

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 137 of 2010****Judgment reserved on 22-1-2018****Judgment delivered on 13-2-2018**

- State Of Chhattisgarh Through The District Magistrate, District Kabirdham

---- Appellant**Versus**

1. Nabbu @ Bafataddin S/o Munvaddin Caste Musalman, Aged 60 years,
2. Nevaji Khan S/o Bafataddin Khan, Aged 35 years
3. Asar Khan S/o Bafataddin Khan, Aged about 24 years,
4. Rabbul Khan S/o Bafataddin Khan, Aged about 22 years
5. Sabbul Khan S/o Bafataddin Khan Aged about 20 years,
All R/o Village Sirmaguda, PS Pandariya, District Kabirdham (CG)

---- Respondents

For Appellant/State	: Shri Ramakant Mishra, Dy. Advocate General
For respondents	: Shri Malay Shrivastava, Advocate

**DB: Hon'ble Shri Justice Prashant Kumar Mishra &
Hon'ble Shri Justice Ram Prasanna Sharma**

CAV Judgment**Per Ram Prasanna Sharma, J.**

1. This acquittal appeal is preferred against the judgment dated 2nd April, 2009 passed by the Sessions Judge, Kabirdham (Kawardha) (CG) (for short the 'trial Court') in Sessions Trial No. 22/2008, wherein the trial Court acquitted the respondents for commission of offence under Section 302, 302/34 of the Indian Penal Code for causing murder of one Tushkumar and his wife Urmila Bai at village Navagaon (Hatha, Sirmaguda).

2. Facts of the case in brief are that on 26.1.2008 at about 7.30 pm deceased Tushkumar and his wife deceased Urmilabai left the house for keeping guard their fields at village Sirmaguda. When they did not return, next day brother of Tushkumar namely Narayan @ Rama (PW8) made search for them. He saw dead bodies of both the deceased on the road near the tube-well. It is alleged that brother of deceased Tushkumar namely- Keshav (PW10) was charged for kidnapping daughter of respondent Nabbu @ Bafataddin, who has been acquitted by the Court, therefore, family members of Nabbu @ Bafataddin were having grudge against the family members of the deceased. It is further case of the prosecution that the respondents have threatened the deceased to kill him before the incident that is why they are the author of the crime. Narayan @ Rama (PW8) who is brother of the deceased has lodged report in Police Station and the matter was investigated. Deadly weapons and other articles were seized from the respondents and those were sent for chemical examination.

3. After completion of investigation, charge sheet was filed before the trial Court. The respondents did not plead guilty, therefore, the trial was conducted. The accused were examined under Section 313 Cr.P.C. After hearing counsel for both the parties, the trial Court acquitted the respondents of the charges as aforementioned.

4. Learned counsel for the State submits as under:

(i) As relation between the respondents and family members of the deceased were strained and they have threatened to kill the

deceased, it is a case where evidence of the prosecution ought to have been believed, but the trial Court declined to act on it.

(ii) Corroborative piece of seizure of deadly weapons from the respondents is an incriminating circumstance against them, but that is also not given weightage by the trial Court, which is contrary to the factual matrix of the case.

(iii) Material evidence of Sadhram, Narayan, Rajendra Patel, Keshav and K.P.S. Paikra has been overlooked by the trial Court.

5. On the other hand, learned counsel for the respondents submitted that the finding arrived at by the trial Court is according to the facts and circumstances of the case, based on legally admissible evidence and not liable to be disturbed.

6. Heard learned counsel for the parties and perused the record.

7. To substantiate the charge, prosecution has examined as many as 11 witnesses.

8. As per version of Dr. Narendra Golan (PW7), he found multiple injuries on vital parts of both the deceased and the injuries were sufficient in ordinary course of nature to cause death. The evidence of the Doctor is unrebutted during cross-examination and there is no other expert opinion, therefore, finding of the trial Court is correct that the deceased died homicidal death.

9. Keshav (PW10) is brother of deceased Tushkumar. As per his version he has been charged for committing rape on daughter

of Nabbu @ Bafataddin and has been acquitted by the Court. He further deposed that the respondent threatened him to kill and similar threat was also extended about 8 days prior to the incident.

10. Narayan @ Rama (PW8) deposed that the respondents were always threatening Tushkumar and Urmila Bai to kill them and they have threatened them just 8 days prior to the incident.

11. From the evidence of the above witnesses, it can be inferred that relations between the respondents and the deceased were strained but this fact is not sufficient to reach to a conclusion that the respondents have executed what they previously threatened.

12. Case of the prosecution is based on circumstantial evidence and there is no eye-witness to the incident. K.P.S. Paikra (PW11) is the Investigating Officer and as per version of this witness, he has seized one sword from the spot in which some reddish colour (Tehra) pieces were found. He further deposed that some lime was scratched from the wall of the house of Narayan @ Rama (PW8), respondent Nabbu @ Bafataddin and Lalaram and lime from place of Nabbu @ Bafataddin was similar which was found in the sword as per Laboratory report. But as per Laboratory report, no blood was found on the sword. As per version of this witness, on the basis of discovery statements he seized various articles from the respondents i.e. from Nabbu- one axe, from Nevaji- one axe, from Asar Khan- one axe, from Rabbul Khan- one Shirt and from Sabbul Khan, one bindni.

13. As per version of seizure witness Rajendra Patel (PW9), the place of seizure is an open place accessible to all. Though blood was found on certain seized weapons, but origin of the blood is not determined nor it is reported that the blood was human blood. Unless the blood found is human blood and that too of the blood group of the deceased, it cannot be a circumstance to link any of the respondent with the crime. Some lime material was found on the sword, but the sword seized from the spot cannot connect any of the respondent with commission of crime. No other link is established to connect the respondents with the offence.

14. The case of the prosecution is based on suspicion and it is settled law that suspicion, however, strong cannot take place of proof. The finding recorded by the trial Court is based on facts and circumstances of the case and it is not for us to reverse the said finding. The view taken by the trial Court is the only view that can be taken into fact and circumstances of the case and same is not liable to be interfered with.

15. In the result, the appeal is liable to be and is hereby dismissed.

**Sd/
JUDGE
(Prashant Kumar Mishra)**

**Sd/
JUDGE
(Ram Prasanna Sharma)**

