

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 238 of 2010**

- Ramadhar Sharma S/o Daouram Sharma, aged about 67 years Retd. Govt. Employees R/o Chandaniapara, Janjgir, District Janjgir Champa (CG) **---- Appellant**

Versus

1. State of Chhattisgarh through PS Janjgir, District Janjgir-Champa (CG)
2. Devendra Mishra S/o Vijay Kumar aged 30 years R/o Village Sendary Police Station Pamgarh, Dist. Janjgir Champa (CG)

---- Respondents**&****ACQA No. 474 of 2010**

- State of Chhattisgarh through District Magistrate, Janjgir Champa (CG). **---- Appellant.**

Versus

- Devendra Mishra S/o Vijay Kumar aged 30 years R/o Village Sendary Police Station Pamgarh, Dist. Janjgir Champa (CG)

---- Respondent

For Appellant :Mr. Ashok Kumar Swarnakar, Advocate.
in ACQA No.238 of 2010

For respondent/State : Mr. Arvind Dubey, Panel Lawyer.

For objector : Mr. Sumit Singh, Advocate.

For Appellant/State Mr. Arvind Dubey, Panel Lawyer
in ACQA No.474 of 2010.

For respondent :Mr. Sumit Singh, Advocate.

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

Judgment on Board**Per Ram Prasanna Sharma, J****13-3-2018**

1. Acquittal Appeal No. 238 of 2010 has been preferred by Ramadhar Sharma who is father of the deceased - Manju Mishra whereas Acquittal Appeal No. 474 of 2010 has been preferred by the State. In both the matters challenge is to the judgment dated 22-2-2010 passed by the Sessions Judge, Janjgir-Champa (CG) in Sessions Trial No. 128 of 2009 wherein the said court has acquitted respondent Devendra Mishra for the charges of offence under Section 302/34 of IPC in alternate under Section 302 read with Section 120-B of the IPC for committing murder of his wife Manju Mishra or for conspiracy of murder.
2. In the present case, deceased Manju Mishra was the wife of respondent Devendra Mishra. It is alleged that the marriage between them was solemnized on 2-4-2007 and deceased died on 28-2-2008. As per version of the prosecution, deceased was going to school on a two wheeler to village Murpar on 28-2-2008 at about 11.00 a.m., and on the way she was dashed by one Black Bolero vehicle. Initially she was admitted to District Hospital, Janjgir and thereafter she was referred to District Hospital, Bilaspur, but on the way to Bilaspur she succumbed to the injuries. It is alleged that the driver of the said Bolero vehicle first dashed the deceased intentionally, then again reversed the vehicle and ran over the deceased. It is alleged that the respondent was sitting in the said vehicle. A report was lodged as per Ex.P/5 by Ramadhar Sharma (PW/3) who is father of the deceased.

The matter was investigated and after completion of the investigation, charge-sheet against the respondent was filed and after completion of trial, the trial Court acquitted the respondent as mentioned above.

3. Learned counsel for the State submits as under:

- i) The trial Court failed to appreciate the evidence of witness Rathram (PW/14) who deposed that the deceased was intentionally dashed twice by the driver of the said Bolero vehicle and again failed to appreciate the version of PW/3 Ramadhar Sharma that the respondent had intention to eliminate his wife.
- ii) The trial Court after evaluating the evidence failed to appreciate the evidence of witness PW/16 Sanjay Sharma and document Ex.P/25 to the effect that the relation between the deceased and the respondent was strained and he was harassing the deceased on account of non-fulfillment of illegal demand of money.

- 4. *Per contra*, learned counsel appearing for the respondent/defence submits that the finding is based on proper marshaling of the evidence and the same is not liable to be disturbed while invoking jurisdiction of the appeal.
- 5. We have heard learned counsel for the parties at length and perused material available on record.
- 6. To substantiate the charge, prosecution has examined as many as 21 witnesses.
- 7. Dr. K.B. Singh (PW/13) conducted autopsy of the deceased on 29-2-2008 at District Hospital, Janjgir and after autopsy he opined that the injuries were caused by heavy moving vehicle and it appears that the death was caused by accident. He further opined that death is caused since 24 hours of the examination.

