

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 304 of 2007

Dilip Agrawal And Another

Versus

Ratidas @ Kunu & Another

ACQA No. 285 of 2010

State of Chhattisgarh

Versus

Ravidas @ Kunu & Another

Judgment for consideration

**JUDGE
18.09.2018**

Hon'ble Shri Justice Pritinker Diwaker

**JUDGE
24.09.2018**

Post for pronouncement of the judgment on 25.09.2018

**JUDGE
25.09.2018**

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on : 24.08.2018

Judgment delivered on : 25.09.2018

CRR No. 304 of 2007

1. Dilip Agrawal And Another Mentioned Above

2. Renna Agrawal W/o Dilip Agrawal, Age 24 years

Both R/o. Village Toshgaon, Thana Basna, District Mahasamund

---- Applicants

Versus

1. Ratidas @ Kunu , S/o. Hataodash Manikpuri aged 32 years,
Occupation Driver, R/o. Village Toshgaon, Thana Basna,
Mahasamund

2. State Of Chhattisgarh Through Station House Officer, P.S. Basna,
Mahasamund

---- Respondent

ACQA No. 285 of 2010

- State of Chhattisgarh, Through the District Magistrate, Mahasamund

---- Appellant

Versus

- Ravidas @ Kunu S/o Hataudas Manikpuri Occup.Driver R/o Villl.
Toshgaon, Ps Basna, Mahasamund

---- Respondent

For Applicant : Shri Sanjay Agrawal and Shri A.P.Singh, Advocates
For Respondent/State : Shri Avinash K.Mishra, P.L.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Smt. Justice Rajani Dubey

Per Rajani Dubey, J

C A V Order

As these two cases arise out of judgment and order dated 28.03.2007 passed by the First Additional Sessions Judge, Mahasamund in Sessions Trial No. 05/2007 acquitting the accused/respondent of the charge under Section 307 IPC, State has preferred the appeal against his acquittal whereas complainant/applicants namely Dilip Agrawal and Reena Agrawal have preferred criminal revision, they are being disposed of by this common judgment.

2. Brief facts of the case are that on 17.12.2006, at about 12.15 midnight when complainant Dilip Agrawal and his wife Reena Agrawal after locking the door from inside, were sleeping in their house, at that time, respondent/accused Rati Das entered the room and assaulted with *lathi* causing injury to Dilip Agrawal on his head and his wife Reena Agrawal on the left elbow. Complainant immediately informed about the incident to his brother Arun Agrawal (PW-1) who lodged the FIR (Ex.P-1) at police station Basna, Mahasamund. Dilip Agrawal and his wife Reena Agrawal were sent to Community Health Centre Saraipali where Dr. V.A.K.Kosariya had examined them vide Ex.P-21 and P-24. Complainant Dilip Agrawal was admitted in the hospital and during course of investigation, discharge certificate of both the victims were seized vide Ex.P-2. Spot map Ex.P-3 was prepared by the patwari (PW-7). Blood stained baniyan and underwear were seized from the spot vide Ex.P-7 and a copper wire was also seized from the spot vide Ex.P-6. After investigation charge sheet was filed against the

accused under Sections 458,323,307 and 325 IPC. Trial Court framed charges under Section 307 IPC against the accused/respondent.

3. In order to establish the guilt of the accused/respondent prosecution has examined 10 witnesses and defence witness has also been examined by the respondent/accused. Statement of the accused was also recorded under Section 313 of the Cr.P.C. in which he denied the charges levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, the trial Court by judgment impugned has acquitted the accused/respondent of the offence and against which acquittal Appeal No. 285/2010 and Cr.Rev. 304/2007 have been filed.

5. State has filed Acq. Appeal No. 285/2010 against the judgment of acquittal of respondent on the ground that the impugned judgment is bad on the facts as well as law. Learned trial court has failed to appreciate the evidence on record and has wrongly acquitted the accused of the charges under the said section on the basis of conjectures and surmises. The trial court has erred in law in acquitting the respondent/accused by not properly appreciating the evidence of injured witnesses and that of the doctor. On the contrary it has passed the impugned judgment by relying upon the minor contradictions in the evidence of prosecution witnesses.

6. Applicants Dilip Agrawal and Reena Agrawal have filed Cr.Rev. No. 304/2007 on the ground that the acquittal is bad in the eye of law. Learned trial Court has erred in law in acquitting the respondent of the offence under Section 307 IPC only on the ground that the prosecution

has failed to prove that the respondent had not entered the house of the victims with an intention to commit their murder completely overruling the medical report of the applicant (Ex.P-24). From perusal of the medical report it is clear that the respondent/accused caused injuries on the vital part of the body of applicant Dilip.

