

HIGH COURT OF CHHATTISGARH, BILASPUR

(Arising out of judgment dated 29-3-2008 passed by the First Additional Sessions Judge, Bastar at Jagdalpur, in ST No.274/2004)

ACQA No. 170 of 2010

1. The State Of Chhattisgarh Through District Magistrate, Jagdalpur, Chhattisgarh

---- Appellant

Versus

1. Motiram, S/o Dashrath Bandhe, Aged About 40 Years
2. Rajendra Kumar S/o Dashrath Bandhe, aged about 28 years
3. Chanda Bai W/o Dashrath Bandhe, aged about 67 years
4. Babita D/o Dashrath, aged about 22 years.

All are R/o Vill. Chiraipadar, OP Bastar, PS Jagdalpur, Dist. Bastar, Chhattisgarh

---- Respondent

For Appellant
For Respondents

Shri Arvind Dubey, Panel Lawyer
None

Hon'ble Shri Justice Prashant Kumar Mishra

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment on Board

By

Prashant Kumar Mishra, J.

16/07/2018

- 1) This appeal against acquittal has been admitted for hearing by order dated 9-4-2010 only against the respondents No.1 - Motiram & No.2 – Rajendra Kumar and no leave was granted in respect of the respondents No.3 – Chanda Bai & No.4 Babita.
- 2) Respondents No.1 - Motiram & No.2 – Rajendra Kumar along with 3rd accused Chanda Bai & 4th accused Babita were tried for

committing offence under Sections 307/34 and 325/34 of the Indian Penal Code for attempting on the life of Kamli Bai (PW-2) and causing grievous hurt to Karli Bai (PW-3).

- 3) Indisputably, the respondents No.1 & 2 are close relatives being the brother-in-law of Kamli Bai (PW-2). They were residing together in the house where the incident took place. It also appears that a previous case is pending between them in the Court against the respondents for which the respondents were persuading the injured to withdraw the same.
- 4) The incident took place at about 11.00 am on 16-5-2004 when a dispute arose between the parties concerning occupation of a room by the injured in the premises where the respondents No.1 & 2 were already residing. The altercation between them aggravated and thereafter the respondents assaulted Kamli Bai (PW-2) by means of sabbal and to Karli Bai (PW-3) by means of sabbal, hand & fist. Both the injured were examined at Maharani Hospital, Jagdalpur, by Dr. Sunil Kumar Yadav (PW-1) and thereafter, both were sent for radiological examination which was conducted by Dr. Govind Singh (PW-8). While Karli Bai (PW-3) was diagnosed to have suffered fracture of head of 1st dorsal phalanx, Kamli Bai (PW-2) had suffered fracture of parietal bone, however, Dr. Sunil Kumar Yadav (PW-1) did not opined about the nature of injuries and the queries made by the Investigating Officer about the nature of injuries remained unanswered.
- 5) With the above discrepancy in the medical evidence, Kamli Bai (PW-2) has stated that she was assaulted by Rajendra Kumar by means of sabbal whereas Karli Bai (PW-3) would state that it was Motiram who had assaulted Kamli Bai by means of sword, therefore, there is

serious contradiction as to who caused head injury to Kamli Bai (PW-2).

- 6) Based on the above lacuna in the medical evidence and discrepancy in the statements of two important injured witnesses namely; Kamli Bai (PW-2) & Karli Bai (PW-3), as also for the reason that independent eyewitness were present but have not been examined by the prosecution, the trial Court has acquitted both the respondents.
- 7) We have seen the evidence on record and we are in full agreement with the findings recorded by the trial Court. The deficiencies in the prosecution case pointed out by the trial Court do exist, therefore, the prosecution has not been able to establish the case against the respondents beyond reasonable doubt.
- 8) In view of the above, the judgment rendered by the trial Court does not suffer from any infirmity or illegality. Accordingly, the appeal, being devoid of merit, is liable to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Sd/-
Judge
(Vimla Singh Kapoor)

Gowri