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HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 783 of 2008**

1. Teju Prasad s/o. Jhakad Ram aged about 40 years r/o. Village Chheradih (Batauli), District Surguja (CG).

---- Applicant

Versus

1. Musan Kanwar s/o. Ghuma Kanwar aged about 55 years, occupation Agriculture.
2. Sudama Kanwar @ Nandguddu S/o Musan Occu. Agriculture
3. Bitauli S/o Mandul Kanwar
4. Dilbar Ram S/o Mandul Kanwar All R/o Vill. Kharakona, P.S. Batauli, Distt. Surguja (C.G.)

All r/o. Village Kharakona, PS Batauli, District Surguja (CG).

(Accused persons)

- The State Of C.G. Through- S.H.O., P.S. Batauli, Distt. Surguja (C.G.)

---- Prosecution

&

ACQA No. 184 of 2010

1. State Of Chhattisgarh through PS Batouli, District Surguja (CG)

---- Appellant.

Versus

1. Musan Kanwar s/o. Ghuma Kanwar, aged 55 years, occupation Agriculture.
2. Sudama Kanwar @ Nanguddu S/o Musan Kanwar, age 27 years, occupation Agriculture.
3. Bitauli S/o Mandul Kanwar, age 51 years, occupation Agriculture
4. Dilbar Ram S/o Bitauli Kanwar age 37 ears, occupation Agriculture.

All are R/o Village Kharakona, P.S. Batauli, Surguja, Distt.-Ambikapur, C.G.

---- Respondents

For Applicant :Mr. A.K. Prasad and Mr. A. Mahobia, Advocates
in CRR No.783/2008

For respondents : Mr. Bhupendra Singh and Ms. Sonia Kuldeep,
No.1 to 4. Advocates.

For State :Mr. Ramakant Mishra, Dy. Advocate General.

For Appellant/State Mr. Arvind Dubey, Panel Lawyer
in ACQA No.184 of 2010.

For respondents :Mr. Bhupendra Singh and Ms. Sonia Kuldeep
No. 1 to 4 Advocates.

Hon'ble Shri Prashant Kumar Mishra,
Hon'ble Shri Ram Prasanna Sharma, JJ

Order on Board

Per Prashant Kumar Mishra, J

03-01-2018

1. Criminal Revision No. 783 of 2008 has been preferred by the informant Teju Prasad, son of the deceased namely; Jhakad Ram whereas Acquittal Appeal No. 184 of 2010 has been preferred by the State. In both the matters challenge is to the judgment of acquittal rendered by the trial Court acquitting the accused persons from the offence under Section 302/34 of IPC for allegedly committing murder of deceased Jhakad Ram at about 5.00 pm on 18-10-2007.
2. According to the prosecution, in nutshell, Jhakad Ram had gone for watering agricultural field near *Mand Nallah* at about 3.00 pm on 18-10-2007. When he did not return from the field till 5.00 pm his grand-son Anil (PW/6) with his friend Pradeep (PW/2) went to the field on a motor-cycle. Pradeep (PW/2) remained on the road whereas Anil (PW/6) went towards the field which is about 500 meters away from the main road. When he reached near the field, he heard and witnessed the accused persons trying to drown the deceased in the

nallah water. Accused Musan Kanwar abused and threatened this witness that he too will be treated similarly. Anil ran away from the place and informed Pradeep about the incident. Both of them came back to village and informed the villagers on which about 20 persons went to the place of occurrence and found the dead body of Jhakad Ram. Anil made a telephone call to the first informant Tejuram (PW/1) at about 8 – 9 pm who is a Patwari at village Pratappur and soon thereafter he reached the village at about 10.00 pm., however, the report was lodged at about 6.30 am in the morning of 19-10-2007.

