

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 309 of 2004

1. Sukhdev Gond, S/o Pardeshi, aged 25 years,
2. Ramchandra, S/o Mahadev Singh Gond, aged 27 years,
3. Dev Narayan Singh, S/o Rameshwar Singh, aged 30 years
4. Ajay Kumar Singh, S/o Parshuram Ram Singh, age 20 years,

All are resident of Village Khargawa Kalan, P.S. Pratappur, Distt. Surguja (CG)

---- Appellants

Versus

- State Of Chhattisgarh

---- Respondent

For Appellants	:	Shri Neeraj Mehta, Advocate.
For Respondent/State	:	Shri Adhiraj Surana, Dy. GA.

And

CRR No. 284 Of 2004

- Lal Sai, son of Ganesh, aged about 30 years, resident of village Sukhdeopur, Police Station Pratappur, Distt. Surguja (CG)

---- Applicant

Vs

1. Sukhdeo Gond, son of Pardeshi, aged about 25 years,
2. Ram Chandar, son of Mahadeo Singh Gond, aged about 27 years,
3. Basant @ Markan, son of Babulal, aged about 20 years,
4. Deo Narayan Singh son of Rameshwar Singh, aged about 30 years,
5. Manoj Kumar, son of Somarsai, aged about 19 years,

6. Ajay Kumar Singh, son of Parshuram Singh, aged about 20 years,
7. Ramlal, son of Ganeshram, aged about 22 years,
8. Bhavnath Singh, son of Darogaram, aged about 50 years,
9. Dilbharan, son of Triveni, aged about 48 years,

All are resident of Village Khadgawankala Police Station – Pratappur, Distt. Surguja (CG).

10. State of Chhattisgarh through the Police Station: Pratappur, Distt. Surguja (CG)

---- Respondent

For Applicant	:	Shri VK Pandey, Advocate.
For Respondent/State	:	Shri Adhiraj Surana, Dy. GA.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board By Justice Pritinker Diwaker

30/08/2017

As both these two cases arise out of the common judgment dated 15.3.2004 passed by the First Additional Sessions Judge, Surajpur, Distt. Surguja in ST No.427/2002, they are being disposed of by this common judgment.

02. Brief facts of the case are that on 12.6.2002 on account of old land dispute as many as 36 accused persons had gone to the field of Shivilal and assaulted him by axe, crowbar and clubs. They also caused injuries to PW-5 Lalsai, PW-6 Ganesh and PW-14 Leela Singh. It is said that after sustaining injuries Shivilal died instantaneously whereas three persons (PW-5, PW-6 & PW-14) suffered simple injuries. Further case of the prosecution is that in the same incident one Revti Raman from the side of the accused persons was killed by

the eyewitnesses and injured of the present case i.e. PW-5 Lalsai, PW-6 Ganesh and PW-14 Leela Singh.

On 12.6.2002 in the afternoon mereg intimation Ex.P/7 was lodged by PW-5 and thereafter FIR (Ex.P/6) was lodged on 12.6.2002 at 12.10 pm by PW-5 against 36 accused persons including four appellants herein under Sections 147, 148, 149, 120B, 307, 302 of IPC. Inquest was conducted over the dead body vide Ex.P/3 on 12.6.2002 and then it was sent for postmortem which was conducted on 13.6.2002 which has been proved by PW-16 Anandram, Investigating Officer. However, autopsy surgeon has not been examined in the Court. As per the postmortem report, deceased Shivilal sustained incised wound on occipital region of head and above left eye as also contusions and fracture of frontal and occipital head bone. The cause of death was head injury and coma due to fracture of head bone caused by hard and sharp object and that the death was homicidal in nature. Though the FIR was registered against 36 named persons but while filing challan, the police submitted challan against 11 persons including the appellants and two juvenile accused who were tried separately. While framing charges, the trial Court framed charges against the accused persons under Sections 148, 302/149 and 323/149 on three counts of IPC.

03. So as to hold the accused persons guilty, the prosecution examined 16 witnesses in all. 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. In defence, they examined

two witnesses.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment while acquitting as many as five co-accused persons of all the charges, convicted the appellants herein under Section 323/34 of IPC on three counts and sentenced them to undergo SI for one year, to pay a fine of Rs.500/- and in default to suffer additional SI for two months on each count. It was further directed by the trial Court that all the jail sentences shall run consecutively.

05. Against their conviction and sentence, the appellants have preferred Cr.A.No.309/04 whereas assailing the same judgment applicant Lalsai has preferred Cr.Rev.No.284/04 seeking remand of the matter to the trial Court for passing judgment afresh holding the accused/respondents No. 1 to 9 guilty under Section 302 & 323/34 of IPC.

