

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 298 of 2005

- Guha Ram Porkiya S/o Ugrasen Prokiya, age 45 years, Occupation - Teacher at Govt. School, R/o village Keshpur, Police Station Basna, District Mahasamund.

---- Applicant

Versus

1. State of Chhattisgarh Through the Police Station, Basna, District Mahasamund (C.G.).
2. Kartik Ram Chowhan @ Shyam Lal Chowhan, S/o Daras Ram Chowhan, age 26 years, By Caste - Ganda, R/o village Kushbhanta, P.S. Bilaigarh, District Raipur (C.G.)
3. Ganesh Ram Chowhan, S/o Sabit Ram Chowhan, age - 42 years, By Caste - Ganda, R/o village Kesharpur, P.S. Basna, District Mahasamund (C.G.)

---- Respondents

For Applicant	:	Shri J.A. Lohani, Advocate.
For Respondent No.1	:	Shri Ravindra Agrawal, P.L.
For Respondent No.2	:	Shri F.S. Khare, Advocate.
For Respondent No.3	:	Shri Manoj Paranjape and Shri Anurag Singh, Advocates.

Hon'ble Shri Justice Pritinker Diwaker &

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

By Pritinker Diwaker, J.

17/04/2017

The present Revision petition is directed against the judgment and order dated 22.03.2005, passed by the II Additional Sessions Judge, Mahasamund, in Sessions Trial No.05/2005 acquitting respondent No.2 of the charges under Section 307 IPC and Section 25/27 of the Arms Act & respondent No.3 of the charge under Section 120-B read with section 307 IPC.

02. As per the prosecution case, in the night intervening 7-8/09/1994 at about 1.00 AM when complainant Guharam (PW/7) was

sleeping in his bed room, he suffered gun shot injury on his back. Thereafter, he immediately called his family members and it was noticed that somebody had fired from outside the house resulting injury to Guharam (PW/7). On 08.09.2004, F.I.R. (Ex.P/1) was lodged by Guharam (PW/7) at about 9.30 am under Section 307 IPC against the unknown person. Injured Guharam (PW/7) was medically examined vide Ex.P/11 on 08.04.2004 and the injury report has been admitted by the defence counsel. On the memorandum (Ex.P/5) of accused/respondent No.2-Kartik, seizure was made under Ex.P/6 by which one country made pistol and one live bullet were seized. However, Chakradhar Choudhari (PW/8) and Lobhan (PW/9), witnesses to the memorandum of accused/respondent No.2-Kartik, have not supported the prosecution case and declared hostile.

03. After filing of the charge sheet, the trial Court has framed the charges against accused/respondent No.2-Kartik Ram under Section 307 IPC and Section 25/27 of the Arms Act, whereas against accused/respondent No.3-Ganesh Ram the charge was framed under Section 120-B read with section 307 IPC.

04. So as to hold the accused/respondent Nos.2 and 3 guilty, the prosecution examined as many as 9 witnesses. Statements of the accused persons 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.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record has acquitted the accused/respondent Nos.2 and 3 as mentioned in para-1 of this judgment. Hence, this revision.

06. Learned counsel for the applicant submits as under :

- that though the complainant had not seen the accused persons causing gun shot injury to him but in the village meeting it was revealed that respondent No.2-Kartik Ram was roaming in the village carrying country made pistol with him;
- that once the gun shot has been sustained by the complainant, even on the ground of suspicion, the accused persons ought to have been convicted;
- that for prosecuting the accused persons under Sections 25 and 27 of the Arms Act, the sanction was granted by the Collector on 02.11.2004 and it is to be presumed that the accused/respondent No.1-Kartik Ram was too involved in the commission of offence;
- that though Chakradhar Choudhari (PW/8) and Lobhan (PW/9), witnesses to the memorandum and seizure, have not supported the prosecution case but they have admitted their signatures and, therefore, the accused persons ought to have been convicted.

07. Supporting the impugned judgment it has been argued on behalf of the accused persons :-

- that Chakradhar Choudhari (PW/8) and Lobhan (PW/9), witnesses to the memorandum, have not supported the prosecution case and it was the basic requirement for convicting the accused persons under provisions of Arms Act;
- that there is no document on record showing that the weapon so seized was in working condition and even the said weapon has not been produced before the Court below;
- that there is no ballistic expert's report on record showing any

gun shot was made from the seized weapon;

- that merely on the basis of suspicion, the accused persons cannot be convicted;
- that the scope of interference in the revision against the judgment acquittal is very limited and the same can only be interfered with if the finding recorded by the Court below is perverse.

08. The State counsel has duly assisted the Court.

09. We have heard learned counsel for the parties and perused the material available on record.

10. In the instant case, the prosecution, in support of its case, has examined 09 witnesses but undisputedly there is no identification of the accused persons and they have been made accused solely on the basis of suspicion and so called memorandum (Ex.P/5) of the accused/respondent No.2-Kartik Ram, but witnesses to memorandum Chakradhar Choudhari (PW/8) and Lobhan (PW/9) have not supported the prosecution case. Likewise, seizure witnesses of Ex.P/6 by which the alleged weapon and bullet were seized have also not supported the prosecution case. Even the weapon alleged to have been used has not been produced before the Court below and there is no ballistic expert's report on record to substantiate its case. Considering all these aspects of the matter, the trial Court, after due appreciation of the evidence, has acquitted the accused persons and the view taken by the trial Court is one of the possible view. The prosecution thus utterly failed in proving its case beyond reasonable doubt and the trial Court has been fully justified in recording the finding of acquittal which is based on proper appreciation of evidence available on record. That apart, the settled legal position that if two reasonable conclusions are possible on the

basis of evidence on record the court should not disturb the finding of acquittal recorded by the trial Court, also comes to the rescue of the accused/respondent Nos.2 and 3 bolstering the presumption that they are innocent.

11. Accordingly, the revision preferred by the applicant is bereft of any substance, the same is liable to be and is hereby dismissed.

Sd/-

(Pritinker Diwaker)

JUDGE

Sd/-

(R.C.S. Samant)

JUDGE