

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 427 of 2007****Order Reserved on 21.12.2016****Order Delivered on 04.01.2017**

1. Smt. Baikunthi Devi w/o late Shivaji Singh aged about 62 years, R/o Kohka, Housing Board, Makan No. 868, Bhilai, District Durg, Chhattisgarh.
2. Anamika D/o late Shivaji Sindu, aged about 24 years, R/o Section-7, Road No. 31 A, Qtr. No. 6A, Bhilai, District Durg, Chhattisgarh.

---- Applicants/ Complainant**Versus**

1. Bhupendra @ Sonu Bhatija (Bhatia), S/o Nandlal, aged about 32 years,
2. Priya @ Gauri Bhatija W/o Bhatija (Bhatia), aged about 32 years. Both R/o. 1 C/31A, Sector-7, Bhilai, District Durg.
3. State of Chhattisgarh through District Magistrate, Durg, District Durg, Chhattisgarh.

---- Respondents

For the Applicants	:	Shri Tarun Dansena, Advocate.
For Respondents No.1 & 2	:	Shri Shrawan Agrawal, Advocate.
For Respondent No.3/ State	:	Shri V.A. Goverdhan, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice Rajendra Chandra Singh Samant****CAV ORDER****Per R.C.S. Samant, J.**

1. The applicants have brought this revision against the judgment dated 24.4.2007 passed in Sessions Trial No. 91 of 2006 by the Learned Second Additional Sessions Judge, Durg, District Durg, Chhattisgarh, whereby Respondents No.1 and 2 were acquitted of the charges framed under Sections 450, 307 and 324 of the Indian Penal Code (for short 'the IPC').

2. The case of the prosecution, in brief, is that on 8.11.2005 at about 2:00 pm, complainant – Anamika recorded one unnumbered First Information Report (Ex. P/11) that her children and children of Priya @ Gauri had a fight between them and for this reason Respondents No.1 and 2 committed house trespass and assaulted the complainant and caused fatal injuries to her baby Khushi and her mother Baikunthi Devi. A case was registered under Section 307 read with Section 34 of the IPC against Respondents No.1 and 2. Numbered FIR was recorded vide Ex. P/5. Injured Anamika and Baikunthi Devi were medically examined vide Ex. P/6 and P/8. One knife was seized vide Ex. P/1 from respondent No.1. The documents of medical treatment of the injured persons were also seized. Statements of the witnesses were recorded and on completion of the investigation, Respondents No.1 and 2 were charge-sheeted.

3. Respondents No.1 and 2 were charged for the offence under Sections 450, 307 and 324 of the IPC to which they denied. The prosecution examined as many as 12 witnesses. 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.1 and 2 pleaded innocence and false implication. By the impugned judgment, Respondents No.1 and 2 have been acquitted of the charges framed against them.

4. The grounds taken in this revision are that despite the availability of the material witnesses, the same were not examined by the trial court, which resulted into the acquittal of Respondents No.1 and 2. The trial Court has acquitted Respondents No.1 and 2 as aforementioned and thereby committed illegality. Hence, it is prayed that this revision may be allowed

and the case may be remanded back to the trial court for reexamining the injured witnesses and Investigating Officer and thereafter for passing a reasoned judgment in accordance with law.

5. It is submitted by learned counsel for the applicants/complainants that no effort was made to serve notices on the applicants. They never changed their address. The trial court failed to appreciate this fact. The evidence of the applicants was shut out and it resulted into miscarriage of justice.

6. On behalf of Respondents No.1 and 2, it has been argued that sufficient opportunity was afforded to the prosecution for production of witnesses, even then the witnesses could not be produced for the reason as they were not found on the address as mentioned in the charge-sheet and the applicants/complainants who were the witnesses of this case never gave any information to the police or to the court about the change of their address. It is submitted that the applicants chose to remain absent for evidence before the trial court. Hence, the revision preferred by them deserves to be dismissed.

7. On the basis of grounds urged in the revision and submissions made by counsel for the applicants and the respondents, the only point which arises for consideration in this revision is whether the present is a case of shutting out evidence by not giving proper opportunity to the prosecution for production of evidence. On this point, only the order-sheets of the case before the trial Court are required to be perused.

