

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No. 455 of 2010**

- State Of Chhattisgarh Through The Police Station Khamhariya, District Durg (CG)

---- Appellant**Versus**

1. Jivan Chandrakar, S/o Sadaram Chandrakar, Aged about 52 years
 2. Maidun Mishra, S/o Shri Bisahu Prasad Mishra, aged about 55 years,
- Both are R/o Village Agarikhurd, P.S. Khamhariya, District Durg (CG)

---- Respondents

For Appellant/State	: Shri Rajendra Tripathi, Panel Lawyer
For respondents	: Shri P.P. Sahu and Shri R.K.Pali, Advocates

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

Judgment on Board**Per Prashant Kumar Mishra, J.****27.02.2018**

1. Challenge in this Appeal is to the judgment of acquittal dated 9.9.2009, rendered by the Additional Sessions Judge, Bemetara, District Durg (CG) in S.T. No.62/2006, acquitting the accused/respondents from the charges under Section 302 read with Section 34 of the Indian Penal Code.

2. The accused persons were tried for committing murder of one Bhoj Chandrakar during 11.00 am to 4.00 pm on 11.10.2005. Respondent No.1- Jivan Chandrakar and deceased Bhoj Chandrakar were the real brothers. They had separate holdings,

but were residing in the same house in different rooms. Respondent No.2- Maidun Mishra is a co-villager, who happened to visit the house of Jivan Chandrakar very frequently and for this, the deceased and his wife Jaleshwari (PW1) were suspecting that Maidun Mishra has illicit relations with the wife of respondent No.1- Jivan Chandrakar. Apart from this, in the partition of agricultural holdings between deceased Bhoj Chandrakar, respondent No.1- Jivan Chandrakar and their father, both the brothers had received 11.5 acres of land each, however, the share allotted to their father ad-measuring 7.5 acres was also cultivated by Bhoj Chandrakar, therefore, Jivan Chandrakar had a grudge that Bhoj Chandrakar is cultivating more area than him.

3. On the date of incident accused Jivan Chandrakar, his wife and son Thakur Ram had gone to work in their agricultural field. Deceased had also gone to his field which was adjoining to the agricultural field of Jivan Chandrakar. At this place, Jivan Chandrakar saw the deceased alone, therefore, he sent his son Thakur Ram to call Maidun Mishra and when he came, Maidun Mishra caught hold of the deceased and Jivan Chandrakar inflicted repeated sickle blows on the neck of the deceased as a result of which, he died instantly.

4. Admittedly, Phulsingh Chandrakar (PW15) was presented as an eye-witness, however, he has turned hostile and has not supported the case of prosecution in any manner even during cross-examination. There is no other evidence in the case in the nature of 'extra-judicial confession' or 'last seen together',

therefore, once the eye-witness turned hostile, the only evidence available with the prosecution to bring home the charge was in form of seizure of sickle and its chemical analysis.

5. The seizure witnesses namely, Heeralal(PW7) and Rambilas Chandrakar (PW16) have turned hostile and have not supported the case of prosecution though they have admitted their signatures on the seizure memo and memorandum statements of the accused persons. F.S.L. report, Ex.P/20 has found blood on the sickle recovered from Jivan Chandrakar, however, there is no mention in the report that the blood was of human origin. In absence of the origin of blood, mere presence of blood on the sickle would not come to the rescue of the prosecution.

6. In the above circumstances, there is absolutely no material against the accused persons either in the nature of eye-witness account or circumstantial evidence, therefore, the trial Court has rightly acquitted the accused persons.

7. The appeal is bereft of any substance, it deserves to be and is hereby dismissed.

Sd/

JUDGE

(Prashant Kumar Mishra)

Sd/

JUDGE

(Ram Prasanna Sharma)

