

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 397 of 2006****Order Reserved on 03.02.2017****Order Delivered on 09.03.2017**

Jethuram Satnami S/o Prem Das, aged about 30 years, R/o Gram – Bhilaidader, police station Bagbahara, District Mahasamund, Chhattisgarh.

---- Applicant/ Complainant**Versus**

1. State of Chhattisgarh through D.M. Raipur, Chhattisgarh.
 2. Bhavan Pandey, S/o Mayaram Pandey, aged about 30 years,
 3. Bhikham Sahu, S/o Chandan Sahu, aged about 23 years,
 4. Bhuchu Kenwat, S/o Tikam, aged about 25 years,
 5. Bhajan Gond, S/o Pan Singh Thakur, aged about 24 years,
- Respondents No. 2 to 5 R/o Gram Bhilaidader, police station Bagbahara, District Mahasamund, Chhattisgarh.

---- Respondents

For the Applicant	:	None present.
For Respondent No.1/ State	:	Shri Arvind Dubey, Panel Lawyer.
For Respondents No.2 to 5	:	Shri Akhilesh Mishra, Advocate.

Hon'ble the Acting Chief Justice**Hon'ble Shri Justice Rajendra Chandra Singh Samant****CAV ORDER****Per R.C.S. Samant, J.**

1. This revision is directed against the judgment dated 26.9.2005 passed in Special Sessions Trial No. 12 of 2005 by the Learned Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the SC & ST Act, 1989'), Raipur, District Raipur, Chhattisgarh acquitting the private respondents i.e. respondents No.2 to 5 from all the charges framed against them.

2. The case of the prosecution, in brief, is that on 27.9.2004 at about 7:00 pm, respondents No.2 and 3 came to the shop of deceased – Bisauha and demanded Khajana Gutka to which he refused, on which respondents No.2 and 3 got annoyed and pulled the deceased out and started beating him. In the meanwhile, respondents No.4 and 5 also came to the spot and assaulted the deceased with hands and fists due to which the deceased fell unconscious. On the next day morning, Neera Bai (PW-2), mother of the deceased found him dead. Merg intimation was recorded by Jethuram (PW-1). Inquest on dead body of Bisauha Ram was conducted vide Ex. P/4. The postmortem was conducted by Dr. Hemant Chandravanshi (PW-6) who opined that the death of the deceased was homicidal due to strangulation. On completion of merg enquiry, First Information Report was lodged vide Ex. P/16 against the private respondents. A case was registered under Section 302 read with Section 34 of the Indian Penal Code under Section 3 (2) (v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. On further investigation, one gamcha was seized from the spot vide Ex. P/2A. The spot maps were prepared by the Investigating Officer vide Ex. P/2 and by the Revenue Officer vide Ex. P/8. Statements of the witnesses were recorded and on completion of the investigation, respondents No.2 to 5 were charge-sheeted.

3. Respondents No.2 to 5 were charged for the offence under Section 302 in alternative under Section 302 read with Section 34 of the IPC and Section 3 (2) (v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 to which they denied. The defence did not examine any witness. On being examined under Section 313 of the

Cr.P.C., denying all the incriminating evidence against them, Respondents No.2 to 5 pleaded innocence and false implication. By the impugned judgment, Respondents No.2 to 5 have been acquitted of the charges framed against them.

4. The grounds taken in this revision are that the trial court has erroneously passed the judgment of acquittal against the private respondents. Eyewitnesses Sukhlal (PW-3), Ganesh (PW-4) and Sonarin Bai (PW-5) have been wrongly disbelieved by the trial Court. Further, the evidence of Neera Bai (PW-2), mother of the deceased was also disbelieved erroneously. Thus, the acquittal of the private respondents is against the evidence of the prosecution and the instant revision has been filed to set aside the impugned judgment. It is also the case of the applicant/ complainant that Neera Bai (PW-2), Sukhlal (PW-3) and Ganesh (PW-4) are eyewitnesses to the incident and their evidence is supported by the medical evidence given by Dr. Hemant Chandravanshi (PW-6) and Dr. R.K. Kuruvanshi (PW-11), which establishes the guilt of the private respondents. The trial court has failed to appreciate the evidence of the prosecution and discarded the same on the basis of mere baseless assumptions. Hence, for these reasons, the impugned judgment is liable to be set aside.

5. None appears on behalf of the applicant/ complainant, however, learned State counsel has duly assisted the court.

6. On behalf of the private respondents, it is submitted that there is no infirmity in the impugned judgment. The trial court has given due consideration to entire evidence of the prosecution and come to this

conclusion that the case of the prosecution has not been proved beyond reasonable doubt. Hence, there is no reason for interference in this revision petition.

7. Considering the material on record and the arguments submitted on behalf of the respondents, the question for determination is, whether the trial Court was justified in acquitting the private respondents and the prosecution has failed to establish their guilt beyond all reasonable doubt?