8. Now the point for consideration is whether death of the deceased is done by conspiracy and the respondent is one of the culprit. As per definition of criminal conspiracy, when two or more persons agree to do, or cause to be done an illegal act, or an act which is not illegal by legal means, such an agreement is designated a criminal conspiracy:
9. PWS/14 Rathram deposed that one lady was driving Luna two wheeler vehicle and at the same time one Bolero vehicle dashed Luna vehicle and again while reversing, the Bolero vehicle dashed the deceased but reversing of the vehicle is not mentioned in his earlier statement recorded under Section 161 of the Cr.P.C by the Investigating Officer. Exaggerated version of this witness may be accepted after plausible explanation for not stating the same in his earlier statement which is made at the first instance. No explanation has been offered by this witness, therefore, his exaggerated version is not working or to say that no finding can be arrived at through his version.
10. PW/3 Ramadhar Sharma is father of the deceased who lodged first information report as per Ex.P/5 in which it is mentioned that the driver of the Black Bolero vehicle dashed the vehicle of the deceased. As per version of this witness some villagers informed him that 2 – 3 persons were sitting in the said Bolero vehicle and one Parmanand Yadav who is resident of village Murpar was claiming to identify them but the investigating agency has not been able to produce any of them before the trial Court.
11. PW/5 Sanat Kurre deposed that after the incident the deceased informed him that one marshal vehicle dashed her. PW/8 Umesh

Sharma deposed that some women informed him that deceased was telling that she was dashed by Bolero vehicle by her husband. Version of this witness is hearsay and that too of some unknown women. PW/11 Kamaldas deposed that some black Magic vehicle was driven by a person whose surname was Mishra. Version of this witness is inconclusive looking to the facts and circumstances of the case. PW/12 Yogendra Singh is a person who deposed that deceased sometimes stated to him that she has been subjected to harassment by her husband. Version of this witness also falls under the category of hearsay evidence.

12. Arun Sharma (PW/18) is the brother of the deceased. He deposed that Rathram (PW/14) told him that driver of one Bolero vehicle dashed the deceased twice. He further deposed that one Umesh Sharma has stated that in the said Bolero respondent was sitting. Version of this witness also falls under the category of hearsay evidence. PW/19 Bhishma Prakash Sharma also deposed that on the basis of information received by him through one Umesh Sharma he is saying that respondent was sitting in the said Bolero. Version of all the witnesses adduced by the prosecution is based on hearsay evidence and version of Umesh Sharma (PW/8) is based on the version of some unidentified women and other witnesses have also deposed on the basis of what is told to them by Umesh Sharma (PW/8).

13. Now, the point for consideration is whether hearsay evidence is admissible evidence and whether the finding can be recorded on the basis of hearsay evidence.

14. In the matter of **Kalyan Kumar Gogoi vs. Ashutosh Agnihotri reported in (2011) 2 SCC 532**, Hon'ble the Supreme Court has held as under:

“(a) the person giving such evidence does not feel any responsibility. The law requires all evidence to be given under personal responsibility, i.e., every witness must give his testimony, under such circumstance, as expose him to all the penalties of falsehood. If the person giving hearsay evidence is cornered, he has a line of escape by saying "I do not know, but so and so told me",

(b) truth is diluted and diminished with each repetition and

(c) if permitted, gives ample scope for playing fraud by saying "someone told me that.....". It would be attaching importance to false rumour flying from one foul lip to another. Thus statement of witnesses based on information received from others is inadmissible.”

As hearsay evidence of all these witnesses is inadmissible, the same is not to be used against the respondent.

15. Registration number of the said Bolero vehicle is not mentioned in the first information report and the said vehicle is not seized. Neither driver of the vehicle is brought before the trial Court nor owner of the said vehicle is identified. When name of the driver and owner of the vehicle is not established, agreement between two persons or more

persons of criminal conspiracy is not established in absence of agreement between two or more persons. Driver and owner of the said vehicle were connecting link, but the same is totally missing. In absence of connecting evidence, respondent cannot be charged for conspiracy.

16. True it is that direct evidence of conspiracy is rarely available, but a person can be connected through his guilty mind with others but there is no iota of evidence to say that there was ever any meeting of mind of respondent with others for commission of offence. His presence in the said offending vehicle is also not proved in absence of evidence. There is no evidence to the fact that one insurance policy was operated in the name of the deceased in which the respondent was nominee and that is not any incriminating circumstance against the respondent because he is the husband of the deceased and his nomination is otherwise, but natural.
17. Considering all the facts and circumstances of the case and in view of the law laid by the Hon'ble Supreme Court of India in Kalyan Kumar Gagoi (supra), we are of the view that the finding arrived at by the trial Court is based on legally admissible evidence which is not liable to be interfered while invoking jurisdiction of the appeal.
18. Accordingly, both the appeals are liable to be and are hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Sd/-
Judge
(Ram Prasanna Sharma)

