

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQA No. 137 of 2011

Embai, Wd/o. Late Shri Umesh Das, Aged about 55 years, R/o. Kukripara, Subash Nagar, Police Station Purani Basti, Raipur District Raipur (C.G.)

--- APPELLANT

Versus

1. State of Chhattisgarh, through Police Station Purani Basti, Raipur (C.G.)
2. Narendra Singh Yadav, aged about 45 years, S/o. Late Phoolsingh Yadav, R/o. Mathpara, Police Station Purani Basti, Raipur, District Raipur (C.G.)
3. Vijay Singh @ Bijju Thakur, aged about 37 years, S/o. Late Laldev Singh, R/o. Subash Nagar, Kukripara, Police Station Purani Basti, Raipur, District Raipur (C.G.)

---- RESPONDENTS

For the Appellant	:-	Mr. Harshwardhan, Advocate
For the Respondent No.1	:-	Mr. Arvind Dubey, Panel Lawyer
For the Respondent Nos. 2&3	:-	Mr. Y.C. Sharma, Advocate with Ms. Priya Mishra, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Ram Prasanna Sharma

Judgement on Board

Per Ram Prasanna Sharma, J.

18. 04. 2018

1. This acquittal appeal is directed against the judgment dated 22.03.2011 passed by the Special Judge (Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act) 1989 (for short

'Act 1989' Raipur, in Special Session Case No. 106/2006, wherein the said Court has acquitted the respondent Nos 2 and 3 for offence punishable under Sections 302 read with section 34 of the IPC and 3 (2)(v) of the Special Act 1989, for having common intention to commit murder of one Deepak Raj on 08.07.2006 at 4.30 pm at village Kukripara.

2. In the present case, date of incident is 08.07.2006. As per prosecution, a quarrel begun between deceased Deepak Raj and Narendra Singh Yadav Corporator for constructing a drainage in the said area. It is alleged that respondent No. 2 Narendra Singh Yadav, who was the Municipal Corporator instigated one Lokesh Chandrakar for assaulting on the deceased. At the time of incident, respondent Vijay Singh @ Bijju Thakur was present and participated in the said crime.
3. Case of the prosecution is based on the evidence of Embai (PW-5), Ambika Bai (PW-7), Gaganbeer (PW-8) and Bhupatbir (PW-9). As per version of Embai (PW-5) Lokesh Chandrakar came on the spot with respondent No. 2 Narendra Singh Yadav and the said Narendra Singh Yadav put-off his shirt and started assaulting the deceased by hands and fists. It is stated by Embai (PW-5) that respondent Narendra Singh Yadav instigated Lokesh Chandrakar to assault on the deceased. But version of this witness is not stable to her earlier statement. Her earlier statement was recorded under Section 161 of the Cr.P.C. by City Superintendent of Police B.B. S. Rajput (PW-11). As per version of this witness, he recorded the statement of Embai (PW-5) as Exhibit DW-1 but in the said statement Embai (PW-5)

did not state that Narendra Singh Yadav instigated Lokesh Chandrkar to assault on the deceased. He further deposed that this witness Embai (PW-5) did not state about respondent Vijay Singh @ Bijju Thakur that he also instigated to assault on the deceased.

4. Ambika Bai (PW-7) deposed before the trial Court that respondent Narendra Singh Yadav and Vijay Singh @ Bijju Thakur were present on the spot and Narendra Singh Yadav stated that it is the deceased who always obstructed in their work and instigated to assault him but version of this witness is also not stable to her earlier version recorded by City Superintendent of Police B.B. S. Rajput (PW-11). As per version of this Police Officers, he recorded the statement of Ambika Bai as Exhibit DW-2 but he did not state that Corporator Narendra Singh Yadav was present there and he instigated for assault. He further deposed that this witness did not state about respondent Vijay Singh @ Bijju Thakur that he was present near the shop.
5. Looking to the statement of Police Officer who recorded the statement of Embai (PW-5) and Ambika Bai (PW-7), version of these two witnesses are not of sterling quality. Bhupatbir (PW-9) deposed that respondent Narendra Singh Yadav and Vijay Singh @ Bijju Thakur were assaulting the deceased. But version of this witness is also not firm with his statement earlier recorded by the Police Officer. As per version of B.B. S. Rajput (PW-11), this witness has not stated before him that respondent Narendra Singh Yadav and Vijay Singh @ Bijju

Thakur assaulted the deceased. Version of Bhupatbir (PW-9) is not stable and he stated differently at different stages of investigation and trial. Again, Gaganbir (PW-8) deposed that it is Corporator who instigated for assaulting the deceased. But version of this witness is also not firm to his statement earlier recorded under Section 161 of the Cr.P.C. As per version of B.B. S. Rajput (PW-11), Gaganbir (PW-8) did not state before him that it is the Corporator who instigated for assaulting the deceased.

6. From the statement of all the prosecution witnesses it is not established that Lokesh Chandrakar who assaulted the deceased was having any arm. It is also not the evidence that any of the person present on the spot was carrying any arm. It appears that quarrel took place all of a sudden and at the spur of moment Lokesh Chandrakr assaulted the deceased by hands and fists, therefore, it is difficult to hold that even the person who assaulted the deceased was having intention to kill the deceased.
7. Looking to the evidence adduced by the prosecution it can not be inferred that any of the respondents had shared common intention with Lokesh Chandrar for assaulting the deceased. Even, instigation by them is not established as per evidence led by the prosecution. The respondents have been charged with offence under Section 3 (2)(v) of the Special Act. For commission of the said offence it is essential that the offence is done on the basis of caste but in the present case it is a quarrel for construction of a drainage and the same is not

based on the caste of the deceased, therefore, section 3 (2)(v) of the Special Act has no application in the present case.

8. On overall assessment of the entire evidence, the finding arrived at by the trial Court is based on relevant fact and it is not based on irrelevant and extraneous material, therefore, it would not be proper for us to reverse the finding of acquittal.
9. For the foregoing, the acquittal appeal fails and is hereby dismissed.

Sd/-
Judge
Prashant Kumar Mishra

Sd/-
Judge
Ram Prasanna Sharma