

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 223 of 2010**

- State Of Chhattisgarh

---- Appellant**Versus**

1. Dolia @ Sanjay aged about 25 years S/o Basant Charan Oriya (deleted as per Court order)
2. Gullu @ Ajay aged about 22 years S/o Basant Charan Oriya
3. Vijay Bihari @ Vijay Kumar aged about 30 years S/o Rampuran Sharma

All residents of Bharav Basti, Camp-II, Police Station Chhawani, Bhilai, District Durg, Chhattisgarh.

---- Respondents

For State
For Respondents

Shri P.K. Bhaduri, Government Advocate.
Ms Indira Tripathi, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Shri Justice Ram Prasanna Sharma****Order On Board****by Hon'ble Ram Prasanna Sharma J.****18/04/2018**

1. This appeal is preferred against the judgment dated 10.04.2003 passed by the VIII Additional Sessions Judge, Fast Track Court, Durg in Sessions Trial No.226/2001, wherein the said Court acquitted the respondents for commission of offence under Section 307 read with Section 34 of IPC for attempting the murder of one Narayan on 06.12.2000 at about 20:30 PM at

village Bhardapara, Bharav Basti Camp No.2, Bhilai Chhawani.

2. In the present case name of the victim is Narayan. The case is based on two eye witnesses namely Narayan Yadav (PW-1) and Prem Kumar (PW-2). During pendency of appeal respondent Dolia died on 14.11.2004 and his appeal is abated. Now the appeal is heard against the respondents Gullu @ Ajay and Vijay Bihari @ Vijay Kumar.
3. As per version of Narayan, at the time of incident respondents Gullu & Vijay assaulted him by fists and Dolia assaulted him by knife. But in his previous statement recorded under Section 161 of Cr.PC, he stated that first Gullu @ Ajay came on the spot and thereafter respondent Dolia came on the spot and the third respondent Vijay came thereafter. From his earlier statement, it is not established that all the three respondents came together with common intention to assault the victim. Though, this witness deposed that Vijay and Gullu assaulted him by fist, but as per statement of Dr. S. Mukhopadhyay, he noticed only three incised wounds on the body of the victim that cannot be caused by fist. So version of this witness is not supported by version of medical expert. Again this witness deposed that respondent Dolia assaulted him by knife but in his cross examination he deposed that Dolia was having knife that is why he stated that it is Dolia who assaulted by knife. Version of this witness is not stable regarding injuries by knife by respondent Dolia. At one point of time, he stated that respondent Dolia assaulted him by knife but in his cross examination he corrected his version that since Dolia

was having knife that is why he has stated that it is Dolia who assaulted him by knife.

4. The other eye witness namely Prem Kumar (PW-2) deposed in his examination-in-chief that Dolia assaulted the victim by knife but in his cross examination (Para 6) he deposed that when he reached to the spot, he found that victim Narayan sustained injuries. He further deposed that since Dolia was having knife that is why he stated that it is Dolia who inflicted knife injuries. Version of this witness is also not stable. In his cross examination, he stated that his version is out of imagination and he has not seen the real incident because the victim Narayan already sustained injuries before he reached to the spot.
5. Looking to the unstable statement made by both the witnesses and opinion of medical expert, the trial Court opined that causing injury by knife by respondent Dolia is under cloud. Again the trial Court held that since injuries found in the body of the victim where incised wound that could not be caused by fist blow. The charges against the present two respondents are also not established.
6. Finding of the trial Court is based on relevant facts of the record and it cannot be said that trial Court came to the conclusion on the basis of irrelevant fact or extraneous matter. True it is that there may be one view that it is Dolia who assaulted the victim by knife but the view taken by the trial Court is the other view which is also one of the plausible view.

7. It is the settled principle of criminal jurisprudence that when two views are possible, the view in favour of the accused can be accepted. We are not in a position to hold that finding of the trial Court is perverse and the same is liable to be interfered with invoking jurisdiction of appeal while hearing the appeal against acquittal.
8. Accordingly, the appeal is liable to be and is hereby dismissed.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Ram Prasanna Sharma

Akhilesh