



218

1

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HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 48 of 2006

- Pritesh Verma son of Shri Rajesh Verma, aged about 20 years, Resident of Gandhi Chowk, Rajatalab, Raipur, Police Station Civil Lines, Raipur (C.G.)

---- Appellant

Versus

- State Of Chhattisgarh Through – Police Station Baloda Bazar, District Raipur (C.G.)

---- Respondent

For Appellant.	:	Shri Ashok Soni, Advocate.
For Respondent.	:	Shri Rahul Tamaskar, PL.

And

CRR No.180 of 2006

- Smt. Tara Bajpayee W/o Shri Santosh Bajpayee, aged about 55 years, R/o Civil Lines in front of High School, Vaishnav Colony, Baloda Bazar, District Raipur (C.G.)

---- Applicant

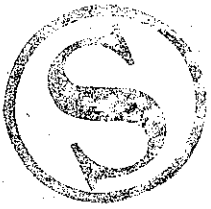
Versus

1. Pritesh Verma son of Shri Rajesh Verma, aged about 20 years, Resident of Gandhi Chowk, Raja Talab, Raipur, Police Station Civil Lines, Raipur (C.G.)
2. State of C.G., Through Station House Officer, P.S. Baloda Bazar, District Raipur (C.G.)

---- Respondents

For Applicant.	:	Shri Govind Dewangan, Advocate.
For Respondent No.1.	:	Shri Ashok Soni, Advocate.
For Respondent No.2.	:	Shri Rahul Tamaskar, P.L.

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



49

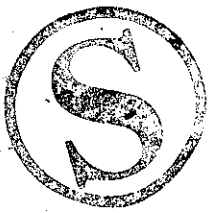
Judgment On Board

By Pritinker Diwaker, J

16/11/2016

As aforesaid Criminal Appeal No.48/2006 and Criminal Revision No.180/2006 arise out of the common judgment dated 31.12.2005 passed by the 1st Additional Sessions Judge, Baloda Bazar, District Raipur in S.T. No.185/2005 acquitting the accused/appellant Pritesh Verma of the charge under Sections 394, 397 & 450 IPC and convicted him under Sections 452, 324 IPC and Section 25 (1-B) (B) of Arms Act & sentenced to undergo R.I. for 3 years with fine of Rs.500/-, R.I. for 3 years with fine of Rs.500/- and R.I. for 1 year with fine of Rs.500/- respectively, plus default stipulations, they are being disposed of by this common judgment.

02. Brief facts of the case are that on 04.01.2005 at 12.00 noon FIR (Ex.P/1) was lodged by Tara Bajpayee (PW/1) alleging in it that on the very day at about 10.45 am when she was working in her house along with her two daughters-in-law, one boy aged about 15-16 years entered the house, inquired about her two sons, thereafter, the boy with an intention to commit loot caused injuries on her stomach, hand and thumb by knife. It has been further alleged that the said boy had covered his face by handkerchief. She caught hold of his hair and hand in which the boy was holding knife and screamed to call police while dragging him. Upon hearing her voice, her both daughters-in-law reached there but before police could be called, the boy had fled from the spot. It has been also alleged that she can identify the said boy on seeing him. Based on this, FIR (Ex.P/1) for the offence under



Sections 307 and 394 IPC was registered against the unknown person. The accused/appellant Pritesh Verma was arrested on 05.01.2005 and thereafter he was put to test identification parade vide Ex.P/2 and he was identified by Tara Bajpayee (PW/1). The said test identification parade was conducted by Shiv Kumar Tiwari (PW/10)-Executive Magistrate. Injured Tara Bajpayee (PW/1) was medically examined on 04.01.2005 by Dr. P.K. Tiwari (PW/9) vide Ex.P/9 who found following injuries :-

- (i) Incised wound of 1 cm x 1/2 cm on left lumbar region.
- (ii) Incised wound of 5 cm x 1/2 cm x bone deep on left forearm of middle part aspect.
- (iii) Incised wound of 2 cm x 1/2 cm on left forearm just below upper hand.
- (iv) Incised wound of 1 cm x 1/2 cm on left forearm just below upper hand.
- (v) Incised wound of 1/2 cm x 1/2 cm on left thumb.

The Doctor has opined that the injuries were simple in nature caused by sharp and hard object.

03. After investigation, charge sheet was filed against the accused/appellant Pritesh Verma and acquitted co-accused Yogesh Das under Sections 307, 394, 120-B IPC and Section 25, 27 of Arms Act. The trial Court framed the charges under Section 394 read with sections 397, 450, 324 IPC and Section 25(1-B) (B) of Arms Act against the accused/appellant Pritesh Verma and under Section 394 read with sections 397, 450 and 120-B IPC against co-accused Yogesh Das.