Learned trial court has completely overlooked the query report given by the doctor (PW-9) where he has clearly mentioned that if the treatment was not given within time, it would have been dangerous for his life. Trial court has erred in holding that the injury caused by the non-applicant No.1 was not sufficient to cause death in the ordinary course of nature. Learned trial court completely overlooked the intention of the non-applicant No.1 in trying to commit murder of the applicant/respondent. The trial court further failed to appreciate the evidence recorded in the case in the proper perspective and has passed the judgment of acquittal in favour of the non-applicant No.1.

7. On the other hand, supporting the impugned judgment it has been argued by the respondent/accused that the acquittal of the accused is strictly in accordance with law and there is no infirmity in the same.

8. Heard counsel for the parties and perused the material available on record.

9. Arun Agrawal (PW-1) is the brother of the injured Dilip Agrawal who had lodged the FIR (Ex.P-1). He has stated that on the date of incident, at about 12.30 mid night, he received a call from his brother that some unknown person had entered his house and assaulted him and his wife with *lathi*. He has stated that thereafter he went to police

station Basna and lodged the FIR. Dilip Agrawal (PW-2) is the injured who has stated that on the date of incident, at night, when he and his wife were sleeping, at about 11.30 p.m. accused/respondent entered their house and assaulted him with lathi on his head. He has stated that as the night bulb was on and the accused was also carrying torch with him, he recognized him. He has stated that when the respondent/accused assaulted them, they started shouting and then the accused/respondent fled from the spot and then they closed the door from inside and informed their relatives. He has stated that after sometime when the relatives came they went to Saraipali hospital. He has stated that accused/respondent was his servant and was working in his house for the 20-25 years. In cross-examination he has stated that after being treated at Community Health Centre, Saraipali, they went to Burla Hospital where they remained admitted for three days and after discharge he informed his brother Gopal that it is his servant Rati Das who had assaulted them. Reena Agrawal (PW-3) wife of injured/applicant No.1 has also made similar statement as has been made by her husband. Naveen Kumar (PW-4) is the witness to memorandum Ex.P-4 and seizure Ex.P-5 by which *lathi* was seized. Girish Chand Bhoi (PW-5) is a witness to Ex.P-9 by which seizure of bed sheet was given effect to. Sanatan Nayak (PW-6) is a witness to seizure of Ex.P-2 by which the papers of treatment were seized. Bhim Kumar Sahu (PW-7) is the patwari who prepared spot map Ex.P-3. S.D.Baghel (PW-8) is the police constable who had sent the seized articles for chemical examination vide Ex.P-22 & P-23. Dr.V.A.K.Kosariya (PW-9) is the doctor who had examined applicant Dilip and according to him, he had suffered one lacerated wound over right frontal region of head, vertical line in the size 5 cm. X 1 ½ cm.

upto bone deep severe bleeding present and there was also bleeding from the right ear. The doctor in Ex.P-24 has opined that had Dilip not got timely treatment the head injury would have been fatal to his life. He had referred the injured to Medical college hospital, Raipur. According to the medical report Ex.P-21, applicant No.2 also suffered various injuries. Hemchandra Verma (PW-10) is the Investigating Officer who has supported the prosecution case.

10. The trial court did not believe the evidence of Dilip Agrawal, Reena Agrawal and Dr.V.A.K.Kosariya and the injuries received did not correspond to the lathi so seized. The trial court found the defence witness Ghurwin Das (DW-1) more reliable. It is a well settled principle of law that the defence has only to show the probability of their defence. But in the present case, victim Reena Agrawal (PW-3) has supported the defence of respondent/accused. In para 4 of her cross-examination she has admitted that after the incident they went to the hospital at Saraipali in a Commander jeep which was driven by the accused/respondent. She has also admitted that during their treatment, accused/respondent was present there. Moreover, complainants Dilip Agrawal and Reena Agrawal have not given any sufficient reason for not mentioning the name of accused in the FIR and MLC report Ex.P-24 though he was well known to them being their servant. Thus after due appreciation of the evidence the trial court has arrived at a particular conclusion of acquitting the respondent/accused.

13. We find no reason to interfere in the judgment of acquittal. Considering the material available on record as well as the elaborate judgment impugned passed by the Court below, and being very much conscious of the existing legal position that in an appeal/revision

against acquittal if two views are possible on the basis of the evidence led by the prosecution and the trial Court taking one view favoured the accused, reversion of the findings of acquittal by the appellate/revisional Court taking the other possible view into consideration, is not permissible in law, this Court is of the view that the judgment impugned acquitting the respondent/accused of the offence as alleged is just and proper and does not warrant any interference by this Court and the acquittal appeal No. 483/2010 fails and is dismissed as such.

Further considering the scope of revision against acquittal, we are of the considered opinion that the judgment impugned acquitting the respondent/accused of the offence under Section 307 IPC is just and proper and does not call for any interference. Revision is also accordingly dismissed.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Rajani Dubey)
Judge