8. Neera Bai (PW-2) has stated that on the date of incident, respondents No.2 and 3, came to the shop of deceased Bisauha and demanded Khajana Gutka to which he refused and upon which some exchange of words took place between the deceased and respondents No. 2 and 3. Thereafter, the deceased was pulled out from the shop and beaten by both of them. In the meanwhile, respondents No. 4 and 5 also arrived on the spot and assaulted the deceased. At that time, respondent No.2 also strangled the deceased and when Neera Bai (PW-2) intervened she was also assaulted by them. Bisauha became unconscious and came to consciousness when water was sprinkled on his face by her. She left Bisauha to sleep at her home. On the next day morning, she found Bisauha dead. In cross-examination, her statement has remained unrebutted.

9. Sukhlal (PW-3) went to the spot on hearing the cries of Neera Bai (PW-2) and saw the private respondents assaulting Bisauha who became unconscious and fell down. His statement has remained unrebutted in his cross-examination.

10. Ganesh (PW-4) stated that he went to the spot and saw that respondent No.2 was assaulting the deceased by using his slipper and remaining private respondents were assaulting him with hands and fists due to which Bisauha became unconscious and fell down. In cross-examination, he admitted that Sukhlal (PW-3) gave some water to Bisauha and on drinking some water he came to his consciousness. Sonarin Bai (PW-5) also stated about witnessing the incident. Respondents No. 2 to 5 have assaulted the deceased.

11. The postmortem was conducted by Dr. Hemant Chandravanshi (PW-6) who gave this statement that he conducted the postmortem examination on the deceased and according to his opinion the death was homicidal and due to throttling of neck. In cross-examination, he admitted that in the circumstances after throttling the person can neither speak nor drink water as he dies immediately.

12. Dr. R.K. Kuruvanshi (PW-11) was also present in the team with Dr. Hemant Chandravanshi (PW-6) while conducting the postmortem. The statements of the doctors were not recorded elaborately as per the details given in postmortem report which was a necessity to consider and decide the case on the opinion of the doctor. The court is just guided by the opinion of the doctor and is not bound to follow it. Whether such opinion is in conformity with the findings in the postmortem has to be examined, hence, it is the duty of every criminal court to record the evidence and the reasons on which the opinion is founded. It appears that the trial court has failed in this respect. For the sake of examining the correctness of the opinion, the contents of the postmortem report Ex. P/6 are perused. Externally some

marks of congestion and bruise were found on the body of deceased Bisauha but internally the symptoms of throttling which should have been found in this case are missing.

13. As per the **Text book of Medical Jurisprudence and Toxicology** by **Jaising P. Modi** asphyxia is caused by pressing of the neck, forcefully, obstructing the air passage to the lungs. The symptoms which should have been found and recorded are that the face should have become puffy and cyanosed. Lips turned to blue colour and bloody froth may come out from the mouth. It is usual to find fracture of hyoid bone and its dislocation of cervical vertebrae and frothy mucous in larynx and trachea with congestion. Further congestion is also marked in lungs and other internal organs. In this case, as per the details in Ex. P/6, neither fracture of hyoid bone etc were noticed and nor trachea and larynx were examined. Hence, in this situation, it appears that though the doctor has not been examined in detail, even if he is examined in detail, his statement would not be of much support to the prosecution.

14. It is the admission of the prosecution witnesses that deceased Bisauha became unconscious after the beatings were given to him by respondents No. 2 to 5 but on sprinkling of water he came back to consciousness and he also drank some water. That means his death was not caused due to beating by the respondents at the time of incident as narrated by the witnesses in this case. The possible cause of death may be some other event which is not witnessed by any of the witnesses examined. This view is also possible, because the incident of beating took place at about 7:00 pm in the evening, thereafter he was alive he went to

sleep and was found dead in the morning only. There is no statement of any witness as to what incident occurred in the night and deceased was found dead in the next morning.

15. Jethuram (PW-1) came to know about the death of his brother and on his information merg Ex. P/1 was recorded. Pansingh (PW-8) is witness of inquest Ex. P/4. Patwari – Rajendra Kumar Dongre (PW-7) prepared the spot map Ex. P/8. Sub-Inspector, R.L. Chauhan (PW-10) has conducted the investigation. K.R. Minj (PW-9) and Sub-Inspector – S.R. Bhagat (PW-12) have assisted the merg enquiry.

16. After perusing and closely scrutinizing the evidence of the prosecution, it is found that there is no answer to this question whether the death of deceased Bisauha was caused because of the beatings given by the respondents. On the basis of admission of the prosecution witnesses, that deceased Bisauha was alive even after the beating given by the private respondents, the theory of the prosecution that deceased Bisauha died due to the act of respondents No. 2 to 5 is not wholly substantiated. The medical evidence and medical report itself is not very clear in this respect. It is a case where two views seem to be possible. In such a case, the principle is that the view in favour of the accused persons has to be followed and the accused should be extended benefit of doubt.

17. For the aforesaid reasons, we find no merit in the revision petition. Accordingly, the revision petition is dismissed.

Sd/-

(Pritinker Diwaker)
Ag. Chief Justice

Sd/-

(R.C.S. Samant)
Judge