

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURCRR No. 232 of 2009

1. Lomas Singh, S/o Lae Purshottam Singh, aged about 21 years, R/o Village Guturma, Tahsil Sitapur, Distt.-Sarguja, C.G.
2. Surajdas S/o Harinath Das, aged about 45 years, R/o Village Guturma, Tahsil Sitapur, Distt.-Sarguja, C.G.

---- Applicants

Versus

1. State of Chhattisgarh, through S.H.O., P.S. Sitapur, District Sarguja, C.G.
2. Umeshram S/o Thinuram Ghasiya, aged about 33 years, R/o Village Lichirma, P.S. Sitapur, Tahsil-Sitapur, Distt.-Sarguja, C.G.
3. Rajkumar S/o Shri Sursutiya Satnami, aged about 26 years, R/o Village Guturma, Tahsil-Sitapur, Distt.-Sarguja, C.G.
4. Raju Chauhan S/o Shri Bhup Singh, aged about 22 years, R/o Kerakachhar, P.S. Pathalgaon, Distt.-Jashpur C.G.
5. Alok Anuranjan Tigga S/o Late Maksimiliyam Tigga, aged about 24 years, R/o Village B.T.I. Chowk, Badapara, P.S. Pathalgaon, Distt.-Jashpur, C.G.

---- Respondents

For Applicant(s)	:-	Shri A.K. Prasad, Advocate.
For Respondent-State	:-	Shri Avinash Choubey, PL

Hon'ble Shri Prashant Kumar Mishra

Hon'ble Shri Gautam Chourdiya, JJ.

Order on Board

By

Prashant Kumar Mishra, J

27/08/2019

1. In all 8 accused persons namely, Buddhesh, Shiv Prasad, Umesh Ram, Manikchand, Buchan Ram, Rajkumar, Raju Chouhan and Alok Tigga were sent for trial for offences under Sections 148, 302 and 302/34 of IPC for committing murder of deceased Purshottam and Kanha @ Anirudh at about 7:00 pm on 28.11.2007.
2. While the trial Court has convicted accused Buddesh, Shiv Prasad, Manikchand and Buchan Ram, the present respondents namely Umeshram, Rajkumar, Raju Chauhan and Alok Anuranjan Tigga have been acquitted of the charges. Criminal Appeals No. 115/2009, 167/2009 and 336/2009 preferred by convicted accused, Shiv Prasad, Buchan Ram and Manikchand respectively, have already been dismissed by this Court by common judgment dated 03.07.2017. This Criminal Revision, against the acquittal of the respondents, was filed on 16.01.2009, however, it could not be heard on admission as it is listed for hearing for the first time after 12.11.2009.
3. As per the statement of eye witness PW-3, Sandeep Singh,

his father Purshottam was assaulted by accused-Buddhesh by means of *Tangi* and at that time Buchan Ram, Shiv Prasad and Manikchand assaulted him by club and were also catching hold of the deceased. Without naming the present respondents, PW-3, Sandeep Singh, would state that other accused persons were assaulting the deceased by bricks and stones. Similar is the statement of three other eye witnesses namely, PW-6 Santan, PW-11, Shyam Sundar and PW-14, Shankar Singh.

4. It is argued that the injuries sustained by the deceased clearly demonstrate such injuries which can be caused by bricks and stones and moreover eye witnesses have stated that after the deceased persons felt down on sustaining injuries respondent-Rajkumar ran the tempo trax over the body of the deceased persons thus, the eye witness account is supported by the medical evidence, therefore, the acquittal of the respondents deserves to be interfered with.
5. The trial Court has dealt with evidence available against respondents in detail from Para 39 to Para 44. Referring to the statement of each of the eye witnesses the trial Judge would conclude that injuries sustained by the deceased have not been conclusively proved to be caused by bricks and stones.

6. Referring to the number of injuries sustained by hard and blunt object, learned trial Judge would further observe that if apart from Buddesh, three other convicted persons have also assaulted the deceased by means of club, the number of injuries caused by repeatedly throwing stones and bricks would be much more than those found over the persons of the deceased. But such not being the number of injuries found over the persons of the deceased, the prosecution case against them appears to be doubtful.
7. Referring to the statement of PW-11, Shyam Sundar the trial Court would also observe that he admits that he does not know Raju and Alok Tigga. In his diary statement, this witness, has not named Raju and Alok Tigga but has referred them as two persons from village Fulita. In absence of Test Identification Parade (TIP) the trial Court has doubted the participation of respondents Raju and Alok in commission of crime.
8. We have carefully read the reasoning assigned by the trial Judge and thereafter perused the deposition of eye witnesses and we are satisfied that the reasoning assigned by the trial Judge is borne out from the evidence available on record and that the same is one possible view in the matter. The trial Court has rightly separated the grain from chaff to convict the real culprits while acquitting the

remaining whose participation in the crime is doubtful in view of the state of evidence on record.

9. It is settled that when two views are possible and the trial Court has taken one possible view in the matter, High Court while hearing appeal or revision against acquittal is not entitled to take the other view merely because that view is also possible. It is also settled that when two views are possible, Court should always take the view which favours the accused.

10. Accordingly, the criminal revision, sans substance, deserves to be and is hereby dismissed.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge

Ankit