It is pertinent to mention here that as in the same incident, one Revti Raman from the said of the present accused/appellants was also killed, a counter case was registered against Lalsai, Ganesh and Leela Singh (PW-5, PW-6 & PW-16 in the present appeal) and by a separate judgment passed in ST No.428/02, they have been convicted under Section 304 Part-I of IPC and sentenced to undergo RI for five years and fine of Rs.500/-. Against their conviction, they have preferred an appeal i.e. Cr.A.No.323/2004, which is also being decided today by a separate judgment.

Cr.A.No.309/2004:

06. Shri Neeraj Mehta, counsel for the appellants submits that the appellants are not pressing this appeal on merits and their only prayer is that considering the overall facts and circumstances of the case giving rise to the incident, the nature of injuries suffered by the victims and the fact that they have already remained in jail for about one year and nine months, they may be sentenced to the period already undergone by them.

07. On the other hand, State counsel submits that the conviction and sentence awarded to the appellants are strictly in accordance with law.

Cr.Rev.No.284/2004:

08. Shri VK Pandey, counsel for the applicant submits that considering the statements of PW-2, PW-3 & PW-4 accused Ram Chandar ought to have been convicted under Section 302/149 of IPC and likewise, from the statement of PW-5, accused Ram Chandar and Ajay both are liable to be convicted under Section 302/149 of IPC. He submits that the trial Court has not properly appreciated the evidence and considering the minor inconsistency and omissions in the evidence of the witnesses has acquitted the accused persons of all the charges and held some of them guilty only under Section 323/34 of IPC. As such, the matter needs to be remanded to the trial Court for decision afresh in accordance with law.

09. Opposing the above submission, it has been argued on behalf of the accused persons that statements of the eyewitnesses are self-contradictory and considering the injuries sustained by PW-5, PW-6

and PW-14 which are simple in nature, offence would not travel beyond Section 323/34 of IPC. He submits that in fact, Shivilal died after sustaining injuries caused by Revti Raman, who too expired in the same incident.

10. State counsel has duly assisted the Court.

11. Heard counsel for the respective parties and perused the material on record.

12. PW-2 Amar Sai has been examined as an eyewitness to the incident. He has stated that on the land of the deceased Shivilal, Manoj, Arun, Dilbharan, Ramchandar, Devnarayan, Ramlal, Sanjay, Arun Pratap, Chandar, Basant, Sukhdev, Balkrishna and Sobharan etc. were present. Deceased Shivilal, injured Lalsai, injured Leela and injured Ganesh and others had a quarrel with the accused persons whereas deceased Shivilal had a quarrel with one Revti Raman (deceased in connected appeal). The accused persons were carrying arms with them. He has stated that Revti Raman caused injury to deceased Shivilal and thereafter PW-14 Leela Singh also caused injury to Revti Raman. He has stated that the weapon of Revti Raman was picked up by deceased Shivilal who then caused injury to Revti Raman. Thereafter, accused/appellant Ram Chandar caused injury to Shivilal and other accused persons also caused injuries to PW-14, PW-6 & PW-5. From lengthy cross-examination of this witness it emerges that in the incident both the parties have caused injuries to each other and in the present appeal, Shivilal died whereas from the side of the accused persons Revti Raman also expired.

13. PW-3 Nandeshwar, a child aged about 12 years, has stated that there was quarrel between two groups and accused/appellant Ramchandar gave a blow to Shivilal on his head, however, this appears to be an improvement because in his case diary statement Ex.D/2 he has not deposed so. PW-5 Lalsai, injured eyewitness, has stated that he was beaten by the accused persons and thereafter, Shivilal was also caused injuries by appellant Ajay and then Chandar also caused him injury. From cross-examination of this witness it is apparent that there are material contradictions in his Court statement from that of his diary statement and FIR (Ex.P/6) lodged by him. PW-6 Ganesh is another injured eyewitness to the incident. According to him also there was a fight between two groups in which this witness was caused injuries by the accused persons whereas Shivilal succumbed to the injuries suffered in the incident. In cross-examination he has reiterated that it is Revti Raman (deceased in another case) who caused fatal injury on the head of deceased Shivilal by battleaxe as a result of which his head was literally chopped and he died instantaneously. PW-14 Leela Singh, the other injured eyewitness to the incident, has stated that deceased Shivilal was beaten by accused Ramchandar on his hand and thereafter acquitted accused Basant and Ramlal caused injuries and then accused Basant caused main injury to Shivilal. PW-16 Anandram, investigating officer, has supported the prosecution case.

14. DW-1 Gayaram Singh, Patwari, has stated that there was land dispute between the parties. DW-2 Sobaran has also admitted fight between the parties on the date of incident.

