

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 615 of 2003**

1. Roop Singh, son of Baloram, aged about 53 years
2. Tikamdas, son of Kamta Prasad, aged about 27 years
3. Kailash Tandon, son of Shri Balram Tandon, aged about 31 years

All residents of Bandhapara, Police Station – Baghbehra, Tehsil
and District Mahasamund, CG

---- Petitioners**Versus**

1. State of Chhattisgarh, through the District Magistrate, Mahasamund, Chhattisgarh
2. Krishna Kumar son of Hincharam, aged about 32 years, caste Satnami
3. Anandram, son of Nankiram Satnami, aged about 70 years
4. Benuram son of Hincharam Satnami, aged about 36 years
5. Dhanesh Ram, son of Jethuram Satnami, aged about 33 years
6. Hincharam, son of Dayaldas Satnami, aged about 70 years

Sl. No. 2 to 6 are residents of village Bandhapara, PS Bagbahra,
Tehsil and District Mahasamund, CG

---- Respondents

For Petitioners	:	Smt. Fouzia Mirza, Advocate
For Respondent/State	:	Shri Avinash K. Mishra, PL
For Respondent Nos. 2, 4 & 5	:	Shri Ajay Mishra, Advocate

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice R.C.S. Samant****Order on Board by Pritinker Diwaker, J****25/04/2017**

This revision petition has been filed by the petitioners against the
judgment and order dated 29.5.2003 passed by Additional Sessions

Judge Mahasamund in Sessions Trial No. 92/1996 acquitting the respondents/accused Krishna Kumar & Benuram of the charge u/s 307; acquitting respondents/accused Anandram, Dhanesh and Hincharam of the charge u/s 307/34; acquitting all respondents/accused of the charge u/s 323 for causing injury to Balaram; but convicting respondents/accused Benuram and Krishna Kumar u/s 323 twice for causing injuries to Roop Singh and Kailash and sentencing them to undergo RI for one one month.

2. Facts of the case in brief are that on 4.5.1995 FIR Ex. P-18 was lodged by Balaram (since deceased) alleging that on that day he, Roop Singh and Kailash were beaten by accused Krishna Kumar, Benuram, Anandram and Dhanesh. Based on this report, offences under Sections 307, 323, 34 IPC were registered against the accused persons. On charge-sheet being filed, the trial Court framed the charge against Krishna Kumar, Anandram, Benuram, Dhanesh and Hincharam under Section 307 and 323/34 IPC.

3. In order to prove the complicity of the accused/respondents in the crime in question, the prosecution has examined 26 witnesses. Statements of the accused/respondents under Section 313 Cr.P.C. were also recorded in which they denied their guilt and pleaded innocence and false implication in the case.

4. After hearing the parties, the Court below has acquitted the respondents/accused of the charges levelled against them u/s 307 and 323 for causing injuries to Balaram but convicted accused Benuram and Krishna Kumar u/s 323 twice for causing injuries to Roop Singh and Kailash.

5. Being dis-satisfied with the judgment impugned acquitting the

respondents/accused of the charge u/s 307 IPC the present revision has been filed. During pendency of this revision respondents/accused Anandram and Hicnharam have expired.

6. Counsel for the petitioners submits that though petitioner Kailash has suffered fracture of radius ulna but yet the trial Court has erred in law in not considering the said fact and at least respondents are liable to be convicted under Section 325 IPC.

7. Counsel for the respondents/accused however supports the judgment impugned and submits that neither X-ray report has been proved by the prosecution nor the radiologist has been examined. He submits that though in the medical report Ex. P-12 it has been mentioned that Kailash suffered fracture of some bone but in the discharge ticket fracture of upper third radius is mentioned. According to the counsel for the respondents/accused, Dr. A.S. Dau (PW-18) - the treating doctor appears to be the orthopedic Associate Professor but the prosecution has not filed any x-ray report nor even the radiologist has been examined by it.

8. State counsel has duly assisted the Court.

9. Heard counsel for the parties and perused the material available on record.

10. Trial Court has come to the conclusion that the radiologist has not been examined nor the x-ray report has been proved as required under the law. Though the evidence of Dr. A.S.Dau (PW-18) discloses that it was confirmed by the x-ray taken on 17.5.1995 that Kailash suffered fracture of radius bone of right hand but in the absence of x-ray report and for want of examination of the radiologist, statement of this witness cannot be made a basis for conviction. Thus there is no immediate connecting

evidence in this respect that the so-called fracture suffered by Kailash was caused in the present incident which had taken place on 4.5.1995. Thus taking all these things into consideration, there does not appear any illegality or infirmity in the findings recorded by the Court below acquitting the respondents/accused of all the charges levelled against them, be it under section 307 or 323 of the Indian Penal Code. Even the legal position prevailing as on date also comes to the rescue of the accused persons that if two conclusions can be drawn from the evidence on record, preference has to be given to the one favouring them.

11. In the aforesaid view of the matter, the revision preferred by the petitioners appears to be without any substance and therefore it is liable to be dismissed. It is dismissed as such. Judgment impugned acquitting the respondents/accused of the charges levelled against them is maintained.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(RCS Samant)
Judge