04. So as to hold the accused guilty, the prosecution examined as

Dr. P.K. Tiwari

Det P.B.



many as 14 witnesses. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record has acquitted the appellant of the charge under Sections 394, 397 & 450 IPC and co-accused Yogesh Das of the charge under Section 120 (B) IPC but convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment. Assailing his conviction, the appellant has filed Criminal Appeal No.48/2006, whereas against his acquittal the complainant has filed Criminal Revision No.180/2006.

06. Learned counsel for the appellant in Criminal Appeal No.48/2006 submits as under:

(i) that there is major discrepancy in the FIR (Ex.P/1) lodged by the complainant and in her Court statement. According to the complainant, on the date of incident one person entered the house and committed offence, whereas as per her Court statement, at first some other boy entered the house and then accused/appellant alleged to have gained entry in the house and committed the offence.

(ii) that the test identification parade (Ex.P/8) is doubtful as Bina Yadav (PW/8) has not fully supported the prosecution case. It has been argued that though Tara Bajpayee (PW/1) has identified the accused/appellant in the test identification parade made under Ex.P/2 but merely on that basis it will not be safe for this Court to uphold the conviction of the appellant.

(iii) that the incident had taken place about 11 years back; the accused/appellant has already remained in jail for about 49 days and has no criminal antecedent; at the time of commission of offence he was young boy aged about 19 years, therefore, his sentence may be reduced to the period already undergone by him after enhancing the fine amount.

07. In relation to Criminal Revision No.180/2006 it has been argued on behalf of applicant/complainant as under :

(i) that in the incident certain articles were looted by the accused/appellant Pritesh after causing injuries to Tara Bajpayee (PW/1) and, therefore, the Court below has erred in law in acquitting the accused/appellant of the charge under Sections 394, 397 and 450 IPC.

08. On the other hand, opposing the submission advanced on behalf of accused/appellant in Cr.A.No.48/2006 it has been argued by counsel for the State that basic ingredients of both the Sections 452 and 324 IPC are completely made out against the appellant and he has been rightly convicted for these offences. Even in respect of conviction of the appellant under the provision of Arms Act, State counsel submits that the same is in accordance with law and there is no infirmity in the same.

09. We have heard learned counsel for the parties and perused the material available on record.

10. Tara Bajpayee (PW/1) is a complainant and victim. She has stated that she knew the accused/appellant Pritesh but does not know the other accused. She is residing in the Vaishnav Colony along with her husband and two sons. She has further stated that on the date of incident her husband and sons were not there and she was cooking vegetable in kitchen, her younger daughter-in-law was bathing her

child and elder daughter-in-law was in her bed room. On 04.01.2005 at about 10.45 am, accused/appellant gained entry in her house. She came from kitchen to take some article and as soon as she returned the accused/appellant came and caused several injuries to her by knife. She has also stated that when the accused/appellant inflicted knife blow, she caught hold of his hand. Accused/appellant was abusing her in filthy language and asked for valuables. On this she told him to take whatever he wanted but not to assault her but the accused/appellant continued assaulting her as a result of which she sustained injuries on her abdomen, neck and both hands. She has also stated that she pushed him to her room and during this scramble the cloth which was on his face fell down as a result of which she could identify the accused/appellant. This witness went on to state that she screamed and called her younger daughter-in-law, who reached to the place of occurrence, thereafter, she asked her to call police but the accused/appellant, leaving his knife, fled away from the spot jolting her. She also states that the incident was informed to police by her son Neeraj and she was medically examined by the Doctor. In cross-examination but for minor contradictions she remained firm in her statement.

11. Soma Bajpayee (PW/2) - daughter-in-law of Tara Bajpayee (PW/1) has duly supported the prosecution case. Dheeraj Bajpai (PW/3) is a seizure witness of Ex.P/4 by which clothes of injured were seized. Santosh Tiwari (PW/4) is a seizure witness of Ex.P/6 and P/7 has duly supported the prosecution case. Tejpai Dubey (PW/5) is Patwari who prepared spot map vide Ex.P/3. Vikas Sahu (PW/6) and