3. In the post-mortem report, cause of death was found to be cardiac tamponade due to rupture (LW) of left post ventricular wall caused by sudden blow on chest wall; homicidal in nature caused within 18 to 24 hours. Although spade was recovered from the spot, however, as per the prosecution no weapon was used in committing the murder, the recovery is thus not connected with the crime.
4. The case of the prosecution hinges around the statements of PW/6 Anil, projected as an eye-witness, PW/2 Pradeep who accompanied Anil while going towards the place of occurrence at the time of incident, PW/4 Anandram Paikra (village Secretary) and Teju Prasad (PW/1), informant and son of the deceased.
5. After considering the entire evidence on record, the trial Court found that the statement of Anil is not trustworthy so as to base the conviction on his solitary eye-witness account. While disbelieving his statement, the trial Court has observed that Pradeep is not supporting the statement of Anil about disclosure of the name of assailant by Anil to him. The trial Court has also observed the

conduct of Anil in not immediately raising alarm for seeking help and further that PW/4 Anandram Paikra was not disclosed the name of the assailant even though Anil happened to meet him in the evening.

6. Mr. Ramakant Mishra, learned Deputy Advocate General for the State and Mr. A.K. Prasad, learned counsel for the informant appearing in Criminal Revision as well as Mr. Arvind Dubey, learned Panel Lawyer appearing for the State in Criminal Revision would submit that the trial Court has recorded perverse findings and reasonings while rendering the judgment of acquittal. According to them, statement of Anil is fully trustworthy and is sufficiently corroborated on all material terms by other witnesses, particularly PW/4 Anandram Paikra, therefore, the accused persons should have been convicted by the trial Court.
7. *Per contra*, Mr. Bhupendra Singh and Ms. Sonia Kuldeep learned counsel appearing for the accused persons would support the impugned judgment on the submission that the trial Court has closely scrutinized and considered all the relevant evidence and has reached to conclusion about the innocence of the accused persons, therefore, present not being a case of any perverse finding, the judgment need not be interfered.
8. We have heard learned counsel for the parties at length and perused the record of the court below.
9. We are convinced that judgment of acquittal rendered by the trial Court is not called for any interference. Our satisfaction is based on the evidence that Anil's statement of disclosing the name of assailant to Pradeep is not supported by PW/2 Pradeep. Anil himself has

stated in para 14 of his cross examination that when he reached the place of occurrence, his grand-father was lying dead. In the first information report itself PW/1 Teju Prasad would inform the Police that he received a telephone call at about 8 – 9 pm about murder of his father. This call was made by Anil, as stated by him in paragraph 7 of his statement, however, the first information report would not disclose that during the telephone conversation itself Anil informed Teju about the name of the assailant. PW/4 Anandram Paikra would state in his examination-in-chief that Anil had informed him that the accused persons were assaulting/beating the deceased. However, in cross examination he would admit that Anil had not informed him about the name of the assailant in the evening on the date of occurrence, which he disclosed later-on on being asked from him.

10. Apart from the reasonings assigned by the trial Court, it is also to be considered that in between *Mandnala* and road one Government Boys Hostel and the house of Bari Harijan are situated, however, neither any student or any employee of the Boys Hostel was listed as witness nor the residents of the house of Bari Harijan (about 14 in number) have been interrogated during investigation. If a murder is caused in the close vicinity of Boys Hostel or the house of Bari Harijan and as per Anil, one of the accused had threatened him, it was the duty of the prosecution to have interrogated from the persons residing near the place of occurrence. If the case is examined by juxtaposing the medical evidence and the oral testimony, Anil would not state that the deceased was given severe beating by the accused persons but he informed the Police that the

accused persons were trying to drown the deceased in the water of *Mandnala* whereas the cause of death was found to be cardiac tamponade due to rupture (LW) of left post ventricular wall caused by sudden blow on chest wall and not by drowning. The deceased did not suffer any external injury as mentioned in page 3 of the post-mortem report.

11. Be that as it may, having closely scrutinized the evidence, we have not found that the view taken by the trial Court is so perverse or absurd that such view cannot be culled out on the basis of evidence available on record.
12. In view of the settled legal position that when two views are possible in the case and the trial Court has taken one of the views, the judgment of acquittal should not be converted into a judgment of conviction. (Please see : State of M.P. Vs. Bachhudas alias Balram and others, (2007) 9 SCC 135), we are of the opinion that the present is not a fit case for interference, because, the view taken by the trial Judge emanates from the state of evidence on record and the same does not appear to be perverse.
13. Accordingly, Criminal Revision as well as Acquittal Appeal deserve to be and are hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Sd/-
Judge
(Ram Prasanna Sharma)