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HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 458 of 2005

1. Tankeshwar Ram, S/o Shri Bagar Sai, R/o Nawagarh Ambikapur, P.S. Ambikapur, Dist: Sarguja (CG) -

---- Petitioner

Versus

1. Chhola Ram, S/o Khedu Ram Vishwakarma, aged about 45 years.
2. Suresh, S/o Khedu Ram Vishwakarma, aged about 40 years
3. Bhola Ram, S/o Khedu Ram Vishwakarma, aged about 43 years
4. Dungu, S/o Khiru Gond

All are R/o Mahamaya Para, Ambikapur, Police Station Amikapur, Dist. Sarguja (CG)

5. State of Chhattisgarh, through - S.O. Police Station Amikapur.

---- Respondents

For Petitioner:	Shri Vineet Pandey, Advocate
For Respondent No.1 to 4:	Shri M. Mishra, Advocate
For Respondent No.5:	Shri Avinash Singh, Panel Lawyer.

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

Judgement

P. Diwaker, J

29/09/2016

1. In this revision the petitioner has assailed the judgment of acquittal dated 12.8.2005 passed by the Special Judge (ST/SC Prevention of Atrocities Act, 1989), Ambikapur in Special Sessions Trial No.17/2004 acquitting respondent No.1 to 4 herein of the charges under Sections 147, 148, 302/149 of the Indian Penal Code (for short 'the IPC') read with Section 3 (2) (5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 27 of the Arms Act.

2. Facts of the case are that on 17.10.2003 at 1.00 a.m. in the night FIR (Ex.P-22) was lodged by Bholanath Yadav (PW-9) against respondents No.1 to 4 herein and two juvenile namely Shivrath & Khulur, alleging in it that on 16.10.2003 at about 7.00 a.m. when he was sitting in the verandah of his friend Pradeep Soni, he saw the accused persons coming from two different directions armed with deadly weapons like sword, *gandasa* (chopper for cutting fodder), club etc. On reaching spot, all of them started saying "kill him and Rajkumar (since deceased)". It is further alleged that seeing the accused persons, he started running from the spot and while he was running he saw accused Chholaram causing sword injuries to deceased Rajkumar. After sometime he came back on the spot with Pintu, brother of deceased, and saw the body of deceased lying in a pit with a stone on his head. It is further alleged that due to old animosity, the accused persons have killed the deceased. Merg Intimation (Ex.P-23) was recorded on 17.10.2003 at the instance of Bholanath (PW-9). Based on this FIR, offence against six accused persons including respondents No.1 to 4 was registered. Inquest was prepared vide Ex.P-2. Body of the deceased was sent for post mortem which was conducted by Dr. B.K. Shrivastava (PW-1) vide Ex.P-20 and noticed following injuries:-

- Incised wound over back side of skull of 3½ x 3" x bone deep. Brain material was coming out.
- Incised wound over right side of skull of 2x ½" x bone deep.
- Incised wound of 1x ½"x bone done over mandible region.
- Multiple abrasions of different sizes on the face and other parts of the body.
- Skull bone, Maxilla & Mandible bones were fractured into pieces.

3. On completion of investigation, charge sheet was filed against the accused persons for the offence punishable under Sections 147, 148, 302/149 of IPC r/w Section 3 (2) (5) of the Act, 1989 and Section 27 of the Arms Act followed by framing of charges by the Court below under above sections.

4. The prosecution in order to bring home the charges levelled against the accused persons examined as many as 11 witnesses. Statements of the accused persons were recorded under Section 313 of Cr.P.C. in which

they abjured their guilt and pleaded false implication. They have also examined two witnesses in their defence namely Bhukhal (DW-1) & Ramlal (DW-2).