54

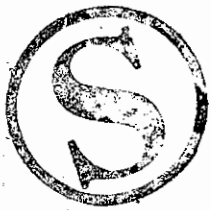
Khatija Begam (PW/7) are the eye-witnesses of conspiracy. Bina Yadav (PW/8) is maid of the complainant. She has proved the identification of the accused made under Ex.P/8. Dr. P.K. Tiwari (PW/9) has medically examined the injured, found five simple injuries and gave his report under Ex.P/9. Shiv Kumar Tiwari (PW/10) is Tahsildar who conducted test identification parade vide Ex.P/2 and Ex.P/8. He has stated that the accused/appellant was identified vide Ex.P/2 by Tara Bajpai (PW/1) and vide Ex.P/8 by Bina Yadav (PW/8). R.N. Shukla (PW/11) – Assistant Sub Inspector and Dr. K. Sharma (PW/13) - Inspector have assisted in the investigation. Gopinath (PW/12) is Investigating Officer who has duly supported the prosecution case. Dr. Sandeep Dave (PW/14) has operated the injured Tara Bajpayee (PW/1) and found 500 ml blood clot in her abdomen.

12. Close scrutiny of the evidence makes it clear that on 04.01.2005 accused/appellant Pritesh entered the house of the complainant Tara Bajpayee (PW/1) and caused several injuries on her abdomen and both hands by knife. She was medically examined by the Dr. P.K. Tiwari (PW/9) who gave his report Ex.P/9 noticing as many as 5 simple injuries on her person, which in his opinion were caused by sharp and hard object. Thus, the medical report supports the prosecution case. Seema Bajpayee (PW/2) has stated that accused/appellant gained entry in the house, caused several injuries to her mother-in-law by knife and during scuffle accused/appellant fled away from the spot leaving his knife. This witness has duly supported the statement of Tara Bajpayee (PW/1). That apart, in the test identification parade, accused/appellant has been duly identified by Tara Bajpayee (PW/1)

made under Ex.P/2 and by Bina Yadav (PW/8) made under Ex.P/8. It has also come in the evidence that during scuffle the accused/appellant fled away from the spot leaving his knife, which was subsequently seized by the police under Ex.P/6. From the material collected on behalf of the prosecution, the only inference which could be drawn is that it is the accused/appellant who committed the offence.

13. Having regard to the totality of the case, in particular the nature of evidence adduced by the prosecution and the statements of the witnesses, we are of the view that conviction of the accused/appellant under Sections 452, 324 IPC and Section 25(1-B) (B) of Arms Act is strictly in accordance with law and there is no infirmity in the same.

14. So far as criminal revision filed by the applicant/complainant is concerned, the prosecution has utterly failed to prove that any ornament was looted by the accused while committing the offence. Even in the FIR (Ex.P/1), complainant has not deposed that any ornament or any other article was looted by the accused. Thus, the acquittal of the accused of the charge under Sections 394, 397 and 450 IPC is in accordance with law and there is no infirmity in the same. After due appreciation of the evidence available on record, the trial Court has acquitted accused/respondent No.1 in CRR No.180/2006 and the view taken by the trial Court is possible view. The prosecution thus utterly failed in proving its case beyond reasonable doubt and the trial Court has been fully justified in recording the finding of acquittal which is based on proper appreciation of evidence available on record. In the revision against acquittal the scope of interference is very limited and unless the Court comes to the conclusion that the finding recorded



56

by the Court below is perverse, interference therewith cannot be made. That apart, the settled legal position that if two reasonable conclusions are possible on the basis of evidence on record the court should not disturb the finding of acquittal recorded by the trial Court, also comes to the rescue of the respondent No.1/accused bolstering the presumption that he is innocent.

15. The next question which arises for consideration by this Court as to what would be the appropriate sentence to be imposed upon the accused/appellant.

16. Considering the fact that incident had taken place about 11 years back; at the time of commission of offence the accused/appellant was a young boy aged about 19 years and has no criminal antecedent, his sentences are reduced to one year. He is sentenced to undergo R.I. for one year under respective Sections. All the sentences to run concurrently. In addition to this, accused/appellant to pay fine of Rs.5000/- under Section 452 IPC and Rs.5000/- under Section 324 IPC, in default of payment of each of the fine amounts the accused/appellant to further undergo R.I. for six months.

17. The fine amount so paid by the accused/appellant be disbursed to the victim Tara Bajpayee (PW/1) after due verification by the trial Court.

18. In the result, the appeal is partly allowed to the extent indicated herein above. The criminal revision being unmerited one is liable to be dismissed and it is dismissed as such. The appellant is reported to be on bail, therefore, his bail bonds stand cancelled and he is directed to



57

10

be taken into custody forthwith to serve out the remaining part of his sentence.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(R.C.S. Samant)
JUDGE

Vijay