

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 41 of 2008

- Prabhuram Sahu, aged 60 years, son of Shri Bhikhari Sahu, resident of Berlakala, police station and Tehsil Berla, district Durg (CG)

---- Applicant

Versus

- Mohanlal Sahu, aged 34 years, son of Mansharam Sahu
- Purshottamlal Sahu aged about 30 years, S/o Mansharam Sahu
- Punitram Sahu S/o Bulakiram Sahu, aged about 19 years, All Are R/o Village Berlakala, P.S. & Tahsil Berla, Distt.-Durg, C.G.
- State Of C.G. Through: P.S. Berla, Distt.-Durg, C.G.

---- Respondents

For Applicant	: Shri Ritesh Verma, Advocate
For Respondents No. 1 to 3	: Shri C.B.Kesarwani, Advocate
For Respondent No.4/State	: Shri Adil Minhaj, P.L.

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

Judgment On Board By

Pritinker Diwaker, J.

04/04/2017

The applicant in this revision is assailing the legality, validity and propriety of the impugned judgment and order dated 20.09.2007 passed by Additional Sessions Judge, Bemetara, district Durg in S.T. No. 5/2006 whereby the court below has acquitted the accused/respondents 1 to 3 of the offence under Section 302/34 IPC.

2. As per prosecution case, on 27.06.05, in the early hours, dead body of the deceased was found near the bank of village pond. Merg intimation Ex.P-21 was recorded on the same day at 1.15 p.m. at the instance of one Parbhuram Sahu (PW-12), father of the deceased. Immediately thereafter at 1.30 p.m. FIR Ex.P-1 was registered against the accused persons on suspicion being shown by Parbhu Ram Sahu. Inquest on the body of deceased was prepared vide Ex.P-4 and body was sent for postmortem examination which was conducted by Dr. V.P. Agrawal (PW-11) vide Ex.P-17 on 28.06.05 who opined that the cause of death was shock due to intra thoracic hemorrhage. On 27.06.05 itself on the memorandum of accused/respondents 1 to 3, seizure of clubs was made from them vide Ex.P-9, P-10 and P-11 however in the FSL no blood has been found on the seized clubs. After filing of the charge sheet, trial judge framed against the accused/respondents 1 to 3 under Section 302/34 IPC.

4. Prosecution has examined 13 witnesses in support of its case. Statements of the respondents/accused were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the charges levelled against them and pleaded false implication in the case.

3. After hearing the parties, the trial Court, vide its judgment dated 20.09.2007 has acquitted the accused/respondents 1 to 3 of the offence punishable under Section 302/34 IPC. Hence the present revision on behalf of the applicant assailing the acquittal.

4. Counsel for the applicant submits that

i) the Court below has committed a serious error in awarding acquittal to the respondents/accused ignoring the statement of Vishal

(PW-7).

ii) had the statement of Vishal is being correctly appreciated, the respondents ought to have been convicted.

iii) Parbhu Ram Sahu has categorically stated that there exist old dispute between the two families and this was the motive for the respondents to commit the murder of the deceased.

5. On the other hand, supporting the impugned judgment it has been argued on behalf of the respondents/accused that the impugned/judgment is in accordance with law. It has been further argued that the scope of revision against acquittal is very limited.

6. State counsel has duly assisted this Court.

6. Vishal (PW-7) has stated that on the date of incident, at about 9.30 p.m. after taking meals when he went to ease himself, he saw the accused persons chasing the deceased and thereafter Jairam came to his house. When he entered inside, respondents/accused shouted on him to take out the deceased from his house however getting scared of them he ran away from the back door. In cross-examination, he has stated that after the above incident he went inside the house and slept. Apart from the evidence of this witness there is no other evidence showing the involvement of the respondents/accused in the commission of the offence. Vishal (PW-7) has nowhere stated that the respondents/accused has chased the deceased when he left his house. He has merely stated that the deceased fled away from the back door of his house and thereafter this witness went inside his house. Thus, according to the Court below the prosecution has not brought any material sufficient for conviction of the respondents/accused and

therefore awarded acquittal in their favour.

6. Therefore after hearing counsel for the applicant and considering the material available on record as well as the elaborate judgment impugned passed by the Court below, and being very much conscious of the existing legal position that in a revision against acquittal if two views are possible on the basis of the evidence led by the prosecution and the trial Court taking one view favoured the accused, reversion of the findings of acquittal by the appellate Court taking the other possible view into consideration, is not permissible in law and further considering the scope of revision against acquittal, we are of the considered opinion that the judgment impugned acquitting the respondents/accused of the offence under 302/34 IPC is just and proper and does not call for any interference. Revision is accordingly dismissed.

Sd/-
Pritinker Diwaker
Judge

Sd/-
R.C.S.Samant
Judge