

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQA No. 390 of 2010

Kunwar Singh Markam, S/o. Late Uderam Markam, Occupation Cultivator, Aged about 65 years, R/o. Village Tiriyaabhat, Chowki Devkar, P.S. Saja, District Durg (C.G.)

---- Appellant

Versus

1. Dular Markam, S/o. Uderam Markam, Aged about 53 years,
 2. Girish Kumar, S/o. Dular Markam, Aged about 33 years,
 3. Pintu Markam, S/o. Dular Markam, Aged about 20 years,
- All R/o. Village Tiriyaabhat, Chowki Devkar, P.S. Saja, District Durg (C.G.)
4. State of Chhattisgarh, Through Police Station Saja, District Durg (C.G.)
- Respondents**

For Appellant	:-	Mr. Ashok Shukla and Mr. Atanu Ghosh, Advocates
For Respondent Nos.1 to 3 :-		Mr. Samir Singh, Advocate
For Respondent No.4/State :-		Mr. Bhaskar Payashi, P.L.

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board By
Prashant Kumar Mishra, J.

20.03.2018

1. In this acquittal appeal, the appellant would challenge the judgment of acquittal rendered by the trial Court acquitting the accused from the charges under Section 436 read with section 34 of the IPC.

2. The appellant and Respondent No.1 Dular Markam are real brothers. Respondent No.2 and 3 are the appellant's nephew being sons of respondent No.1. The respondents have some land dispute with the son of the appellant.
3. At about 12.30 am on 27.6.2009, the respondents committed mischief by fire by setting ablaze the pump house, bore pump and other articles lying inside the said pump house belonging to the appellant. The matter was reported to the Police Station Police outpost Devkar at about 15.00 hours. In the charge sheet filed against the respondents, nine witnesses were cited and all nine witnesses were examined before the trial Court. In the FIR, the appellant had mentioned that the respondents reached the pump house at about 12.30 am, tried to break the make shift door of pump house and on hearing the noise, he woke up and shouted by calling as to 'who is there', to which the respondents replied that they have come to kill him.
4. Since, the appellant was present alone in the pump house, there is no eye-witness to the incident, therefore, entire prosecution case pivots around the statement of the appellant. The trial Court has disbelieved the appellant's evidence on the ground that he being 65 years of age, suffering from cataract, he could not have seen the accused persons in the dark of mid night. It has been held that the identification by speech was not possible because it is not a case where only one accused was present but there were three accused persons. Thus, if all were speaking in chorus, none could be identified. The appellant has

not stated name of any one of the accused, out of three, who have called him at the time of incident.

5. Thus, presence of any of the accused persons at the place and time of incident has been doubted by the trial Court. The only corroboration to the appellant's statement is in form of statement of his son Pawan to whom he informed the incident soon after. However, when the evidence of the appellant himself as to the identify of the accused is in doubt, any information supplied to Pawan and the evidence rendered by Pawan on the said basis would be termed as hearsay. When the sources of information itself is in doubt, the quality of evidence which is based on such other information also remains in doubt. There is no other evidence in support of prosecution in the nature of extra judicial confession or seeing the accused persons around the place of occurrence immediately before the incident.
6. In our considered view, the trial Court's finding in support of judgment of acquittal is born out of record and does not suffer from any perversity. The view taken by the trial Court is possible view in the state of evidence of record, therefore, the judgment of acquittal does not call for any interference. The acquittal appeal fails and is hereby dismissed.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Ram Prasanna Sharma