

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 287 of 2010**

- State of Chhattisgarh, Through Station House Officer, Manendragarh, District Korea (CG)

---- Petitioner**Versus**

1. Sunil Kumar Verma, S/o Ramsajivan Verma, Aged about 26 years
2. Divakar @ Chhote Bhaiya, S/o Chandrabhan Singh, Aged about 24 years,
3. Sushil @ Lala, S/o Ramsajivan Verma, Aged about 19 years,
4. Ramkripal @ Kustu, S/o Late Shir Lalman, Aged about 20 years,
5. Hetram Singh @ Santosh, S/o Vriman Singh, Aged about 23 years,

Respondents No. 1 to 5 are residents of Ward No.1, Manendragarh, District Korea (CG)

6. Bhhutu @ Ratnakar, S/o Bishesar Borat, Aged about 22 years
7. Mithun Chakraborty @ Vikki S/oo Late Shri Vilas Chakraborty, Aged about 21 years

Respondents No.6 to 7 are residents of Jhagrakhand, Thana Manendragarh, District Korea (CG)

8. Vanar @ Santosh S/o Rameshwar Soni, Aged about 27 years, R/o Ward No.6, Manendragarh, District Korea (CG)

---- Respondent

For Appellant/State
For Respondents

Mr. Arvind Dubey, Panel Lawyer
Mrs. Indira Tripathi, Advocate

DB.: Hon'ble Mr. Justice Prashant Kumar Mishra &**Hon'ble Mr. Justice Ram Prasanna Sharma**

Order On Board By**Ram Prasanna Sharma, J.****6/4/2018**

1. Heard.
2. This appeal is directed against the judgment dated 11.8.2006 passed by the Additional Sessions Judge, Manendragarh, District Korea (CG) in ST No.213/2003, wherein, the said Court acquitted all the 8 respondents for charges under Section 307 of IPC for attempting murder of one Anantlal on 14.10.2002 at about 3 a.m. in Village Jhagrakhand, Police Station Manendragarh, District Korea (CG).
3. In the present case, the name of the victim is Anantlal and the date of the incident is 14.10.2002. Though FIR was lodged on the same day at Police Outpost, Jhagrakhand, but no one was named in the FIR as culprit.
4. As per the prosecution case, the victim was admitted to the Hospital at Jhagrakhand and thereafter, shifted to Bhilai. As per the version of Dr. P.R. Shivhare (PW-4), the victim sustained multiple injuries. The prosecution case is based on direct evidence of PW-1 Anantlal, who is the victim. The other witnesses are either supporting piece of evidence or those who assisted during investigation after registering of the FIR.
5. Anantlal (PW-1) deposed that respondents Mithun Chakraborty @ Vikki and Hetram Singh @ Santosh, hurled stones on his body, due to which, he received injuries on his face. Though in his

previous statement recorded under Section 161 of Cr.PC, he named five persons namely Sushil @ Lala, Sunil, Mithun, Bhhutu and Santosh for assaulting him but while deposing before the Court, he admitted that Sushil @ Lala and Sunil were not present at the time of the incident. He further deposed that the names of Sushil, Divakar and Sunil were wrongly mentioned in his oral statement recorded under Section 161 of Cr.PC.

6. Anantlal (PW-1) is not firm in his version since the date of the incident. In his statement, he has named several persons as culprits but before the Court, he named only two persons for assaulting him by stone. Further, his statement under Section 161 of Cr.PC is recorded on 30.11.2002 i.e. after about 1 month and 15 days of the incident.
7. As per the version of Puranlal (PW-2), victim Anantlal was not in a position to speak after the incident while Anantlal deposed that he informed the incident to his wife just after the incident. In this way, the statement of Anant Lal is rebutted by the statement of Puranlal, therefore, it is doubtful as to whether the victim was in a position to speak just after the incident. The FIR is unnamed and the statement of the victim is recorded for the first time after 1 month and 16 days of the incident, in which, he has named several persons who committed the crime, but before the Court, he has deposed differently by naming only two persons as his assaulters.
8. It is for all these reasons, the trial Court came to the conclusion that the version of Anantlal is not dependable and it is not safe

to act on the statement of Anantlal and record finding of guilt against all or any of the respondents.

9. It is the settled law that when a number of persons are charged for commission of an offence, the overt act or *mens rea* on the part of each of the persons is to be established otherwise there is possibility of holding innocent persons guilty.
10. On over all assessment of the evidence, the view taken by the trial Court is one of the plausible view and further, it is the settled law that if two views are possible, the view which favours the accused may be accepted.
11. In the facts and circumstances of the case, it would not be proper for us to disturb the finding recorded by the trial Court.
12. The acquittal appeal has no substance, it deserves to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Sd/-
Judge
(Ram Prasanna Sharma)