

IN THE HIGH COURT OF JUDICATURE AT BILASPUR(C.G.)

Division Bench

CRIMINAL REVISION NO. 91 OF 2006

APPLICANT : Kumari Bai Wd/o Late Dilip Singh, aged about 30 years, R/o Mudpar, Tahsil Sarangarh District Raigarh (CG).

VERSUS

NON-APPLICANTS :

1. Baisakhu S/o Tiharu Yadav, aged 30 years.
2. Bihari Lal S/o Anand Ram Yadav, aged 28 years.
3. Baladram S/o Anand Ram Yadav, aged about 21 years.
4. Anand Ram S/o Ludhgu Yadav, aged 45 years.
5. Janak Ram S/o Bedu Satnami, aged 35 years.
6. Thakur Ram S/o Kirit Ram Sahu, aged 29 years.
7. Janku S/o Darsu Yadav, aged 40 years.
8. Janmajai S/o Bedu Satnami, aged 38 years.
9. Dehari S/o Janku Yadav, aged 28 years.
10. Bedu S/o Bhagru Satnami, aged 58 years.
11. Paras Yadav S/o Janku Yadav, aged 27 years.

All resident of Village Mudhpar Bade Chowki Kosir, Thana Sarangarh District Raigarh.

12. The State of Chhattisgarh, through the District Magistrate, Raigarh (CG).

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CRIMINAL REVISION U/S 397 READ WITH SECTION 401 OF Cr.P.C

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HIGH COURT OF CHHATTISGARH, BILASPUR

**CORAM: HON'BLE SHRI JUSTICE PRITINKER DIWAKER &
HON'BLE SHRI JUSTICE RAJENDRA CHANDRA SINGH SAMANT**

Criminal Revision No. 91 of 2006

Kumari Bai

---- Applicant

Versus

Baisakhu and Others

---- Respondent

Order for Consideration

Sd/-
Rajendra Chandra Singh Samant
Judge

Hon'ble Shri Justice Pritinker Diwaker

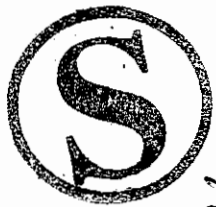
Sd/-
Pritinker Diwaker
Judge

16 /02/2017

Post for Order on 17/02/2017

Sd/-
JUDGE
16/02/2017

Seen
Sd/-
C. H. A. 10/11/2017
Seen
Sd/-
16/02/2017



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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 91 of 2006

Order reserved on : 13 / 01 /2017

Order passed on : 17 / 02 /2017

Kumari Bai, Wd/o Late Dilip Singh, Aged about 30 years, R/o Mudpar,
Tahsil Sarangarh, District Raigarh (C.G.)

---- Applicant

Versus

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8. Janmajai S/o Bedu Satnami, Aged 38 years;
9. Dehari S/o Janku Yadav, Aged 28 years; (**Deleted**)
10. Bedu S/o Bhagru Satnami, Aged 58 years; (**Deleted**)
11. Paras Yadav S/o Janku Yadav, Aged 27 years,

All resident of Village Mudhpar Bade Chowki Kosir, Thana Sarangarh,
District Raigarh.

12. The State of Chhattisgarh, through the District Magistrate, Raigarh (C.G.)

---- Non-applicants

For Applicant	:	Ms. Pritha Goshal, Advocate
For the State/Non-applicant No.12	:	Shri Neeraj Mehta, Panel Lawyer.



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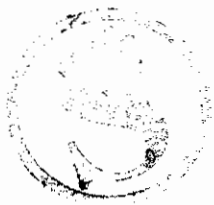
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Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V Order

By Rajendra Chandra Singh Samant, J.

