

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 730 of 2008**

(Arising out of judgment dated 5.8.2008 passed by the Sessions Judge, Janjgir Champa in
ST No.255/2007)

- Ram Prasad, S/o Bedi Ram Sahu, aged 41 years, R/o Village Kukda, Police Station Nawagarh, District Janjgir Champa (CG)

---- **Appellant**

Versus

- State Of Chhattisgarh, through Station House Officer, Police Station Nawagarh, District Janjgir Champa (CG)

---- **Respondent**

CRR No. 638 of 2008

- Amrela Bai Wd/o Late Salikram Aged About 38 Years R/o Village Kukda Police Station Navagarh District Janjgir Champa Chhattisgarh

---- **Applicant**

Versus

1. State Of Chhattisgarh Through The Police Station Navagarh District Janjgir Champa Chhattisgarh
2. Rajesh, son of Bediram Sahu, aged about 21 years, resident of village Kukda, Police Station Navagarh, District Janjgir Champa (CG)
3. Santram, son of Narayan Prasad Sahu, aged about 32 years, resident of village Godhna, Police Station Navagarh, District Janjgir Champa (CG)
4. Deleted.
5. Ramkripal, son of Ramratan Kashyap, aged about 35 years, resident of Village Kukda, Police Station Navagarh, District Janjgir Champa (CG)
6. Devprasad, son of Bedram Sahu, aged about 29 years, resident of Village Kukda, Police Station Navagarh, District Janjgir Champa (CG)

---- **Respondent**

For Appellant and Res. 2, 4 & 6 in Revision :	Shri Sumit Singh, Advocate.
For Applicant in Revision	: Miss Neha Verma, Advocate.
For Respondent/State	: Shri Adhiraj Surana, Deputy GA.
For Respondent No.5 in Revision	: Miss Nirupama Bajpai, Advocate.

**Hon'ble Shri Prashant Kumar Mishra &
Hon'ble Smt. Vimla Singh Kapoor, JJ**

Judgment On Board By Prashant Kumar Mishra, J

03/07/2018

1. Criminal Appeal No.730/2008 has been preferred by appellant Ram Prasad challenging his conviction under Sections 148, 302/149 and 201/149 of the IPC. Criminal Revision No.638/2008 has been preferred by the wife of the deceased Salikram challenging acquittal of accused No.2 Rajesh, accused No.3 Santram, accused No.4 Rameshwar, accused No.5 Ramkripal and accused No.6 Devprasad. Respondent No.4 Rameshwar has died during the pendency of Criminal Revision, therefore, the Revision Application against Rameshwar has abated and is dismissed as abated vide order dated 27.6.2018.
2. The accused persons and deceased Salikram are resident of the same village namely, village Kukda, Police Station Nawagarh, District Janjgir Champa. On account of dispute concerning Gram Panchayat election and the right to carry on fishing activities, both the parties had soured relations and a year prior the present incident, both of them had assaulted each other for which case and counter case is going on against both the parties. On 3.6.2006, deceased Salikram had gone to his in-

laws' house at village Godhna situated at a distance of about 2 km from Kukda. However, he did not return and later on his dead body was found in a well at village Kokrinala on 6.6.2006.

3. Merg intimation (Ex.-P/1) was lodged by (PW-1) Maniram Kashyap, brother of the deceased. After merg enquiry, FIR (Ex.-P/12) was registered against unknown persons because postmortem report (Ex.-P/10) carried on by (PW-19) Dr. Vimal Kishore Rai revealed that death of the deceased was homicidal in nature with several injuries on his person including fracture of mandible bone, incised wound over neck, lacerated wound over left parietal region, penetrating wound on right shoulder. The Investigating Officer did not find any headway to investigate the matter, as no witnesses were coming forward to inform the police as to who has committed the crime. Suspecting that, one police constable Mr. Sakhiram Tiwari has also a hand in committing murder, Amrela Bai, preferred WPC No.2871/2007 arraying the present appellant Ram Prasad and his brother accused No.2 Rajesh, son of Bediram Sahu, as also Rameshwar Kashyap (since deceased) and Sakhiram Tiwari. In para-5.7 of the writ petition, it was alleged that investigation is not carried on fairly and honestly because one constable Mr. Sakhiram Tiwari is involved in committing murder. The writ petition was eventually disposed of on 13.9.2007 when the prosecution informed this Court that some of the culprits have been arrested. The prosecution eventually filed charge sheet against the appellant, Rameshwar and other accused persons but not against Sakhiram Tiwari

and the complainant did not agitate the matter further alleging that Sakhiram Tiwari has been deliberately left out from the array of accused; neither the complainant or the prosecution moved any application during the course of trial that Sakhiram Tiwari should also be tried.

