

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 118 of 2011**

Snehlata, wife of Babulal, aged about 35 years, R/o village- Ghuru,
P.S. Chakarbhata, Tahsil & District- Bilaspur (C.G.) ---- **Appellant**

Versus

1. Mamta Baghel, W/o Rajendra Kumar Baghel, aged about 25 years.
2. Rajendra Kumar Baghel, S/o Ramgopal, aged about 32 years.
Both respondents No. 1 & 2 R/o village- Ghuru, P.S. Chakarbhata, Tahsil & District- Bilaspur (C.G.)
3. State of Chhattisgarh, through Thana- Chakarbhata, District- Bilaspur (C.G.) ---- **Respondents**

 For Appellant : Mr. Vijay K. Deshmukh, Advocate.
 For Respondent 1 & 2 : Mr. Vinod Kumar Tekam, Advocate.
 For State/respondent 3 : Mr. Suryakant Mishra, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****28/09/2018**

1. This acquittal appeal is preferred under Section 372 of the Code of Criminal Procedure, 1973 against judgment dated 25.04.2011 passed by Third Additional Sessions Judge, Bilaspur (C.G.) in Session Trial No. 04/2010, wherein the said court acquitted the respondent No. 1 - Mamta Baghel. The appeal is also preferred for enhancement of sentence for respondent No. 2 - Rajendra Baghel who has been convicted for commission of offence under Section 307 of IPC and sentenced to R.I. for 7 years and fine of Rs. 100/- with further default stipulations.
2. As per the case of prosecution, both the respondent No. 1 & 2 were removing some garbage near electric pole on 05.05.2009 and at the same time, victim Snehlata intervened

there where altercation took place and respondent No. 2- Rajendra Baghel assaulted her by axe (Rapa). It is alleged that respondent No. 1- Mamta Baghel caught hold the victim and she acted in furtherance of common intention and she is also liable for committing the offence under Section 307 read with Section 34 of IPC.

3. Snehlata (PW-1) though deposed in her cross-examination in chief that respondent No. 1- Mamta Baghel made her lay-down in surface by using her leg, but in her previous statement, she deposed that Mamta Baghel caught her hand only. Looking to the contradiction, the trial court opined that statement of Snehlata against Mamta Baghel is not sufficient to involve her in commission of offence in question. Vivek (PW-2) also deposed that Mamta Baghel made victim lay-down in surface, but this witness has not stated the same during investigation and there is no explanation for exaggeration before the trial court. In absence of explanation, the trial court opined that version of this witness is also not sufficient to incriminate the respondent No. 1- Mamta Baghel for commission of crime in question.
4. Vivek (PW-3) has also not stated in his previous statement as to what he stated before the trial court. Version of Pawan Kumar (PW-5) is also not accepted by the trial court on count that he stated differently before investigating officer. Dikesh Dahariya (PW-7) deposed that respondent No. 1- Mamta

Baghel caught the victim, but his version is different from version of other witnesses.

5. Looking to the evidence in its entirety, the trial court opined that involvement of respondent No. 1- Mamta Baghel for assaulting the victim is not established. This Court has reassessed the evidence and after reassessment, there is no reason to record contrary finding what is recorded by the trial court. As the participation of respondent No. 1- Mamta Baghel was not established, the trial court has rightly acquitted her and order of acquittal is hereby affirmed.
6. Second question for consideration of this Court is whether the sentence awarded to respondent No. 2- Rajendra Baghel can be enhanced. Respondent No. 2- Rajendra Baghel was convicted for commission of offence under Section 307 of IPC and sentence to R.I. for 7 year, sentence awarded by the trial court can not be termed as meager sentence or lesser sentence, therefore, when the trial court has made right approach in awarding sentence, it would not be proper for this Court to enhance the sentence as awarded by the trial court. Enhancement of sentence is also not warrant nor any interference by this Court.
7. Accordingly, the acquittal appeal is liable to be and is hereby dismissed.

Sd/-
(Ram Prasanna Sharma)
Judge