

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 584 of 2009

- Vijay Narayan Rajwade, S/o Rupchand, aged about 22 years, R/o Village-Chendra(Langhitari), District-Surguja, Chhattisgarh.

---- Applicant

Versus

1. State of Chhattisgarh through: District-Magistrate Surguja, Chhattisgarh.
2. Ram Sharan, S/o Jhabbu Gond, 41 years,
3. Dev Sharan, S/o Jhabbu Gond, 38 years,

Non-applicant Nos.2 & 3, R/o Village-Chendra Kodhapurwa, Outpost-Chendra P.S.-Jhilmili, District-Surguja, Chhattisgarh.

---- Respondents

For Applicants : Mr. Keshav Prasad Dewangan, Advocate.

For Respondent No.1/State: Mr. Adil minhaj, Govt. Advocate.

For respondents No.2 & 3: Mr. Trivikram Nayak, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

05/03/2020

1. This petition has been brought by the complainant against the judgment dated 7.11.2009 passed by the 1st Additional Sessions Judge, Surajpur, District-Surguja, Chhattisgarh in Criminal Appeal No.65/2009 filed by the respondents No.2 & 3 against the judgment of conviction & order of sentence dated 09.07.2009, by which appeal of respondents No.2 & 3 has been allowed and they have acquitted of the charge under Section 326/34 of IPC.
2. The respondents No.2 & 3 were prosecuted for commission of offences under Section 326/34 of IP, which was registered as criminal Case No.72/2009 before the Court of JMFC, Surguja. Respondent No.2 & 3 were charged with the same offences and tried. The trial Court convicted respondents No.2 & 3 under Section 326/34 of IPC

and sentenced each of them to undergo R.I. for 3 years and to pay fine of Rs.200/- with default stipulation. Respondents No.2 & 3 preferred an appeal in which they have been acquitted by the impugned judgment.

3. It is submitted by the learned counsel for the applicant that the learned appellate Court has erroneously made appreciation of the evidence present in the record of the trial Court. The applicant himself and other witnesses of relevance have made statement to the police regarding incident and none of them has been declared hostile by the prosecution. Nature of evidence given was not of such kind that it could have been discarded totally. Applicant himself is the victim in the case and lodger of FIR. His evidence is corroborated by other witnesses and also medical witness. The reasoning given by the appellate Court are not at all convincing, therefore, the judgment of appellate Court is bad in law, incorrect and illegal, which is liable to be set aside.
4. Learned State counsel opposes the petition and submissions made in this respect. However he admits that the reasoning given by the appellate Court for disbelieving the evidence of the prosecution witnesses should have been more exhaustive and convincing.
5. Learned counsel for respondents opposes the grounds raised in this revision petition and submits that the learned appellate Court has not committed any error in appreciating the evidence of the prosecution witnesses. On plain reading of the statement of applicant and other witnesses, it will be found that their statements are full of discrepancies, omissions and contradictions, therefore, the learned appellate Court has rightly disbelieved their evidence and acquitted the respondents No.2 & 3 of the charge. The revision petition is baseless, which may be dismissed.
6. I have heard both the parties and perused the documents on record.
7. On perusing the evidence of the prosecution witnesses available in the record of the trial Court, it is observed that none of the prosecution witnesses has been declared hostile by the prosecution. The learned appellate Court has made mention of some discrepancies, but at the same time, the appellate Court should have also taken into consideration other evidence that were present in the statements of witnesses, which has not been done. PW-1 Vijay Narayan is the

complainant and eyewitness. There are some other witnesses, who reached the spot immediately after the incident and narrated about their knowledge in their statements. There is evidence of treating doctor and the Investigating Officer, who have given evidence in corroboration of the statement given by the complainant. These witnesses have been cross-examined at length by the defence side. But, on perusal of the whole evidence it is evident that while appreciating the admissions and other statements that were in favor of accused persons, the appellate Court should have discussed the same at length the other evidence should have given detailed reasoning for disbelieving the statement that was in favor of the prosecution and therefore, I am of the considered view that the impugned judgment is without such reasoning and as such, the same is liable to be set aside.

8. Accordingly, without expressing any opinion on the merits of the case, this revision petition is allowed. The impugned judgment of acquittal is hereby set aside and the matter is remanded back to the appellate Court with a direction to pass reasoned judgment in accordance with law, after affording opportunity of hearing to both the sides.

Sd/-

(Rajendra Chandra Singh Samant)
Judge