

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 497 of 2009**

- Dinesh Kumar Markandey S/o Late Chait Ram Markandey, aged about 24 years, R/o Village Lasha Tola, Police Station Arjunda, Distt.-Durg (CG)

---- Petitioner

Versus

1. State Of Chhattisgarh through Police of Police Station Arjunda District Durg.
2. Lomash Prasad S/o Sarju Prasad, aged about 43 years, R/o Village Ghona Thana Arjunda District Durg (CG)
3. Ishwar Lal, S/o Panchram Hiba, aged about 47 years, R/o Lasha Tola Thana Arjunda District Durg
4. Nathela Ram S/o Udaya Ram Thakur, aged about 57 years, R/o Lasha Tola Thana Arjunda, District Durg (CG)

---- Respondent

For Appellant	Mr. Rahil Arun Kochar, Advocate
For Respondent /State	Mr. R. Tripathi, Panel Lawyer

**DB: Hon'ble Mr. Justice Prashant Kumar Mishra &
Hon'ble Mr. Justice Gautam Chourdiya**

Order On Board by Prashant Kumar Mishra, J.

25/2/2020

1. Heard.
2. This revision application is directed against the impugned judgment dated 26.4.2007 passed in Sessions Case No.290/2006 rendered by the trial Court acquitting the accused of the charges under Sections 302 read with Section 34 and 201 read

with Section 34 of IPC.

3. Three accused persons were sent for trial for committing murder of deceased Chetram in between 6:00 p.m. and 8:00 p.m. on 21.8.2006. The dead body was recovered from a canal on 24.8.2006. Four witnesses namely PW-1 Divyaprakash, PW-2 Dhalendra Hirwani, PW-10 Poonamchand Gautam and one Hemant (not examined), informed the Police on 24.8.2006 itself that they have seen the accused persons assaulting the deceased by stone and broken bottles.
4. These witnesses have been disbelieved by the trial Court by assigning reasons from para 12 to 22. The trial Court has highlighted the material contradictions and omissions in their statements. It is found that PW-1 Divyaprakash was not acquainted with accused Ishwar and Nathela Ram. He became aware of these two accused only when Police informed about the facts. PW-10 Poonamchand Gautam admits in para 13 and 15 of his examination that all four friends had decided to reveal the incident to the Police and make similar statements. He also admits that he was not personally acquainted with accused Ishwar and Nathela Ram. PW-2 Dhalendra Hirwani admits in para 2 of his statement that he did not see the assault because he was standing at a distance. Thus, if all the four friends were together, it was not possible for the other witnesses to have seen the incident. The eye-witnesses have contradicted each other to describe as to what article was used by which accused in causing injuries to the deceased.

5. PW-10 Poonamchand Gautam's father is a Kotwar and he admits in para 25 of his statement that since the Police visits his house regularly, he is not afraid of Police. Similarly, PW-2 Dhalendra Hirwani states that he had informed his father Balchand about the incident on 22.8.2006. However, Balchand was examined on 23.8.2006 during merg enquiry but he did not inform the police that his son Dhalendra has disclosed to him that the accused persons have committed the offence.
6. We have seen the entire evidence to find out whether the reasoning assigned by the lower Court is borne out of the evidence available on record.
7. Having seen the evidence, we are of the considered opinion that the view taken by the trial Court emanates from the state of evidence on record and the said view is one probable view in the matter.
8. It is the settled law that when two views are possible and the trial Court has taken a view favouring the accused, interference with the judgment of acquittal is not permissible.
9. There is no substance in the revision, it fails and is hereby dismissed at the motion stage itself.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Gautam Chourdiya)
Judge

