

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 240 of 2010**

(Arising out of judgment dated 24.10.09 in ST No.42/09 of the learned 4th
Additional Sessions Judge, FTC, Raigarh)

- State Of Chhattisgarh, through District Magistrate, District Raigarh (CG)

---- Appellant

Versus

- Draupadi Padihari, D/o Nityanand Padihari, Aged about 34 years, R/o Near Jagannath Temple, Tamnar, Present R/o Jandal Hospital Tamnar, Tahsil Gharghoda, District Raigarh (CG)

---- Respondent

For Appellant : Shri R.K. Mishra, Deputy Advocate General.
For Respondent : Shri Vivek Bhakta, Advocate.

**Hon'ble Shri Prashant Kumar Mishra &
Hon'ble Shri Ram Prasanna Sharma, JJ**

Judgment On Board By Ram Prasanna Sharma, J

27/02/2018

1. This Acquittal Appeal is directed against the judgment dated 24th October, 2009 passed by the 4th Additional Sessions Judge, (FTC), Raigarh in ST No.42/2009 wherein the said Court acquitted the respondent of the charge of attempting to commit murder of Baby Anchal, aged 6 years.

2. As per the prosecution case, complainant Smt. Laxmi Behra and her mother-in-law Jamuna Bai were in the house situated at village Jheekabahal on 18.2.2009 at about 5.30 pm. At the same time, the respondent came there and demanded Rs.35,000/- from the complainant by saying that her husband Vijay borrowed from her. At the same time, some altercation took place between them and the respondent thrown the daughter of the complainant namely, Baby Anchal into the well situated in the house. The matter was reported to the Police Station Tamnar. After investigation charge sheet was filed and after completion of trial, the Court acquitted the respondent as mentioned above.
3. Learned counsel for the State/appellant submits that from the evidence of Baby Anchal (PW-2) and Smt. Laxmi Behra (PW-1), it is established that the respondent has thrown Baby Anchal into the well, however, the trial Court disbelieved their evidence against the settled principles of law. Corroborating piece of evidence was also reliable but the same was overlooked by the trial Court and the finding recorded by the trial Court is not based on legally admissible evidence. The trial Court has not given proper weightage to other materials collected by the prosecution and the finding recorded by the trial Court is liable to be set aside.
4. On the other hand, learned counsel for the respondent submits that

the finding arrived at by the trial Court is based on proper marshalling of evidence and the same is not liable to be interfered with invoking jurisdiction of the appeal.

5. Baby Anchal (PW-2) is the victim. In her examination-in-chief, she deposed that the respondent had taken her near well for clicking her photograph and had thrown her into the well. But in her cross-examination, she has admitted that she was tutored by her mother for mentioning the name of the respondent as culprit. The version of this witness is self contradictory and it was not safe for the trial Court to base any finding on the basis of her statement. Smt. Laxmi Behra (PW-1) though deposed in examination-in-chief that the respondent was attempting to throw her daughter Anchal into the well but in cross-examination (para-12), she admitted that it is not mentioned in her previous statement recorded under Section 161 CrPC that the respondent tried to throw Baby Anchal into the well. There is no explanation in her statement for not stating the same just after the incident to the Investigating Officer. Her statement can be accepted only when there is plausible explanation for not stating the same on earlier occasions, at the first instance. Looking to her entire evidence, the trial Court opined that her version is not liable to be acted upon.

6. Seth Basant Patel (PW-3) is the person who reached the house of

Baby Anchal where mother of Baby Anchal was crying to save her daughter. As per the version of this witness, he jumped into the well and saved the life of Baby Anchal. Vijay Behra (PW-4) is the person to whom the incident was informed on mobile phone and thereafter he reached the spot and saved the life of Baby Anchal. Kunu Ram (PW-5), Smt. Jamuna Bai (PW-6) and Dhaniram (PW-7) are the persons who reached on the spot after hearing the cries of the people and they helped in saving the life of Baby Anchal. Rest of the witnesses have assisted during investigation after registration of the FIR.

7. Case of the prosecution is based on direct evidence and it is not based on the circumstantial evidence. But there is no direct evidence of sterling quality which can be acted upon and conviction can rest on statement of any of the witnesses. Overall assessment of the evidence adduced by the prosecution goes to show that the statements of the witnesses are contradictory and there is material omission in their statements. Therefore, the trial Court was not in a position to record finding of conviction. We are in agreement with the finding arrived at by the trial Court.

8. The Appeal therefore is liable to be and is hereby dismissed.

Sd/-
Judge

(Prashant Kumar Mishra)

Barve

Sd/-
Judge

(Ram Prasanna Sharma)