8. Respondents No.1 and 2 were charged on 18.8.2006 and the case was fixed for evidence on 3.10.2006, 4.10.2006 and 5.10.2006. Thereafter,

no appearance of the applicants/complainants as witnesses is recorded in the order-sheets nor there is any mention of service report in these order-sheets. Again, the case was fixed for evidence of the applicants on 2.1.2007 by order dated 15.12.2006. On 2.1.2007, neither the applicants were present nor the order-sheet mentions about the service report. After that, the case was again posted for recording the evidence of the applicants on 28.2.2007. It is mentioned in the order-sheet that the summons issued to the witnesses were not returned either served or unserved.

9. By order-sheet dated 1.3.2007, even when no service of summons was effected on the applicants, an order was made for issuance of bailable warrants against the applicants' witnesses and the case was posted for recording their evidence on 22.3.2007. In the order-sheet dated 22.3.2007, again it is mentioned that the summons which were issued against applicants – Baikunthi Devi and Anamika were not returned either served or unserved. In the order-sheet dated 23.3.2007, there is again mention of issuing of bailable warrant of Rs.500/- against the applicants and other witnesses. On the date of hearing i.e. 30.3.2007, it is recorded in the order-sheet that the bailable warrants issued to applicants – Baikunthi Devi and others were returned unserved.

10. In the order-sheet dated 2.4.2007, it is recorded that applicants – Anamika, Baikunthi Devi and witness Anjana Singh and one other witness could not be served with the bailable warrant. As per report, these witnesses were not residing on the given address and there is no information of their present address. A last opportunity was afforded to the prosecution with a direction to provide new and current address of Anamika, Baikunthi

Devi and Anjana Singh. It was also ordered that on supplying of new and current addresses, bailable warrants be issued against them. On the next date of hearing, i.e. on 9.4.2007, none of the witnesses were present nor there is any mention in the order-sheet about service or non-service of the warrants issued against them. On this date, the prosecution declared closure of the prosecution evidence and thereafter the accused were examined and the impugned judgment was passed.

11. On going through the proceedings, as per the order-sheets of the case before the trial court, it is apparent that the court below did not play an active role in ensuring appearance of the witnesses. It is submitted on behalf of the applicants, that they are still residing in the same address since beginning, to which learned counsel for Respondents No.1 and 2 replied that the address of applicant No.1 given in the petition is different as compared to her address mentioned in the charge-sheet, but the address of applicant No.2 is the same as mentioned in the charge-sheet.

12. In the case of **Bablu Kumar and others vs. State of Bihar and another**, reported in **(2015) 8 SCC 787**, it was held by the Apex Court that under the basic concept and purpose of fair trial, duty of the court/ Presiding Judge is to ensure fair trial and direction for retrial is given by the superior court only when it is warranted. It is held that the court cannot be a silent spectator or mute observer when it presides over trial. It is the duty of the court to see that neither prosecution nor accused play truancy with criminal trial or corrode sanctity of the proceedings. In that case, it was found that the trial court did not take any active step. It was never verified whether the summons had been served on the witnesses or not. It was also held that the

court is under legal obligations to see that the material witnesses have been examined and on their non-examination the court should not allow the prosecution to close the evidence.

13. On behalf of respondents No.1 and 2, reliance has been placed on **Sheetala Prasad and others vs. Sri Kant and another**, reported in **(2010) 2 SCC 190**, which is a view on the point of revisional jurisdiction of High Court and this judgment is not relevant for consideration of the point arising in this case.

14. After going through the order-sheets of the instant case, it is found that the trial Judge has not made any effort to secure presence of the witnesses who were material witnesses for decision of the case. On continuous non-service of summons, the prosecution and the SHO of the concerned police station should have taken to task and necessary directions should have been issued in this regard. It is the duty of the court to make all endeavour for production of witnesses who are material for decision of the case and such endeavour should reflect in the order-sheets of the court. When witnesses could not be produced after putting all the efforts and making use of all the institutions for service of processes, then the order-sheets should reflect that despite all the efforts made by the agencies employed, the witnesses remained untraceable in the case and then only the closure of the prosecution evidence can be considered as justified. Very clearly, in the instant case the closure of the prosecution evidence cannot be held as justified. Hence, for these reasons, this revision is fit to be allowed.

15. The revision is accordingly allowed and the impugned judgment of acquittal passed by the trial court is hereby set aside. The case is remanded back to the trial court with a direction to take all necessary steps to secure presence of the remaining material witnesses of the prosecution, to record their evidence and thereafter to decide the case afresh in accordance with law. Considering the fact that the incident occurred about 11 years back, the trial court to make all the endeavour for the early disposal of the trial strictly in accordance with law.

16. Send down the records forthwith.

Sd/-

(Pritinker Diwaker)

Judge

Sd/-

(R.C.S. Samant)

Judge