

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 450 of 2010**

- State Of Chhattisgarh, through the Police Station Banki Mongra, District Korba (C.G.)

---- Petitioner**Versus**

1. Kanhaiyalal S/o Kartikram Rajak, aged about 45 years, R/o Banki Basti, P. S. Banki Mongra, District Korba (C.G.)
2. Nathunram, S/o Jokhan Vishwakarma, aged about 64 years, R/o Shuklakhar, P. S. Banki Mongra, District Korba (C.G.)
3. Shashi Vishwakarma, S/o Nathunram, aged about 31 years, R/o Shuklakhar, P. S. Banki Mongra, District Korba (C.G.)
4. Chamra @ Laxman, S/o Veersingh Yadav, aged about 24 years, R/o Banki Basti, P. S. Banki Mongra, District Korba (C.G.)
5. Raghuvir Yadav, S/o Anjorsay Yadav, aged about 22 years, R/o Banki Basti, P. S. Banki Mogra, District Korba (C.G.)
6. Ramkumar, S/o Tirsingh Yadav, aged about 21 years, R/o Banki Basti, P.S. Banki Mongra, District Korba (C.G.)

---- Respondents

For Appellant

Shri Arvind Dubey, PL

For Respondent Nos.1, 4 & 6

Shri Rishi Mahobia, Advocate

For Respondent Nos.2 & 3

Shri Aman Kesharwani, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Shri Justice Ram Prasanna Sharma****Order On Board****20/03/2018**

1. This appeal is preferred against the judgment dated 21.10.2009 passed by the Special Sessions Judge (Atrocity), Korba (C.G.) in Special Sessions Case No.01/2007, wherein the Special Court acquitted the respondents of the charges under Section 302 read with Section 34, Section 302 read with Section 34, Section 302 read with Section 120-B, Section 379 read with Section 34 of IPC and Section 3 (2) (V) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.
2. All the respondents were charged for committing murder of Dharamjit Singh Kanwar and Khokharhin Bai in the intervening night of 25.08.2006 and 26.08.2006 at Bhejinarakhar on account of committing theft of certain utensils from the house of Dharamjit Singh Kanwar.
3. There is no eye witness account to the incident. The case of the prosecution is based on circumstantial evidence. The prosecution is under obligation to establish the circumstances beyond shadow of doubt and all the circumstances should form a link to complete the chain and should be in consistence with commission of offence by the respondents and inconsistent with their innocence. In the present case, the first circumstance tried to be established by the prosecution is so called extra judicial confession made by the respondent No.1 Kanhaiyalal before Rama Devi (PW-8). Though she stated in her examination in chief that Kanhaiyalal made confession before her that he committed two murders and one Vishwakarma Babu conspired with him in commission of murder, but in her cross examination

she admits that this version is not mentioned in her statement recorded under Section 161 of CrPC as per Ex-D-2. Another statement, which is not stated at the first instance, can be accepted only when any satisfactory explanation is offered in not stating the same, but in the present case Rama Devi has not explained as to why she has not stated before the Investigating Officer regarding confession by Kanhaiyalal. In absence of any explanation, it is difficult to hold that any such confession was made before Rama Devi. The other piece of evidence adduced by the prosecution is the conspiracy between the respondents for commission of the offence. The prosecution has examined Rajkumar (PW-1) and Charkhuraam (PW-2) for establishing conspiracy, but they have not supported the version of the prosecution recording any agreement for commission of murder between the respondents. It is mentioned that such conspiracy was written in a note book, but that note book was not produced before the trial Court. In absence of connecting piece of evidence, the trial Court opined that the conspiracy is not established against any of the respondent.

4. The other piece of evidence is the seizure of axe, club, clothe and other articles from the respondents to connect them with commission of offence, but from the report of forensic laboratory, there is nothing regarding origin of blood and group of the blood connecting with the blood group of any of the deceased. In absence of connecting piece of evidence, the trial Court was not in a position to come to the conclusion regarding guilt of the respondents.

5. It is contended on behalf of the State that there is motive of commission of offence, as there was dispute regarding cultivation of land between the deceased and the respondents, but mere establishing motive is not sufficient to bring home the guilt.
6. It is settled law that motive may be a cause to commit the offence but that is not the incriminating piece of evidence. On an overall assessment of the evidence, there is nothing incriminating against any of the respondent with the commission of the offence. When the charge is grave, the stricter in proof and there is long mental distance between may be true and must be true. In the present case, the circumstances are not sufficient to establish the guilt, therefore, we are in agreement with the finding recorded by the trial Court.
7. It is not established that any offence is committed on the ground of caste and again the articles seized in the present case from the respondents are not identified by any of the witness, therefore, evidence is not sufficient to establish offence under Section 3 (2) (V) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and Section 379 of IPC.
8. For all the afore-stated reasons, the appeal deserves to be and is hereby dismissed.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Ram Prasanna Sharma