

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 289 of 2010**

1. State of Chhattisgarh, through District Magistrate, Bilaspur (CG).

---- Appellant**Versus**

1. Premlal Yadav, S/o Semlal Yadav, aged about 24 years.
2. Dhantal, S/o Semlal, aged about 30 years.
3. Pancham Yadav, S/o Semlal, aged about 25 years.
4. Bablu Yadav, S/o Ratnu Yadav, aged about 25 years.
5. Latta Guddu, S/o Samaru Yadav, aged about 20 years.
6. Ram Vishal @ Bisal, S/o Ratnu Yadav, aged about 40 years.
7. Jiyalal @ Khedriha, S/o Bihari Yadav, aged about 23 years.

All are R/o village Tikthi, Police Station Marwahi, District Bilaspur (CG).

---- Respondents**ACQA No. 290 of 2010**

1. State Of Chhattisgarh, through District Magistrate, Bilaspur (CG).

---- Appellant**Versus**

1. Guddi @ Bihari, S/o Samelal Yadav, aged about 40 years, R/o Vill. Tikthi, Police Station Marwahi, District Bilaspur (CG).

---- Respondent

For Appellant/State
For Respondents

Shri A.S. Kachhawaha, Addl. Adv. General
Shri B.M.K. Bajpai, Adv. with Shri Arvind Dubey.
Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment on Board

By

Prashant Kumar Mishra, J.

19/06/2018

1. In these two acquittal appeals, the State has assailed the legality and validity of the judgments of acquittal, whereby the trial Court has acquitted the accused persons for the charges under Sections 147, 148, 302, 302/149 and 323/149 of the Indian Penal Code (IPC) for forming unlawful assembly; committing rioting; and committing culpable homicide by murdering the deceased namely; Balaram and causing simple injuries to Bisahan Lal (PW-3). Since accused Guddi @ Bihari absconded during the first trial, his trial was separated and, as such, there are two judgments in the same sessions trial giving rise to both the acquittal appeals.
2. As per the First Information Report (Ex-P-1), the incident occurred at about 8.00 am on 03.06.2005 at Village Tikthi, Police Station Marwahi for which the report was lodged by Bisahan Lal (PW-3) at 9.30 am stating that he was in possession of the Government land where he had gone at about 8.00 am and witnessed that Bablu Ahir, Lata Guddu Ahir, Vishal Ahir, Premlal Ahir, Dhanlal Ahir, Pancham Ahir, Guddi Ahir, Khodriha and Jiyalal were digging soil to raise foundation to obtain possession of the land. When he tried

to restrain the accused persons, Dhanlal caused injuries to him by means of wooden stick over his left hand and lower left leg. At the same time, his brother Balaram reached the place of occurrence and he was also beaten by the accused persons by means of club, spade & crow bar. He (informant) somehow escaped and reached the house of Dahru Panika where he met Ramprasad & Dahru to whom he narrated the incident on which they went towards the place of occurrence and brought Balaram. As per the FIR, Ramprasad Vishwakarma, Babulal Mahra and Devi Mahra have seen the incident.

3. After recording the statements of witnesses; making recovery of the articles; obtaining the FSL report; postmortem report of the deceased and the injury report of Bisahan Lal (PW-3), the charge sheet was filed against the accused persons.
4. In the postmortem report (Ex-P-18), the deceased Balaram was found to have sustained the following injuries:-
 - (i) Incised wound in the size of 5 cm x 1 cm x ½ cm above the frontal head. Wounds margins are sharp deep to bone.
 - (ii) Lacerated wound in the size of 3 cm x 2 cm x ½ cm, 4 cm below right knee.

- (iii) Lacerated wound in the size of 4 cm x ½ cm x 1 cm between left knee and ankle at the front side.
 - (iv) Fracture and deformity 6 cm above right wrist.
 - (v) Fracture with deformity 8 cm above left ankle at the front side. Private parts are healthy.
5. In the injury report (MLC) of Balaram (Ex-P-17), it is stated that the deceased was not in a fit condition for recording his dying declaration.
6. In course of trial, the prosecution has examined 14 witnesses, whereas, while abjuring the guilt, the accused persons examined 2 defence witnesses. Out of 14 witnesses examined by the prosecution, Bisahan Lal (PW-3) & Pritamdas (PW-5) are the star witnesses.
7. The trial Court has disbelieved the statements of the prosecution witnesses including the above two witnesses for the reason that the FIR lodged by Bisahan Lal (PW-3) has not disclosed the name of Pritamdas (PW-5) as an eyewitness and that there being material contradictions & omissions in the statement of Bisahan Lal (PW-3), he too cannot be relied as an eyewitness. On the basis of statement made by Bisahan Lal (PW-3), presence of other witnesses namely Devi Singh (PW-1), Ramprasad (PW-2), Smt.

Chanda Bai (PW-4) and Pritamdas (PW-5) were also disbelieved as Bisahan Lal (PW-3) has stated in his Court statement that except him, no other witness was present on the spot.