5. After hearing counsel for the parties and considering the material available on record, the Special Judge by the impugned judgment, acquitted respondent Nos.1 to 4 of the charges levelled against them.
6. Learned counsel for the appellant submits that the trial Court has erred in law in disbelieving the statement of Mohanlal (PW-9), which is corroborated by the post-mortem report and FIR.
7. On the other hand, counsel for the respondents No.1 to 4 supports the judgment of acquittal and submits that statement of Mohanlal (PW-9) is at variance with his own diary statement (Ex.D-1) & FIR (Ex.P-22) lodged by him and therefore the view taken by the Court below is one of the plausible & possible leading to acquittal of accused persons and therefore no inference with it is called for.
8. Counsel for the State has duly assisted the Court.
9. We have heard learned counsel for the parties and perused the material available on record.
10. Tankeshwar (PW-1) is the witness of inquest (Ex.P-2) & seizure memos of Ex.P-3, P-4, P-5 & P-6.
11. Raman Ram (PW-2), Kapil (PW-3), Smt. Ropni Bai (PW-4), Smt. Munnibai (PW-5), Smt. Manmati Bai (P-6) & Ramsevak (PW-8) did not support the prosecution and turned hostile.
12. Dr. B.K. Shrivastava (PW-7) is the person who conducted post-mortem on the body of deceased and noticed injuries as described above. This witness has opined that cause of death was due to head injury and multiple fractures.

13. Mohan Lal Yadav (PW-9) is the sole eyewitness to the incident. In the Court statement he has stated that on the date of incident at about 4.30-5.00 p.m. when he was sitting in the courtyard of Pradeep Soni, the accused persons armed with sword, battleaxe, *gandasa* (chopper for cutting fodder), club etc. came there. Accused Chholaram attacked on him by sword, however, as he was at the place 5 feet height from the ground, the sword did not hit him and he rolled down. Thereafter, he was caught hold by accused Bhola & Shivnath and then accused Chholaram assaulted the deceased on his head by sword as a result of which he fell down on the ground. He has further stated that he somehow freed himself but he was again caught hold by accused Suresh & Duggul and then he saw accused Bhola Ram & Shivnath assaulting the deceased. He again managed to come out from the clutches of accused persons and hid himself near the cremation ground and from where he saw that after throwing the body of deceased in a pit, accused Shivnath had thrown big boulder on the head of deceased. On being confronted with his diary statement, this witness has stated that the facts stated by him in the Court have also been disclosed by him to the police and if the same are not mentioned in his statement then he cannot tell reasons. He has further stated that at the time of recording of his statement under Section 161 Cr.P.C. he was in jail in connection with charge of rape. He admits that certain criminal cases of other nature are also pending against him. In the cross-examination of this witness, there are material contradictions from that of the FIR and his own diary statement.

14. Lal Umed Singh (PW-10) is the person who conducted investigation in the matter.

15. Anup Ekka (PW-11) is the Sub Inspector who did major part of the

investigation.

16. Though the prosecution has tried to establish the charge of murder against respondent Nos.1 to 4 on the basis of testimony of alleged eyewitness Mohanlal (PW-9), but testimony of this witness does not appeal to the conscience of this Court for the reason that statement of this witness is at variance with his own diary statement (Ex.D-1) & FIR (Ex.P-22) lodged by him. According to diary statement (Ex.D-1) of Mohanlal (PW-9), it is accused Cholaram who had assaulted the deceased by sword, but at the time of recording of Court statement this witness had improved a lot and gave description of the sequence of assaults on the deceased by all the accused persons. Further, in the FIR (Ex.P-22) & diary statement (Ex.D-2), it is mentioned that incident occurred at about 7.00 p.m., whereas Mohanlal (PW-9) has categorically stated in the cross-examination that incident took place at 4.30-5.00 p.m. Since there are glaring inconsistencies in the Court evidence and previous statement of the sole eyewitness on a crucial aspect pertaining to complicity of the accused persons, his evidence is not sufficient to convict the accused persons for the offence under Section 302 with the aid of Section 34 IPC.

17. The other important thing to be noted here is that the charge sheet has been filed by the prosecution without securing report from the FSL showing presence of blood stains on the articles seized based on the disclosure statements of accused persons, meaning thereby, there is nothing to establish a close link between the articles i.e. alleged weapons of offence, seized at the instance of respondents No.1 to 4 and its use in the commission of offence by them.

18. Thus we are of the considered opinion that the conclusions reached by

the trial Court acquitting respondents No.1 to 4 cannot be said to be such which has led to a miscarriage of justice. The trial Court has taken a possible view which could legitimately be taken on the basis of the inconsistencies in the evidence of the prosecution. The trial Court has acted in accordance with the well-known principles that if two views are possible on the evidence adduced, one pointing to the guilt of the accused and the other to innocence, the view which is favourable to the accused is normally to be adopted.

19. In the result, the revision being meritless is liable to be dismissed and is hereby dismissed.

Sd/-
Pritinker Diwaker
Judge

Sd/-
R.C.S. SAMANT
Judge

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