

11. Sitaram (PW-4) is the another person who has been cited as eyewitness by the prosecution but he too has stated in his deposition that hearing commotion he reached on the spot and saw that the son and daughter-in-law of deceased were picking her up.
12. Almost similar statement has been made by Phulkunwar (PW-5), Surendra (PW-6) & Ramkumar (PW-7) who have also been cited as eyewitness of the incident by the prosecution.
13. PW-8 Bharat Ram & PW-9 Santlal have also reached on the spot after the incident had taken place. PW-10 Santlal is the hear-say witness and according to him, having been informed by his grandson that accused Sanjay assaulted the deceased, he reached on the spot where he came to know that the deceased was taken to the hospital.
14. PW-11 Ashok Kumar is the witness of memorandum (Ex.P-8), seizure memo (Ex.P-9) and arrest memo (Ex.P-10).
15. Lalji Sahu (PW-12) is also the witness of memorandum (Ex.P-8), seizure memo (Ex.P-9) & map (Ex.P-5).
16. Dharampal (PW-13) is the witness of inquest (Ex.P-2) & seizure memo (Ex.P-4 & P-12).
17. Dr. A.K. Sharma (PW-14) is the person who medically examined the deceased and injured Surendra when they were brought to him after the incident.

18. Gopal Dhurve (PW-18) is the person who conducted investigation in the matter.
19. Dr. A.K. Karan (PW-19) conducted post-mortem on 8.8.2005 on the body of the deceased vide Ex.P-19 wherein he noticed one lacerated wound on the left temporal scalp of the deceased. In his opinion, the cause of death was coma due to injuries to head. In the cross-examination this witness has admitted that injury found on the temporal region of the deceased may come on account of fall on hard surface from top in downward direction.
20. R.P. Sahu (PW-20) is the Assistant Sub Inspector who did major part of investigation.
21. Sukhnandan Kurre (DW-1) has stated that on the date of incident respondent Ramsajeevan Sahu was present in the school.
22. Gopal (DW-2) has stated that at the relevant time he was working in the field and hearing commotion that the deceased had fallen down, he reached on the spot and saw that Shivcharan and his wife Sukhnibai were lifting Sukhnibai up and made her to sit on the hedge. At that time accused Sanjay was ploughing his field and therefore he did not come on the spot. Whereas, accused Ramsajeevan had gone to the school.
23. As per FSL report available on record, blood was found on spade seized from the possession of acquitted accused Sanjay but there is no serological report confirming origin of the blood and as to whether it was of the blood group of the deceased.
24. Close scrutiny of the evidence makes it clear that there is no legally admissible evidence on record against the respondents showing their complicity in the crime in question beyond all reasonable doubt. Whole

prosecution case was resting on the evidence of Shivcharan (PW-3), Sitaram (PW-4), Phulkunwar (PW-5), Surendra (PW-6) & Ramkumar (PW-7) who, according to the prosecution, have witnessed the incident, but nothing could be proved by the prosecution through these witnesses to connect the acquitted accused with the crime in question, rather it has come in their depositions that they had reached on the spot after the incident was over.

As stated above, the FSL report though positive in respect of spade cannot be taken into consideration because there is no serological report to connect the respondents on the basis of alleged recovery of spade with the crime in question. The autopsy surgeon has also admitted that the injuries sustained by the deceased may come on account of fall on a hard surface from the top in downward direction and therefore the possibility that the death of the deceased was an accidental one cannot be ruled out. Thus, the prosecution has utterly failed to prove its case on the basis of evidence adduced by it. The findings arrived at by the trial Court while acquitting the respondents of the charges are based on proper appreciation of the entire evidence and therefore, we see no reason to form a different opinion.

25. Even otherwise, it is a well settled principle of law that interference with appeal against acquittal is permissible only when there are compelling and substantial reasons for doing so. What the appellate Court has to see is whether the reasonings of the trial Court are well founded and acceptable with sound reasoning, and if it is so, then the question of reversing the finding of the trial Court does not arise. It is only in case, if the evidence on record has not been properly appreciated by ignoring the material facts, it is open to the appellate Court to interfere with such judgment of the trial Court. If there are two possible views on the basis of evidence on record

in the case, the one favouring the accused should be adopted and that is what the trial Court has done.

26. For the reasons stated above, we are of the considered view that the trial Court has not committed any illegality while passing the impugned judgment acquitting the respondents No.1 & 2 of all the charges by giving them benefit of doubt. Accordingly, the acquittal appeal filed by State and the criminal revision filed by the complainant being without any substance are liable to be dismissed and are hereby dismissed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(RCS Samant)
Judge

roshan/-