4. Be that as it may, charge sheet filed by the police contained most of the investigation having been carried after more than a year and within 4-5 days between 5.9.2007 and 9.9.2007, as the case diary statements of witnesses were recorded on 5.9.2007 and the accused persons were arrested on 8.9.2007. Out of 24 witnesses examined by the prosecution during the course of trial, the star witness for the prosecution is (PW-5) Khalil, who has been projected as eyewitness to the crime. Based on his statement and other corroborative incriminating circumstances, the trial Court has convicted Ram Prasad and at the same time, it has acquitted the remaining accused persons for want of evidence against them.
5. We have heard learned counsel for the parties at length in both the matters.
6. There is sufficient evidence on record in the statements of (PW-1) Maniram Kashyap, (PW-2) Mohanlal Kashyap, (PW-4) Amrela Bai and (PW-7) Thandaram Kashyap that there was groupism in the village and both the parties were subsisting animosity on account of Panchayat election and exercise of fishing rights over 2 adjoining ponds, out of

which, one was cultivated by deceased Salikram and the other was handed over by accused Ramkripal (Sarpanch) to accused Rameshwar (since deceased). There is also evidence to the effect that one year prior to the present incident, there was altercation and assault between both the groups which has resulted in criminal cases. There is additional oral evidence on record that 2-3 days prior to the incident, as also on the date of the incident, appellant Ram Prasad had threatened the deceased of dire consequences and eliminating him. Thus, the prosecution has been successful in establishing motive on the part of the appellant. However, firstly, motive alone may not be sufficient to bring home the guilt and secondly, at times, motive works both ways. While it may be a reason for committing murder, it may also be a reason for falsely implicating a person.

7. With the above background, we shall proceed to analyze the evidence of eyewitness (PW-5) Khalil, who happens to be a poultry shop owner at village Nawagarh. His case diary statement has been recorded on 5.9.2007 i.e. almost after 14 months from the date of the incident. According to him, on the date of incident, he had gone to Shivrinarayan at about 10 am for purchasing poultry from one Dipak Poultry Farm, however, owner of Dipak Poultry Farm informed that the stock of poultry may be available only till evening. He stayed there and waited but in the evening the stock was not made available by Dipak Poultry Farm. He started returning from Shivrinarayan to Kukda via Godhna. When he reached near canal culvert in between Kukda and Godhna, he

witnessed that 4-5 persons had caught hold of the deceased and Ram Prasad was assaulting him by means of rod, while others were carrying club and axe. He witnessed the incident for about 5 minute and thereafter rushed back out of fear, as he was carrying some cash. This witness informed about the incident to Dharam and Shankar about 4 months back prior to his examination in the Court. He explains that he did not divulge/reveal about the incident to anyone as he was under fear. He could not recognize other persons with Ram Prasad as they had muffled their faces. In cross-examination, he admits that he had stopped at betel shop of one Tikaram Tiwari for about 45 minutes. However, Tikaram Tiwari has been examined as DW-3 to state that on 3rd June, 2006, he had not opened the shop. This witness speaks about visiting Dipak Poultry Farm. However, (DW-1) Bhuwan Lal, CMO of Municipal Council, Shivrinarayan has stated that the Municipal Council has not issued any licence for running any poultry farm in the name of Dipak Poultry Farm.