1. This criminal revision is directed against the judgment of acquittal dated 28-10-2005 passed by Sessions Judge, Raigarh in Special Case No.05/2005 by which respondents No.1 to 8 and 11 and deceased/respondents No.9 and 10 were acquitted of all the charges.
2. Case of the prosecution in brief, is that on 17-11-2004 at about 1.30 p.m., complainant Kumari Bai (PW-1) and others went to the residence of respondent No.1 Baisakhu to complain that their path of bringing water has been obstructed due to which there was exchange of words between Rameshwar and respondent No.1. Respondent No.1 Baisakhu said that "why Chamra Log" (Cobblers) should walk on this path. Respondent No.1 along with others assaulted Rameshwar. Kumari Bai (PW-1), Dilip and Kunjram went to the spot but by then Rameshwar was done to death. Dilip and Kunjram was chased by the respondents-accused persons. Dilip and Kunjram fled from the spot and after entering their house bolted the door. Respondents-accused persons arrived there, who broke opened the door of their residence. Dilip and Kunjram tried to run away from the spot to save themselves but Kunjram was chased, his both hands were chopped down which caused his death. Complainant Kumari Bai also tried to run away but she was caught and assaulted. Dilip was also assaulted by the respondents and done to death in the same incident. After causing damage to the house and belongings of the complainant, respondents went away from the spot.
3. One unnumbered FIR (Ex. P-1) was recorded at the instance of Kumari Bai (PW-1), on the basis of the same unnumbered FIR (Ex. P-34) was recorded in Police Station, Sarangarh. Later on, recorded as numbered FIR (Ex. P-35). Morgue Intimation (Ex. P-27) regarding death of Dilip, (Ex. P-2) regarding death of



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Rameshwar and (Ex. P-39) regarding death of Kunjram were recorded. During investigation, vide Ex. P-11 blood stained soil and plain soil was seized from the spot where dead body of Rameshwar was found. Slippers and a broken frame of spectacle was seized vide Ex. P-12. Vide Ex. P-13, blood stained soil and plain soil was preserved and sealed from the spot where dead body of Kunjram was found. Damaged articles from the residence of complainant were seized vide Ex. P-14. At the instance of respondent Anandram vide memorandum Ex. P-17, a bamboo club was seized vide Ex. P-20. At the instance of respondent Baisakhu vide Ex. P-16, one axe was recovered and seized vide Ex. P-21 and also Lungi and Banian were seized vide Ex. P-23. At the instance of respondent Thakur Ram vide his memorandum (Ex. P-18) one bamboo club was seized vide Ex. P-22. At the instance of respondent Janak Ram vide memorandum statement (Ex. P-19), Lungi was seized vide Ex. P-24. Further in the investigation, autopsy was conducted on dead body of Rameshwar, Kunjram and Dilip vide Ex. P-29, P-30 and P-31. Dr. J.R. Ghrilahre (PW-11) opined that the death of Rameshwar, Kunjram and Dilip was homicidal in nature due to the injuries caused on their bodies. Dr. J.R. Ghrilahre (PW-11) examined seized articles, axe and clubs and reported vide Ex. P-32 and P-33. Further seized articles were sent for FSL examination. On completion of investigation, respondents-accused persons were charge-sheeted.

4. Trial Court framed charges under Sections 147, 148, 149, 427 and 302 of IPC along with Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Respondents-accused persons denied the charges levelled against them and demanded for trial.

5. The prosecution examined 24 witnesses. On examination under Section 313 of Cr.P.C., respondents denied all the implicating circumstances against them in the prosecution evidence. Further they pleaded innocence and false implication in the crime in question. Opportunity to lead the evidence in defence was taken



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but none of the witnesses were examined in defence. Impugned judgment was passed by the trial Court. The finding was given that prosecution has failed to prove the charges against all the respondents-accused persons on the basis of proof beyond reasonable doubt and order of acquittal was passed.

6. The grounds in this revision are that the trial Court has erroneously given the finding of acquittal in favour of the respondents-accused persons. There had been eyewitnesses who have been wrongly disbelieved by the trial Court, hence material irregularity was committed in passing the impugned judgment. There had been sufficient evidence of prosecution for holding guilty all the respondents-accused persons. Prayer has been made to set aside the impugned judgment and pass suitable directions.

