

HIGH COURT OF CHHATTISGARH, BILASPURACQA No. 118 of 2016

[Arising out of judgment of acquittal dated 12-11-2014 passed by the Additional Sessions Judge, Gariyaband, in ST No.45 of 2013]

1. Maheshwari Yadav, W/o Aas Kumar Yadav, aged about 40 years, R/o village Lalpur, PS Fingeshwar, Dist. Gariyaband (CG).

---- Appellant

Versus

1. The State of Chhattisgarh, through the Station House Officer, PS Fingeshwar, Dist. Gariyaband (CG).
2. Madhav @ Mahendra Yadav, S/o Ramadhar Yadav, aged about 26 years, R/o Nawapara, Rajim, PS Nawapara, District Raipur (CG).
3. Peeluram Yadav, S/o Vishram Yadav, aged about 21 years, R/o village Lalpur, PS Fingeshwar, Dist. Gariyaband (CG).

---- Respondents

For Appellant	Shri Goutam Khetrapal, Advocate
For Respondent No.1/State	Shri Ashish Gupta, Panel Lawyer
For Respondent No.2	Shri C.R. Sahu, Advocate
For Respondent No.3	Shri Raghvendra Pradhan, Advocate

Hon'ble Shri Prashant Kumar Mishra, J.

Hon'ble Shri Gautam Chourdiya, J.

Judgment on Board

By

Prashant Kumar Mishra, J.

07-02-2020

1. This appeal against acquittal is directed against the judgment dated 12-11-2014 rendered by the Additional Sessions Judge, Gariyaband, in ST No.45 of 2013 whereby and whereunder the trial Court has acquitted the accused/respondent No.2 Madhav @ Mahendra Yadav (A1) from the charge under Sections 302 & 302 read with Section 120-B of the Indian Penal Code (IPC) and acquitted the accused/respondent No.3 Peeluram Yadav (A2) from the charge under Section 302 read with Section 120-B of the IPC.
2. The accused persons were sent for trial for committing murder of Pravin & Bhupendra (since deceased) by deliberately dashing the Scorpio vehicle with the motorcycle driven by the deceased. The police received information that the deceased persons are lying injured in the agricultural field of one Chain Singh where the Scorpio has also turned turtle. Both the injured were taken to the Government Hospital, Fingeshwar where they died soon after admission.
3. PW-16 Ramesh Kumar Sahu, who was passing through the place of occurrence, lodged First Information Report (FIR) vide Ex.P/25. Scorpio vehicle was recovered vide Ex.P/26 whereas Discover motorcycle was recovered vide Ex.P/27. Merg intimation (Ex.P/18 & Ex.P/19) was also lodged by PW-16 Ramesh Kumar Sahu. Memorandum statements of the accused were recorded vide Ex.P/8 & Ex.P/12 on the basis of which T-Shirt, Trouser & Mobile set were recovered vide Ex.P/9 to Ex.P/11 from A1 whereas Mobile set and Hero Honda motorcycle was recovered from A2 vide Ex.P/13.

4. In the case diary statement of the witnesses the police was informed that the accused persons chased the deceased from Fingeshwar to Rajim and deliberately & intentionally dashed them near Borsi turning in order to commit their murder. Call details of conversation between both the accused persons as well as one Pardeshi Yadav was obtained and the seized vehicles were mechanically examined.
5. Learned counsel appearing for the appellant would submit that the prosecution witnesses have clearly stated that both the accused had threatened the son of the appellant namely; Praveen not to continue his affair with Kunti otherwise he will be killed by causing accident. Thus, there is clear motive on the part of the accused to commit murder. Learned counsel would also argue that it was not an accident, but a planned murder, therefore, the trial Judge should have convicted the accused.
6. Learned counsel appearing for the State would submit that the State has not preferred any appeal against acquittal.
7. Learned counsel appearing for the accused/respondents No.2 & 3 would argue that in absence of any eyewitness who have seen the appellants causing murder by deliberately dashing Scorpio vehicle with the motorcycle, the impugned judgment does not warrant interference.
8. We have heard learned counsel appearing for the parties at length and perused the record.
9. Prosecution has examined as many as 28 witnesses, however, there is no categorical statement by any of the witnesses, who have seen the accused persons driving Scorpio vehicle. Albeit

some of the witnesses have seen the Scorpio vehicle being driver speedily, but they have not stated that it was the accused persons or any one of them, who was driving the vehicle.

10. Informant PW-16 Ramesh Kumar Sahu and PW-4 Hukumal Sinha, who reached the place of occurrence soon after the accident found the Scorpio vehicle in the agricultural field of Chain Singh in a turtle condition, however, they have not seen the accused persons on the spot at that time.
11. Appellant-Maheshwari Yadav, examined as PW-1, is the mother of both the deceased whereas PW-2 Kunti @ Pinki is the widow of deceased Praveen, however, both of them were in the house, therefore, it was impossible for them to have seen or noticed the accused persons driving the Scorpio vehicle.
12. Except PW-16 Ramesh Kumar Sahu & PW-4 Hukumal Sinha no other witnesses reached the place of occurrence seen after the incident. Most of the witnesses are making statement about the motive and the threat given by the accused to deceased Praveen, however, in a case of circumstantial evidence motive alone is not sufficient to convict the accused and more so when the alleged threat by the accused to deceased Praveen was not reported to the police prior to the date of incident.
13. In absence of any eyewitness or any witness who had seen the accused persons driving Scorpio vehicle near the place of occurrence, the trial Court's finding while acquitting the accused persons does not appear to be perverse.

14. Even otherwise, it is the trite law that when two views are possible in the case and the trial Court has taken one of the views, the judgment of acquittal should not be converted into a judgment of conviction. {See : State of M.P. v. Bachhudas alias Balram and others (2007) 9 SCC 135}.
15. In this view of the matter, the judgment of acquittal rendered by the trial Court cannot be set aside for convicting the respondents No.2 & 3/accused persons.
16. As a sequel, the present Acquittal Appeal deserves to be and is hereby dismissed.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Gautam Chourdiya)
Judge

Gowri