

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 125 of 2010**

- The State Of Chhattisgarh, through the District Magistrate, District Korea (C.G.)

---- Petitioner

Versus

- Ramkumar @ Mishra Harijan, S/o Bacchalal, aged about 23 years, R/o Village Chhuri, P. S. Khadgawan, District Korea (C.G.)

---- Respondent

ACQA No. 126 of 2010

- The State Of Chhattisgarh, through the District Magistrate, District Korea (C.G.)

---- Petitioner

Versus

- Ramkeshwar @ Mohit Harizan, S/o Bacchalal, aged about 26 years, R/o Village Chhuri, P. S. Khadgawan, District Korea (C.G.)

---- Respondent

For Applicant	Shri A. S. Kachhawaha, Addl. AG and Shri Arvind Dubey, PL
---------------	--

For Respondents	Shri A. K. Dewangan, Advocate
-----------------	-------------------------------

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Smt. Justice Vimla Singh Kapoor****Order On Board By****Prashant Kumar Mishra J.****02/07/2018**

1. The State has preferred these acquittal appeals to challenge the respondents' acquittal from the charges under Sections 294/34

and 307/34 of IPC for using obscene language and attempting to commit murder of injured Budhram at about 4 pm on 19.03.2008.

2. The prosecution case, as projected in the charge sheet, is that at about 22:30 hours on 19.03.2008, Budhram lodged *Dehati Nalisi* vide Ex-P-8 interalia alleging that on 19.03.2008, he had gone to Village Chhuri and was going to seek refund of the amount paid to Ram Singh of Village Chhuri. When he was moving with Devsharan, it started raining, therefore, he and Devsharan stopped at the house of Satyendra, where he met respondent Ramkumar @ Mishra Harijan. In the house of Satyendra, a dispute arose between him and Mishra Harijan, after which he was manhandled and assaulted by hand and kicks by the said Mishra Harijan. They were separated by Devsharan and thereafter he was going to his house at Village Bari, however, when he had reached near Village Ghutri at about 4 pm, both the accused came from behind, chased him and assaulted him by means of axe causing 3-4 incise wound and other injuries. The injured fell down and at that time, Bharat Yadav reached there and shouted for help, on which Sudhram, Gendlal and Madan reached on the spot, to whom Budhram narrated the entire incident. The injured came to Police Chowki with Jailal and lodged the *Dehati Nalisi*.
3. In course of investigation, axe has been recovered from both the respondents pursuant to their memorandum statements. In course of trial, the prosecution examined PW-1 Gorelal, PW-2, Sudhram, PW-3 Ramprasad, PW-4 Gendlal, PW-5 Bharat, PW-6

Budhram, PW-7 Manraj, PW-8, Madan Singh, PW-9 Satyendra, PW-10 Devsharan, PW-11 Dr. S. Kujur, PW-12 Ghurau Ram Komre, PW-13 Motiram Sandilya, PW-14 Vijay Singh. The accused persons abjured guilt and examined one Sukla Prasad in their defence as DW-1.

4. The trial Court has acquitted the accused mainly for the reason that there is material omissions and contradictions in the statement of witnesses and there being previous enmity between the parties, the prosecution case is doubtful.
5. According to *Dehati Nalisi* and FIR, after the assault was over, Bharat Yadav reached on the spot and shouted for help, on which Sudhram, Gendlal and Madan reached the spot, to whom injured Budhram narrated the entire incident and thereafter he came to the Police Station with Jailal for lodging *Dehati Nalisi*, however, PW-2 Sudhram (brother of injured Budhram), who is named in the FIR as the person who reached the spot and to whom the story was narrated by the injured, has stated in his examination-in-chief that when he was sitting in his house, wife of Budhram reached and informed that someone has assaulted his brother, therefore, he should go to the place of occurrence to rescue and bring Budhram to the house. When this witness reached the spot along with Manraj, the injured was lying unconscious. Thus, the statement in the FIR that Budhram had narrated the story to this witness is contradicted. This witness would also state that the report was lodged at the Podi Police Chowki by her sister-in-law (Bhauji), however, *Dehati Nalisi* and FIR would carry the name of

the injured as the informant. There is no mention in the *Dehati Nalisi* or the FIR that the injured's wife has lodged the FIR. PW-3 Ramprasad is the witness who was present at the time of first incident in the house of Sukhnandan, however, this witness has been declared hostile. PW-4 Gendlal is also named in the FIR as one of the person who reached the spot and to whom the injured has narrated the incident. This witness has also been declared hostile. He has stated that he was informed by Bharat that the accused persons have assaulted the injured by axe, however, PW-5 Bharat has himself denied to have informed about the incident to anyone. According to this witness, he saw the injured lying unconscious, when he was returning after attending the work. In his examination-in-chief, he admits to have shouted and called Madan, however, this witness left the place immediately after Madan's arrival. Thus, the contents of the FIR that Budhram has narrated the incident to this witness is seriously contradicted.

6. More importantly, the injured Budhram (PW-6) would himself depose that since he became unconscious after the assault, he does not recollect as to who brought him to the hospital, thus he would not state that either Bharat or Sudhram, Gendlal and Madan were informed about the whole incident.
7. The prosecution case is, therefore, full of material contradictions and omissions, therefore, in the light of admitted position, as occurring in the statement of PW-2 Sudhram and PW-6 Budhram that there is previous enmity between the two families and Budhram himself is facing trial for assaulting the grand father of

the present accused persons, the trial Court has rightly found that the prosecution has failed to prove its case beyond all reasonable doubts.

8. In the considered opinion of this Court, the finding recorded by the trial Court does not suffer from any perversity warranting interference in these acquittal appeals.
9. The present acquittal appeals are devoid of any substance, they deserve to be and are hereby dismissed.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Vimla Singh Kapoor