7. It is submitted by learned counsel for the applicant that Kumari Bai (PW-1), Chatur (PW-3), Ku. Santoshi (PW-5) are the eyewitnesses who have supported the case of prosecution and their statements have remained unrebutted. There had been no reason to disbelieve the version of these witnesses. FIR of the incident was promptly lodged on the date of incident itself, in short span of time. The medical evidence is sufficient to corroborate the statements given by the eyewitnesses. No evidence was led by the defence. Reasons assigned for disbelieving the statements of these witnesses are beyond imagination. Hence, for these reasons, the judgment of acquittal passed by the trial Court is perverse, contrary to the facts and against the principles of law.

8. The question for determination in this revision is limited to that, whether the reasons assigned by the trial Court to disbelieve the statement of eyewitnesses had been sufficient and on its basis the prosecution case was belied? For which the statement of witnesses before the trial Court is perused and finding is arrived at.

9. In revisional jurisdiction, the correctness, legality and propriety of an order



passed by the Court below is examined. Evaluation and marshaling the evidence before trial Court can be done with a limited purpose to examine, that whether the evidence has been disbelieved by the trial Court on the basis of perverse reasoning. This is the case in which the reasoning given by the trial Court to disbelieve the evidence of prosecution has to be examined.

10. In this case, Kumari Bai (PW-1) has given eyewitness account of the incident. Her statement was disbelieved on this ground that she cannot be a witness to each of the three murders committed in this incident. Spot map (Ex. 43) was relied, on the basis of which it was held that it was not possible for Kumari Bai (PW-1) to witness the incident in front of the residence of Baisakhu. For this reason, her statement was disbelieved. Kumari Bai (PW-1) has stated in her deposition that on the date of incident at about 12.00 O'clock when herself, her father-in-law Rameshwar, brother-in-law Kunjram, uncle Chatur and her husband Dilip were at home, Baisakhu called her father-in-law to his residence. After that the incident happened in which Ramesh, Dhanilal, Kirit and Prahlad assaulted her father-in-law. Her husband and brother-in-law rushed to the spot. After that the accused persons chased her husband and brother-in-law who came back inside her house and bolted the door. Later on, the door of her residence was forcefully broke opened, her husband and brother-in-law were dragged out and assaulted. Further, other details were also given in her statement. It may be so, she may have not been the witness to the incident when her father-in-law was assaulted, but she was in the same house from where her husband Dilip and her brother-in-law Kunjram were dragged out of the house and assaulted by the accused persons.

11. Kumari Bai (PW-1) has on being questioned by defence counsel answered that when deceased Dilip and Kunjram were inside the house of Kumari Bai (PW-1), about 100 persons were surrounded her residence and she was unable to identify each of them. In the statement of Kumari Bai (PW-1), she has given the

names of assailants who chased her husband and brother-in-law to her house. She has named the persons who broke opened the door of her house. She has also named the persons who assaulted her husband and her brother-in-law with axe causing injuries to them and she has identified the accused persons in Court as well.

12. Trial Court has disbelieved Kumari Bai (PW-1) regarding her statement about getting recorded unnumbered FIR (Ex. P-1). On the basis of this statement of Kumari Bai (PW-1), that her uncle Kirtan went to Police Station after the incident and had already lodged a report there. That report was not presented before the Court. Hence, for this, she did not lodge any report as the police came to the village, but she has stated that she gave a statement to the police. While considering this statement, the statement of Sub Inspector Puran Chand Singh (PW-24) should also have been considered to arrive at a finding, who has stated that it was Kumari Bai (PW-1) on whose information (Ex. P-1) was recorded. He has also stated in his cross-examination that on arriving at the spot at first, he recorded *Dehati Nalishi* (Ex. P-1). Hence, the ground for disbelieving the statement of Kumari Bai (PW-1) do not appear convincing.

