

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No.657 of 2001

State of Chhattisgarh

---Appellant

Versus

1. Manrakhan, S/o Ramhan Kunwar, aged about 50 years,
 2. Kaushal, S/o Bishau Sonker, aged about 21 years,
 3. Bishau, S/o Jetha Ram Sonker, aged about 51 years,
 4. Preetam, S/o Mehtar Sonker, aged about 18 years,
 5. Nilam, S/o Bahruram Kunwar, aged about 19 years,
 6. Madan, S/o Jethu Kunwar, aged about 25 years,
 7. Butu alias Dault Kumar, S/o Bishau Sonker, aged about 20 years,
 8. Kartik S/o Ramlal Kunwar, aged about 50 years,
- All R/o Village, Ureyedbari, Police Station Chicholla, Thana Churiya, District Rajnandgaon (Chhattisgarh) ---Respondents

For State : Ms. Ishwari Ghritlahre, PL

For Respondents : Mr. Parag Kotecha, Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment On Board

05/03/2020

The story put-forth by the prosecution discloses that on 07.09.1997 in the wee hours when the complainant Nainwati (PW-1) was sleeping in her house along with her two sons namely Ramsagar (PW-2) and Mishra Kumar (PW-9), the accused/appellant came there and started banging the door from outside. They also persistently asked them to open the door. When the door was not opened by PW-1 they broke open the same, barged therein, dragged PW-1 and PW-2 out of the house and thrashed them with hands and fists. It is alleged that accused Bishau beat PW-2 with club whereas the others with hands and fists. They also called PW-1 a sorcerer. Thereafter, one Suklal (PW -7) appeared on the scene and pacified the dispute. This led PW-1 to lodge FIR (Ex.P-7) in the police station on the basis of which offences under Sections 147, 148, 452, 506, 294, 323 and 149

IPC were registered against the respondents/accused. After medical examination of PW-1 and PW-2 and completion of investigation the charge-sheet was filed under the same sections followed by charge being framed accordingly.

2. Learned Court below however, did not believe the evidence led by the prosecution and acquitted all the accused persons of the charges levelled against them. Hence this appeal by the appellant/State.

3. Counsel for the appellant/State submits that though PW-1 and PW-2 have expressed their pathetic tale of being dragged and manhandled by the accused persons after entering their house, it is erroneously chosen to acquit all of them, which being against settled position of law is liable to be set aside. Counsel for the accused/respondents however supports the judgment impugned and submits that as almost all the independent witnesses have turned hostile and not lent support to the case of the prosecution, the findings recorded by the Court below acquitting the respondents/accused of the charges levelled against them do not suffer from any legal flaw and therefore, they deserve affirmation by this Court.

4. Heard counsel for the parties and perused the material available on record.

5. Sanmat Bai (PW-6) though has stated the incident of Nainbai (PW-1) being dragged by the respondents/accused, she did not say even a word about anyone including PW-1 being subjected to beating by the accused persons. Even in the cross-examination she has stuck to the version put-forth by her in the examination-in-chief. All other independent witnesses being Kalaram (PW-3), Sukhram (PW-4), Mehtarinbai (PW-5) and Sukhlal (PW-7) have not supported the case of

the prosecution. Though PW-1 and PW-2 have made an allegation of being dragged out and subjected to thrashing by the accused persons, merely on their sole testimony, the conviction of accused persons cannot be sustained, because they happened to be the interested persons to the incident. Even medical evidence expressed the possibility of the injuries caused by PW-1 being caused as a result of friction by coming into the contact with rough surface. Of course the injuries caused to PW-2 have been opined to have been inflicted by a club but the evidence does not at all spell as to which of the accused person caused that club injury. The medical report of PW-1 and PW-2 is Ex.P-3 and Ex.P-4 given by Dr. A.K. Bansal (PW-8). None of the independent witnesses has supported the disclosure statement and deposition made by them in the Court as to the act alleged against the accused/respondents.

6. In aforesaid view of the matter it can safely be said that the Court below has not fallen in any error of law while recording a finding of acquittal against all the respondents as none of the main independent witnesses has supported the case of the prosecution. Even otherwise, it is a settled legal position that if two views are amenable from the material collected by the prosecution, the one beneficial to the accused has to prevail. Thus there is no substance in the appeal preferred by the State against the well reasoned judgment passed by the trial Court acquitting all the accused persons. Accordingly, the same is hereby dismissed and the judgment impugned receives affirmation.

Sd/-

(Vimla Singh Kapoor)

Judge