

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 203 of 2010**

- State Of Chhattisgarh

---- Petitioner**Versus**

- Baided S/o Shri Mata , aged about 35 years, Agriculturist
- Murli S/o Shri Mara , aged about 23 years, Agriculturist (dead)
(deleted as per Court order)

Both are resident of Village Jamawada, Police Station Phejarpur,
District Bastar

---- Respondent

For Appellant
For Respondent

Mr. Ramakant Mishra, Dy. AG
Mr. Vikas Shrivastava, Advocate

DB.: Hon'ble Mr. Justice Prashant Kumar Mishra &**Hon'ble Mr. Justice Ram Prasanna Sharma****Order On Board By****Prashant Kumar Mishra, J.****28/2/2018**

1. Heard.
2. This appeal is directed against the judgment of acquittal of surviving respondent Baidad, rendered by the Second Additional Sessions Judge, Jagdalpur in ST No.283/98 decided on 8.4.1999.

3. The FIR was lodged by PW-3 Pandu at about 10:30 a.m. on 13.7.1998 alleging that on the previous day i.e. on 12.7.1998, at about 5:00 p.m., when he and Cherga (deceased), who was his brother in family relationship, were returning from Ladrapara, the accused persons inflicted injuries over the head and neck of Cherga, for which, he succumbed to the death instantly.
4. The prosecution case was based on the eye-witness account rendered by PW-3 Pandu, PW-4 Sunil and PW-5 Bhuras. The prosecution has also proved the memorandum statement and consequent seizure, as stated by PW-6 Dayaram, however, yet the learned trial Court has acquitted the respondents by disbelieving the eye-witness account.
5. Mr. Ramakant Mishra, learned Dy. AG for the State, has read out the entire evidence to buttress his submission that the judgment of acquittal is based on perverse finding, which has been arrived at without marshalling of evidence of the eye-witnesses.
6. On the other hand, Mr. Vikas Shrivastava, learned counsel for the respondent, would support the impugned judgment.
7. Out of the two accused sent for trial, respondent No.2 Murli has died during pendency of this appeal, therefore, the present appeal now survives only against respondent No.1 Baidad.
8. We have perused the entire evidence and the judgment of acquittal rendered by the trial Court.

9. We have found that after recording of finding that the death was homicidal in nature, the trial Court has referred to the evidence adduced by the witnesses from para 19 to 37 and thereafter, referred to the case laws relied by the defence and thereafter, concluded in para 39 that on the basis of the case laws cited before him and the arguments advanced by the defence counsel, he finds the present to be a case of acquittal.
10. In the earlier part of the judgment, the entire evidence has been reproduced, however, there is no marshalling of evidence nor the trial Court has assigned any reasoning as to why the eye-witnesses are not to be relied upon.
11. The trial Court has, thus, committed serious error of jurisdiction by rendering the impugned judgment of acquittal without marshalling the evidence.
12. In the matter of **Ajay Kumar Ghoshal and others Vs. State of Bihar and another, (2017) 12 SCC 699**, it has been held by the Supreme Court that while exercising powers against an order of acquittal, the High Court has ample power to re-appreciate the evidence and arrive at its own conclusion. If on such re-appreciation, it is found that the judgment of acquittal suffers from any error apparent on record or manifests perversity, the judgment of acquittal can be set-aside by the appellate Court.
13. Since the trial Court has not at all appreciated or marshalled the evidence, we find the present to be a fit case where the impugned judgment deserves to be set-aside and the matter

deserves to be remitted back to the trial Court for decision afresh on the basis of evidence available on record.

14. It is ordered accordingly.

15. The appeal is partly allowed. Let the record of the trial Court be sent back for decision afresh in the matter.

Sd/-

Sd/-

Judge

Judge

(Prashant Kumar Mishra)

(Ram Prasanna Sharma)

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