13. Statement of other eyewitnesses Chatur (PW-3) and Ku. Santoshi (PW-5) was considered by the trial Court and reasoning given for disbelieving their statement that when accused persons surrounded the house of complainant and started breaking the door, Chatur (PW-3) went in hiding. His admission that there were about 100 persons participating in the assault and he could not recognise each of them. In paragraph 7 of cross-examination, he stated that accused persons were among the 100 persons who were participating in the incident.

14. Further, the statement of Chatur (PW-3) was considered on the point of his conduct when he arrived to Sarangarh has been viewed with suspicion. While considering the on the point, the statement of Sub Inspector Puran Chand Singh (PW-24) should have been examined who has stated that one information was



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received telephonically on 17-11-2004, that one incident of violent dispute and assault has taken place in village Mudhpar, which was recorded in Rojnamcha Sahna and he proceeded to the spot to do the needful. The conduct of Chatur (PW-3) about not recording any FIR was made a ground by the trial Court to disbelieve his statement.

15. Statement of Ku. Santoshi (PW-5) that she had been to bore-well to fetch of water when she saw accused Janmajai, Bedu, Anand and Baisakhu assaulting Rameshwar with axe. Some contradictions in her statement have been taken into account to disbelieve her holding the same as material contradictions. Similarly, her admission in cross-examination that about 100 persons were participating in the assault and she was told about the names of assailants by Kirtan Satnami was also taken into consideration to disbelieve her. On perusing the statement of Ku. Santoshi (PW-5), it is clear from her statement of examination in Chief that she saw Janmajai, Bedu, Anand and Baisakhu assaulting Rameshwar. Although there is some omission about naming the rest of the accused persons even then, her statement against the named accused persons was consistent. Her admission that names of Janmajai, Bedu, Anand and Baisakhu were told by Kirtan was on suggestion by defence. Further her statement is only to this extent that Kirtan told her these names do not make it clear that she did not know these persons from the beginning in her examination in chief. She has stated that she knows all the accused persons.

16. There is settled principle of law regarding believing or disbelieving the statement of witnesses of prosecution. Minor discrepancies, contradictions and omissions which do not go to the root have not been considered as the sufficient ground to discredit or disbelieve the witnesses. On the other hand, when statement of the witnesses has to be disbelieved, for that purpose, the statement of investigation officer is also needed to be examined in this respect for coming to the conclusion.



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17. In **Kocharya Khatrya Valvi Vs. State of Maharashtra & Anr**,
2011 CRI. L. J. 1434 (BOMBAY HIGH COURT) held in para 15 as under:

"15. In a criminal trial, Court has to take into consideration right of complainant/victim and right vested with the accused person. The Court seized with the trial is under legal duty to give proper and fair opportunity to all the parties, however, shall not ignore the injustice likely to be caused to the complainant on account of lethargy on the part of the prosecution."

In **Ganesha vs. Sharanappa and another**, AIR 2014 SUPREME COURT 1198 it was held by Apex Court in para 10 as under :

"10. However, in a case where the finding of acquittal is recorded on account of misreading of evidence or non-consideration of evidence or perverse appreciation of evidence, nothing prevents the High Court from setting aside the order of acquittal at the instance of the informant in revision and directing fresh disposal on merit by the trial court. In the event of such direction, the trial court shall be obliged to re-appraise the evidence in light of the observation of the revisional court and take an independent view uninfluenced by any of the observations of the revisional court on the merit of the case. By way of abundant caution, we may herein observe that interference with the order of acquittal in revision is called for only in cases where there is manifest error of law or procedure and in those exceptional cases in which it is found that the order of acquittal suffers from glaring illegality, resulting into miscarriage of justice. The High Court may also interfere in those cases of acquittal caused by shutting out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue has been overlooked. In such an exceptional case, the High Court in revision can set aside an order of acquittal but it cannot convert an order of acquittal into that of an order of conviction. The only course left to the High Court in such exceptional cases is to order re-trial



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In **State V/S Sarvanan and another**, 2009 AIR(SC) 152, (2008) 17 SCC 587, it was held by Supreme Court as under :

[11] The High Court also held that as there were some discrepancies and improvements in the statement of the witnesses, their evidence should not be relied upon. In *State of U. P. v. M.K. Anthony*, [(1985) 1 SCC 505] this Court has laid down the approach which should be followed by the Court in such cases:

"10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper- technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross- examination is an unequal duel between a rustic and refined lawyer....."