8. In the matter of **Surajit Sarkar Vs. State of West Bengal** {(2013) 2 SCC 146}, the Supreme Court has held that when the statement of eyewitness was recorded after 45 days of the incident and during this period, the eyewitness did not reveal about the incident to anyone, his statement is not trustworthy. The Supreme Court has referred to its previous decision in the matter of **Ganesh Bhavan Patel Vs. State of Maharashtra** {(1978) 4 SCC 371} to hold thus in para-40:-

40. The learned counsel for Surajit Sarkar relied upon *Ganesh Bhavan Patel* (Supra) to contend that the delayed examination of PW 7 Sanatan Sarkar throws some doubt on his presence at the place of occurrence. In that case, there was a delay of a few hours by the investigating officer in examining the eyewitnesses and it was observed: (SCC p. 376, para 15)

“15. ... Delay of a few hours, *simpliciter*, in recording the statements of eyewitnesses may not, by itself, amount to a serious infirmity in the prosecution case. But it may assume such a character if there are concomitant circumstances to suggest that the investigator was deliberately marking time with a view to decide about the shape to be given to the case and the eyewitnesses to be introduced.”

and thereafter concluded the issue in para-46 which reads thus:-

“**46.** If the evidence on record is looked at in this perspective, namely, that PW 7 Sanatan Sarkar, an eyewitness to the incident did not bother to inform anybody in the family of Gour Chandra Sarkar about the assault on his neighbour; that this eyewitness was examined by the investigating officer more than a month-and-a-half after the occurrence; that the presence of this witness was not mentioned by PW 8 Achintya Sarkar, also an eyewitness to the incident, leads us to have some doubt about the presence of PW 7 Sanatan Sarkar at the place of occurrence.”

9. In the case at hand also, the projected eyewitness (PW-5) Khalil, whose statement has been heavily relied by the trial Court to record conviction against Ram Prasad, was available in the village throughout 14 months period after the date of the incident till his case diary statement was recorded. At no point of time, members of the deceased family have ever revealed to the police that Khalil is an eyewitness and the police is deliberately not examining him. Instead, in the writ petition, allegation levelled by the complainant party was that the police is not proceeding

ahead with the investigation because constable Sakhiram Tiwari is involved in committing murder. However, when no charge sheet was filed against Sakhiram Tiwari, the complainant party kept quiet and did not agitate the matter further.

10. Reverting back to the credibility of the evidence of Khalil as eyewitness, he would admit that he does not fear the police nor has any enmity with either of the party, yet he maintained silence for 45 months. He admits that case of committing theft is pending against him in the Court and that Nawagarh Police Station is at a distance of 1½ km from his residence. He also says that the fear, which he was nurturing, came to an end when the accused persons were arrested forgetting that they have been arrested only after his statement was recorded. Considering this special feature i.e. the conduct of Khalil after the incident, it appears, he is a cooked up witness and has been projected by the police only to defend them in the writ petition filed by Amrela Bai and for filing reply in the High Court that the accused persons have been arrested.

11. There are witnesses and evidence concerning motive and we have found that the prosecution has established motive but that alone is not sufficient to convict a person for committing murder. The Supreme Court in the matter of **Sujit Biswas Vs. State of Assam** {AIR 2013 SC 3817} has reiterated the principle that suspicion, however grave it may be, cannot take the place of proof. Therefore, even if motive might be

available, in the absence of cogent and reliable evidence connecting the appellant with the crime in question, conviction of Ram Prasad is not well founded.

12. Accordingly, we allow the Appeal preferred by appellant Ram Prasad.

Conviction and sentence imposed upon him under Sections 148, 302/149 and 201/149 of the IPC are set aside. He is acquitted of the said charges. The appellant is on bail. Surety and personal bonds earlier furnished at the time of suspension of sentence shall remain operative for a period of 6 months in view of the provisions of Section 437-A of the Cr.P.C. The appellant shall appear before the higher Court as and when directed.

13. Insofar as Criminal Revision preferred by Amrela Bai is concerned,

firstly, there is absolutely no evidence against the accused persons establishing their identity or involvement in the crime, and secondly, since the evidence of Khalil (PW-5) has been disbelieved and appellant Ram Prasad has been acquitted, as mentioned above, the Criminal Revision against the remaining accused persons also deserves to be and is hereby dismissed for the same reason.

Sd/-
Judge

(Prashant Kumar Mishra)

Sd/-
Judge

(Vimla Singh Kapoor)

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HEADLINES

Case diary statement of eyewitness recorded after a year though he was available throughout within a distance of 1½ km from Police Station. Such eyewitness is not trustworthy. Accused entitled to acquittal.