8. Shri A.S. Kachhawaha, learned Additional Advocate General appearing for the State, would assail the impugned judgment on submission that the FIR having been lodged within few hours of the incident clearly arraying the accused persons in commission of crime and considering the statements of Bisahan Lal (PW-3) & Pritamdas (PW-5) the prosecution has proved its case. Shri Kachhawaha would submit that the trial Court has accorded unnecessary weightage to minor contradictions & omissions in the statements of these two witnesses and has reached to a perverse finding. According to Shri Kachhawaha, on the basis of evidence on record, only one view was possible that the accused persons have committed the murder of the deceased, therefore, the impugned judgments of acquittal deserve to be set aside.
9. *Per contra*, Shri B.M.K. Bajpai, learned counsel duly assisted by Shri Arvind Dubey, learned counsel, would submit that the reasonings assigned by the trial Court are borne out of the evidence available on record and there being no illegality or perversity in the findings recorded in the impugned judgments, no interference is called for in the impugned judgment. It is argued

that Bisahan Lal (PW-3) & Pritamdas (PW-5) are cooked up witnesses to falsely implicate the accused persons. The conclusions drawn by the trial Court are perfectly borne out from the record.

10. We have seen the entire record to consider and evaluate the arguments raised, at the bar, to satisfy ourselves as to whether the impugned judgment deserves to be interfered.
11. We would first refer to the statement of Bisahan Lal (PW-3), as he is the person who lodged the FIR presenting himself as an injured eyewitness. This witness is the elder brother of the deceased Balaram. According to him, all the accused persons were carrying club, spade & crow bar and he was assaulted by Pancham & Dhanlal by means of club, due to which he fell down and, thereafter, the deceased Balaram was chased & beaten. At that time, he also chased the accused persons but till then Pancham, Dhanlal, Bihari & Prem have already beaten and brought Balaram on the ground. He would specifically state in his examination-in-chief that all these accused persons have used crow bar, spade & *gaiti*, however, in the FIR he has stated that the accused persons also used the club for causing injuries to Balaram.

12. Stating about the nature of dispute concerning the land, this witness would state that the disputed land earlier belonged to one Tulsi Gond from whom the accused Bihari had purchased the land. It is also stated that their land is located on the one side of the road whereas the disputed land is on the other side of the road. Thus, the disputed land does not belong to the complainant party and at one stage, the witnesses have stated that the disputed land is a Government land. In any case, the land does not belong to the complainant party or the injured party and yet they tried to restrain the accused party from digging the land, though in para 7 of the cross-examination, Bisahan Lal (PW-3) has stated that accused Bihari had purchased this land from Tulsi.
13. Coming back to the issue as to whether Bisahan Lal (PW-3) has witnessed the incident, it is to be seen that in his case diary statement he has stated that after sustaining injuries, he became unconscious, albeit he states that at that point of time, the accused party were assaulting Balaram, but in paras 22 to 24 of his cross-examination, he has stated that Balaram sustained injuries and died on the agricultural field of Chandrika Nau, which is situated at a distance of about 300 yards from the land where the dispute began. He also admits that the embankment of the agricultural field of Chandrika Nau is about 4 ft. height and that at the time of

assault on Balaram, he was at the place where the dispute first began and not on the agricultural field of Chandrika Nau.

14. It is important to bear in mind that while in his case diary statement, Bisahan Lal (PW-3) states that he fell unconscious in the agricultural field, whereas in his Court statement, he states that after running away from the place of occurrence, he reached the house of Samnu and fell unconscious at his house. House of Samnu is situated at a distance of about 2 kms. and according to his statement, the witness was not able to walk after sustaining injury. Bisahan Lal (PW-3) did not disclose the incident to Samnu or his family members. He waited till Balaram was brought by the family members to the house of Samnu and he accompanied them to reach police station Marwahi.
15. Considering that this witness has suffered only simple injuries and was lying unconscious in the house of Samnu, it is highly probable that the first part of the incident, where Bisahan Lal (PW-3) sustained injuries, occurred earlier whereafter he ran away and became unconscious in the house of Samnu and thereafter the second part of the incident occurred where the deceased Balaram sustained injuries over the agricultural field of Chandrika and not from the agricultural field from where the dispute started.

16. It is precisely for this reason, Bisahan Lal (PW-3) has informed the Police that Devi Singh, Babulal and Ramprasad have seen the incident, but in his Court statement, he has clearly stated in para 27 that none of his family members were present at the place of occurrence and that he alone was present there. This statement itself is sufficient to belie the contents of FIR and the statements of other witnesses who have projected themselves as eyewitnesses including the statement of Pritamdas (PW-5).
17. On the strength of the above discussion as also considering the reasoning assigned by the trial Court while disbelieving the prosecution witnesses, more particularly the statements of Bisahan Lal (PW-3) & Pritamdas (PW-5), we are convinced that the trial Court has not committed any error while acquitting the accused persons from the charges under Sections 147, 148, 302, 302/149 and 323/149 of the Indian Penal Code.
18. In the result, both the appeals, being devoid of merit, are liable to be and are hereby dismissed.

Sd/-

Judge
(Prashant Kumar Mishra)

Sd/-

Judge
(Vimla Singh Kapoor)