Even otherwise, it has been said time and again by this Court that while appreciating the evidence of a witness, minor discrepancies

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on trivial matters without affecting the core of the prosecution case, ought not to prompt the court to reject evidence in its entirety. Further, on the general tenor of the evidence given by the witness, the trial court upon appreciation of evidence forms an opinion about the credibility thereof, in the normal circumstances the appellate court would not be justified to review it once again without justifiable reasons. It is the totality of the situation, which has to be taken note of. Difference in some minor detail, which does not otherwise affect the core of the prosecution case, even if present, that itself would not prompt the court to reject the evidence on minor variations and discrepancies.

Further in **Shivaji Sahebrao Bobade & Anr vs State Of Maharashtra: 1973 AIR 2622, 1974 SCR (1) 489** , it was held in para 6 as under :

".....The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim and the community, demand special emphasis in the contemporary context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will breakdown and lose credibility with the community. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicated 'persons' and more severe punishment of those who are found guilty. Jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing chance possibilities as good enough to set the delinquent free and chopping the logic of pre-ponderant probability to punish marginal innocents. Certainly, in the last analysis, reasonable doubts must operate to the advantage of the appellant. In India the law has been laid on these lines long ago."

Other principles on appreciation of evidence are :

It is the duty of court to scrutinize the evidence carefully and to see that acceptable evidence is accepted; **State of Gujarat v. Gandabhai Govindbhai, 2000 Cr LJ 92 (Guj).**

It has been held regarding "interested witness" that the relationship is not a factor to affect credibility of witness; **Rizan**

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vs. State of Chhattisgarh, AIR 2003 SC 976.

Testimony of injured eye witnesses cannot be rejected on ground that they were interested witnesses; **Nallamsetty Yanasaiah v. State of Andhra Pradesh, AIR 1993 SC 1175.**

(iii) The mechanical rejection of evidence on sole ground that it is from interested witness would invariably lead to failure of justice; **Brathi alias Sukhdev Singh v. State of Punjab, 1991 Cr LJ 402 (SC).**

"Falsus in uno, Falsus in Omnibus" is not a rule of evidence in criminal trial and it is duty of the Court to disengage the truth from falsehood, to shift grain from the chaff; **Triloki Nath v. State of U.P., AIR 2006 SC 321.**

.....The maxim *"falsus in uno falsus in omnibus"* has not received general acceptance nor has this maxim come to occupy the status of rule of law. The maxim merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence"; **Israr v. State of Uttar Pradesh, AIR 2005 SC 249".**

18. The question of guilt of innocence of the private respondents needs to be decided after scrutinizing the evidence of the witnesses on the basis of the principles laid down as mentioned above. It appears that in this case, the trial Court has not followed the principles of law in scrutinizing, accepting or rejecting the evidence of the witnesses. The reasons given for disbelieving the statement of the eyewitnesses had to be cogent and lawful in accordance with the principles in this respect. For these reasons, the grievance of the applicant needs to be addressed. It is a fit case to exercise the power of revision under Section 397 and 401 of the Cr.P.C., hence the revision is allowed. The impugned judgment of acquittal passed by the trial Court is set aside. Case is remanded to the trial Court with a direction to give opportunity of submitting arguments to both sides and decide the case afresh in accordance with law.

Sd/-
Pritinker Diwaker
Judge
JUDGE

Sd/-
(R.C.S. Samant)
JUDGE