

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 868 of 2016**

1. Mohammad Sajjad Alam S/o Mohammad Nizamuddin Aged About 70 Years R/o Village Budhwari Bazar, Ward No. 15, Janjgir, District Janjgir Champa, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Police Station Janjgir, District Janjgir Champa, Chhattisgarh.
2. Narayan Kashyap S/o Salikram Kashyap Aged About 71 Years R/o In front Of Old Hospital
3. Videshi Kashyap S/o Narmada Kashyap Aged About 50 Years R/o Khadpari Para Janjgir
4. Bablu @ Pitambar S/o Bahartaram Rathore Aged About 40 Years R/o In front Of Old Hospital, Janjgir
5. Baijudas Mankikpuri @ Bajudas S/o Late Garibdas Aged About 37 Years R/o Indranagar, Janjgir
6. Ashok Kumar Rohidas @ Munkul S/o Jagannath Rohidas Aged About 40 Years R/o Indranagar, Janjgir
7. Rajkumar Yadav S/o Mahesh Yadav Aged About 48 Years R/o Ward No. 19, Indra Nagar, Janjgir

Respondents No.2 to 7 residing under P.S. & Tahsil Janjgir, District Janjgir Champa, Chhattisgarh.

---- Respondent

For Petitioner	Shri Hanuman Prasad Agrawal, Advocate
For Respondent/State	Shri R.K. Mishra, Dy. Adv. General

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

Per Prashant Kumar Mishra, J.

19/08/2016

1. This is an application seeking leave to appeal against the judgment of acquittal rendered by the Additional Sessions Judge, Fast Track Court, Janjgir, in ST No.79/2014 acquitting the respondent No.2 herein from the charge under Section 304-A of the Indian Penal Code (for short 'the IPC') and the remaining accused persons from the charge under Section 304 of the IPC.
2. The accused persons were sent for trial on the allegation that at about 9.30 am on 21-1-2012 the accused Narayan Kashyap had engaged the other accused persons namely; Pitamber, Videshi, Rajkumar, Ashok & Baijudas to cut the Neem tree standing on the main road in front of his house without taking due precaution and security to see that the place of occurrence being main road the cut tree may not fall on the persons on the road and cause accident. Coincidentally, at the said time applicant's son namely Ejaz Alam (since deceased) was passing through and the tree fell on his person seriously injuring him over neck, hand & face. After administering primary medical facility at Janjgir he was shifted to Apollo Hospital, Bilaspur where he died on 24-1-2012.

3. Initially, all the accused persons were sent for trial under Sections 337, 338 & 304 read with Section 34 of the Indian Penal Code, however, subsequently, by order dated 8-12-2014 passed by this Court in Cr.R.No.547/2014 preferred by Narayan, his charge was altered from Section 304 of the IPC to Section 304-A of the IPC.
4. In course of trial, the prosecution examined the witnesses namely; Rajesh Kumar Sirmor (PW-1), Anil Yadav (PW-2), Raza Siddiqui (PW-3), Hariram (PW-4), Ramshankar (PW-5), Shivnand (PW-6), Dr. Mamta Jagat (PW-7), Navsad Alam (PW-8), Dilip Singh, ASI (PW-9), D.S. Vindyaraj, SDO (PW-10), Jawahar Lal Rathore (PW-11), Dr. R.K. Upadhyay (PW-12), Jalalludi Khan (PW-13) and Shyam Sunder Sharma (PW-14).
5. By the impugned judgment the trial Court has concluded that the prosecution has failed to prove its case beyond all reasonable doubt because the entire evidence considered together has failed to establish that the accused persons namely; Pitamber, Videshi, Rajkumar, Ashok & Baijudas were cutting the tree and the accused Narayan Kashyap was supervising.
6. We have gone through the judgment passed by the trial Court. It is manifest that the trial Court has elaborately considered statements of all the relevant witnesses. The finding that there is lack of

evidence to conclude that the accused persons were involved in cutting the tree is born out from the record and the said finding is not perverse. In any case when two views are possible in the case and the trial Court has taken one of the views, the judgment of acquittal should not be converted into a judgment of conviction. (See : **State of M.P. v. Bachhudas alias Balram and others**¹). The finding arrived at is not so perverse or unreasonable that it has been recorded contrary to the record.

7. Considering the state of evidence available on record, this Court does not find any substance in the CrMP seeking leave to appeal. Accordingly, the same is dismissed.

Sd/-

Judge
Prashant Kumar Mishra

sd/-

Judge
Chandra Bhushan Bajpai

Gowri

¹ (2007) 9 SCC 135