

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQA No. 110 of 2012

- State Of Chhattisgarh Through - The House Officer, P.S. Jashpur, Distt. Jashpur C.G.

----Appellant

Versus

1. Ridol Toppo, S/o Ignesh Toppo Aged About 40 Years R/o Village Lalganj Aagdih, P.S. Jashpur, Distt. Jashpur C.G.
2. Smt. Birjiniya Khess, W/o Rimjiyash Khess Aged About 48 Years, R/o Village Ghulmul Sitkikona, P.S. Jashpur, Distt. Jashpur C.G.

---- Respondents

For State
For Respondents

Shri P.K. Bhaduri, Government Advocate.
Shri Sanjeev Kumar Sahu, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board By

Shri Ram Prasanna Sharma J.

01/05/2018

1. This appeal is preferred against the judgment dated 18.01.2012 passed by the Sessions Judge, Sessions Division, Jashpur (C.G.) in Sessions Trial No. 45 of 2011, wherein the said Court acquitted both the respondents for commission of offence under Section 302, 307, 307, 460 & 394 of IPC 1860 for committing murder of one Mikhail Lakda, for attempting to commit murder of Vinay Lakda & Dipika Lakda and for committing the said offence, did lurking house trespass in the house of Mikhail Lakda and again

committing robbery of Rs. 4,000/- and Rs.15,000/- respectively.

2. As per the prosecution case, the date of incident is 15.01.2011 at 6:30 P.M. At that time Vinay Lakda, Dipika Lakda, Mikhail Lakda and Amelda Lakda were taking food in the house and at the same time 4 unknown persons entered into the house and snatched Rs. 4,000/- from possession of one Vinay and again they took money from Almirah of wife of Vinay. At the same time, they assaulted Mikhail Lakda, Vinay Lakda and Dipika Lakda by axe and Mikhail succumbed to the injuries, while Vinay Lakda and Dipika Lakda managed to save their lives.
3. To substantiate the charge, the prosecution examined as many as 13 witnesses. Vinay Lakda PW-1, Dipika Lakda PW-2 and Amelda Lakda PW-3 are the witnesses of the incident. FIR was lodged against the 4 unknown persons. As per version of Vinay Lakda PW-1, 4 unknown persons entered into their house before commission of offence. Dipika Lakda deposed on the same line. She deposed that 4 persons covered their faces with shawl, though, she deposed that she had a look of respondent No.1 Ridol Toppo, but there is no explanation as to why name of Ridol Toppo was not mentioned in the FIR after commission of offence. Amelda Lakda PW-3 deposed on the same line and she did not identify anyone at the time of commission of offence.
4. Now the point for consideration is whether the identification

parade conducted in the present case is sufficient to bring home the guilt against any of the respondents.

5. PW-12 D.P Bhupal was working as Executive Magistrate on 07.01.2012 at Tehshil, Jashpur. As per version of this witness, he conducted identification in which Vinay Lakda and Dipika Lakda present, but no identification was done against the present Respondent No.1 Ridol Toppo. When there was no occasion to see the real culprits of the incident, no witness was in a position to identify the present respondent.
6. The other piece of evidence is seizure of axe from respondent Ridol Toppo. One other Axe was seized from the spot and the same is not seized from any respondents and therefore it is not incriminating circumstances against any of the respondents. The seized axe was sent for chemical examination, but report is not found positive regarding human blood. The prosecution was under obligation to establish the substance regarding blood group of the deceased in the said axe, but it is not substantiated by report of the laboratory, therefore, seizure of axe is also not helping the prosecution to establish guilt against any of the respondents. So far as respondent No.2 Birjiniya Khess is concerned, the only evidence led by the prosecution is that Amelda cautioned her that anyone can attack on her, apart from this evidence, there is nothing regarding involvement of Smt. Birjiniya Khess in commission of offence, where the charge was not substantiated by any kind

of evidence, the trial Court was right in holding that offence charged is not established against any of the respondents and therefore, finding arrived at by the trial Court is not liable to be interfered by invoking jurisdiction of appeal.

7. The appeal is liable to be and is hereby dismissed.

Sd/-

Sd/-

Judge

Judge

Prashant Kumar Mishra

Ram Prasanna Sharma

Akhilesh