

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 396 of 2009**

- Sahadeo Son of Door Gond, aged about 32 years, R/o village Endagaon, P.S. Kondagaon, Tahsil Kondagaon, District Bastar (C.G.)

-----Applicant**Versus**

1. Tulsi Son of Mangau, aged 22 years,
2. Budhu son of Kariya, aged about 55 years,
3. Lachchhan son of Budhu, aged about 25 years,
4. Mangau son of Kariya, aged about 42 years,
5. Saytu son of Bodku, aged about 25 year,
6. Ganda Ram son of Sukh Ram, aged about 27 years,
All R/o Village Endagaon, P.S. Kondagaon, Tahsil Kondagaon, District Bastar (C.G.)
7. State of Chhattisgarh, Through : The Police Station Kondagaon, District Bastar (C.G.)

----- Respondents

For Applicant	:	Shri N.P. Koshta, Advocate.
For Respondents 1 to 6	:	Shri Keshav Dewangan, Adv.
For State/Respondent No.7	:	Shri Avinash K. Mishra, P.L.

Hon'ble Shri Justice Prashant Kumar Mishra &**Hon'ble Smt. Justice Rajani Dubey****Judgment On Board****14/05/2019**

01. The applicant is brother of deceased Jagdev, who was allegedly murdered by the accused persons at about 12.30 PM

on 25.06.2007, for which the report was lodged by Hariram (PW/9) on the date of incident itself.

02. The trial Court has acquitted the accused persons of the charges under Sections 148/149, 302/149, 323 and 120-B IPC upon disbelieving the eye-witness account rendered by Smt. Sanmati (PW/6), Sadharam (PW/7) and Hariram (PW/9). In the FIR (Ex.P/18), informant Hariram (PW/9) informed the police that he and deceased Jagdev went to a temple belonging to Patel and damaged the deity, therefore, accused Lachchhan and Tulsi along with other accused persons assaulted and tied him. At this point of time, Jagdev moved away, therefore, after tying him, the accused persons went after Jagdev. At about 3.00 PM, he was informed by Palliram (PW/3), Sarpanch, that the accused Lachchhan and Tulsi have committed murder of Jagdev.

03. Since other witnesses are not important as they have not made any incriminating statement against the accused persons, we are not adverting to the entire evidence and we restrict our consideration to the statement of Smt. Sanmati (PW/6), Sadharam (PW/7) and Hariram (PW/9).

04. Smt. Sanmati (PW/6) is the sister-in-law of deceased Jagdev. She would state that all the accused persons assaulted the deceased by means of club and axe and that she and her husband tried to separate them but the accused persons did not oblige. She would further state that Jagdev resides with her and that on the date of incident her husband

and mother-in-law were not available. She also states that when Jagdev reached her residence, there was no dispute between the accused persons and Jagdev, and further that when Jagdev reached her residence, the accused persons did not reach there. She also states that when the accused persons reached her residence, Jagdev was running away and that no *maar-peet* had taken place with Jagdev near her house and that when she reached the place of occurrence, her brother-in-law i.e. deceased Jagdev was lying dead.

05. Sadharam (PW/7) also states, in his examination-in-chief, that he has seen the accused persons assaulting the deceased. However, according to this witness, residence of deceased is separate. He also states that the accused persons brought out Jagdev from his residence and assaulted him while chasing.

A close scrutiny and appreciation of evidence of these two witnesses would reveal that while Smt. Sanmati (PW/6) denies that Sadharam was present in the village, although, in the beginning, she says that Sadharam was available, however, she herself would, later on, state that when she reached the place of occurrence, Jagdev was lying dead. Similar is the case with Sadharam (PW/7), whose presence, by itself, is doubtful in view of statement of Smt. Sanmati (PW/6).

06. Insofar as Hariram (PW/9) is concerned, having said that he had seen the incident, in the last line of his statement, in

cross-examination, he says that since he was beaten and tied by the accused persons who went away to chase the deceased, he could not see the accused persons beating the deceased. Thus, Hariram (PW/9) also becomes a doubtful eye-witness for the tenor of his statements in respect of his witnessing the incident.

07. Appreciation and marshalling the evidence of above three witnesses raises serious doubt on the prosecution case vis-a-vis they having seen the occurrence. Therefore, in revisional jurisdiction, we are not inclined to interfere with the trial Court's verdict holding that offence under Section 302 IPC is not made out against the accused persons.

08. Insofar as offence under Section 323 IPC is concerned, there is material on record that Hariram (PW-9) suffered simple injuries and has also entered the witness box as PW-9. However, this criminal revision has been preferred by brother of the deceased as his legal heir. Insofar as offence under Section 302 IPC is concerned, applicant may be a legal heir because the deceased was not married, but insofar as offence under Section 323 IPC vis-a-vis Hariram (PW-9) is concerned, the present applicant is not his legal heir. If Hariram (PW-9) had filed the criminal revision, the matter would have been different because it was he who has sustained the injuries and was a victim for the offence under Section 323 IPC.

09. In a case where victim is available but has chosen not to prefer any criminal revision or appeal against acquittal, this

Court may not act at the behest of a person who may be a legal heir in respect of other connecting offence.

10. In view of above, the criminal revision deserves to be and is hereby dismissed.

Sd/-

(Prashant Kumar Mishra)
JUDGE

Sd/-

(Rajani Dubey)
JUDGE

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