15. Close scrutiny of the evidence makes it clear that there was old

land dispute between the complainant and the deceased party and in connection therewith on 12.6.2002 there was quarrel between both the parties in which they assaulted each other resulting in instantaneous death of Shivilal and Revti Raman and simple injuries to PW-5 Lalsai, PW-6 Ganesh and PW-14 Leela Singh. Eyewitnesses to the incident i.e. PWs-2, 3, 5, 6 & 14 are not consistent in making allegation against the accused persons that deceased Shivilal was done to death by any of the accused persons. In fact, what reflects from the evidence is that deceased Shivilal after being assaulted by Revti Raman (deceased in connected criminal appeal) on his vital part head by battleaxe succumbed to the same. Though PWs-2, 3 & 5 have made allegation against the accused/appellants for causing injuries to Shivilal but their statements are self-contradictory and not conclusive in nature and there are inconsistencies on material particulars in their statements. Their Court statements are also at variance with their diary statements on material points. This apart, though certain seizures have been effected vide Ex.P/26, P/27, P/30 & P/32 on the memorandum of the accused/appellants (Ex.P/22, P/23, P/24 & P/19) but there is no FSL report to connect the said seizure with the crime of murder. Considering all these things, the trial Court found that the nature and quality of evidence adduced by the prosecution fall short of the standard of proof required for bringing home the charge under Section 302 of IPC. We do not find any illegality or infirmity in the findings recorded by the trial Court acquitting the accused persons of the offence under Section 302 of IPC.

Even otherwise, it is a settled principle of law that scope of interference in the order of acquittal under revisional jurisdiction is very

limited and if there are two views – one favouring the accused and the other the prosecution, the view favourable to the accused should be adopted. In the matter of ***Bindeshwari Prasad Singh Vs. State of Bihar and another, AIR 2002 SC 2907***, the Supreme Court while dealing with the scope of interference in revision against acquittal observed as under:

“13. The instant case is not one where any such illegality was committed by the trial court. In the absence of any legal infirmity either in the procedure or in the conduct of the trial, there was no justification for the High Court to interfere in exercise of its revisional jurisdiction. It has repeatedly been held that the High Court should not re-appreciate the evidence to reach a finding different from the trial court. In the absence of manifest illegality resulting in grave miscarriage of justice, exercise of revisional jurisdiction in such cases is not warranted.

14. We are, therefore, satisfied that the High Court was not justified in interfering with the order of acquittal in exercise of its revisional jurisdiction at the instance of the informant. It may be that the High Court on appreciation of the evidence on record may reach a conclusion different from that of the trial court. But that by itself is no justification for exercise of revisional jurisdiction under [Section 401](#) of the Code of Criminal Procedure against a judgment of acquittal. We cannot say that the judgment of the trial Court in the instant case was perverse. No defect of procedure has been pointed out. There was also no improper acceptance or rejection of evidence nor was there any defect of procedure or illegality in the conduct of the trial vitiating the trial itself. At best the High Court thought that the prosecution witnesses were reliable while the trial

court took the opposite view. This Court has repeatedly observed that in exercise of revisional jurisdiction against an order of acquittal at the instance of a private party, the Court exercises only limited jurisdiction and should not constitute itself into an appellate court which has a much wider jurisdiction to go into questions of facts and law, and to convert an order of acquittal into one of conviction. It cannot be lost sight of that when a re-trial is ordered, the dice is heavily loaded against the accused, and that itself must caution the Court exercising revisional jurisdiction. We, therefore, find no justification for the impugned order of the High Court ordering re-trial of the appellants.”

16. As regards conviction under Section 323/34 of IPC, though medical reports of injured PW-5 Lalsai, PW-6 Ganesh and PW-14 Leela Singh are there on record vide Ex.P/13, P/14 & P/15 and the same have not been proved by examining the treating doctor, however, the fact remains that they were caused injuries by the accused/appellants, their evidence to that extent remains firm and being so, non-examination of the treating doctor cannot be said to be fatal to the prosecution case. According to these medical reports the injuries sustained by the aforesaid witnesses were simple in nature and as such, the trial Court was justified in convicting the accused/appellants under Section 323/34 of IPC on three counts.

So far as quantum of sentence is concerned, taking into account of overall facts and circumstances of the case, the manner in which the incident occurred, the nature of injuries suffered by the injured eyewitness, we are of the opinion that the sentence awarded to the accused/appellants is commensurate with the gravity of the offence

and needs no reduction by this Court.

17. In the result, both the appeal (Cr.A.No.309/04) and the revision (Cr.Rev.No.284/04) being without any substance are liable to be dismissed and are, accordingly, dismissed.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(R.P. Sharma)

Judge

Khan