

HIGH COURT OF CHHATTISGARH, BILASPURJudgment reserved on 24-01-2020Judgment delivered on 18-03-2020ACQA No. 224 of 2009

[Arising out of judgment of acquittal dated 16-10-2008 passed by the 6th Additional Sessions Judge, Bilaspur, in ST No.61 of 2008]

1. The State Of Chhattisgarh, through District Magistrate, Bilaspur (CG).

---- Appellant

Versus

1. Deenu Verma, S/o Rajva Verma, aged about 35 years.
 2. Raju Sahu @ Arvind, S/o Jagdish Sahu, aged about 20 years.
 3. Vinod Kumar, S/o Late Ganesh Pradhan, aged about 22 years
- All are R/o Devridih, PS Torva, Dist. Bilaspur (CG).
4. Lalsai, S/o Shri Mukh Soni, aged about 35 years, R/o Devridih, PS Torva, Dist. Bilaspur (CG).

---- Respondents

For Appellant/State	Shri Ashish Gupta, Panel Lawyer
For Respondent No.1	Shri Akhtur Hussain & Ms Deblina Maity, Advocates

Hon'ble Shri Prashant Kumar Mishra, J.

Hon'ble Shri Gautam Chourdiya, J.

The following judgment of the Court was delivered by

Prashant Kumar Mishra, J.

1. Trial Court has acquitted the accused persons from the charge under Section 302 read with Section 34 of the Indian Penal Code (IPC).
2. The accused persons namely; Deenu Verma (A1), Raju Sahu @ Arvind (A2), Vinod Kumar (A3) and Lalsai (A4) were sent for trial for committing murder of Bajrang @ Padam Sharma (since deceased) at about 9.00 pm on 27-1-2008.
3. In the First Information Report (FIR) (Ex.P/2) lodged by Pankaj Sharma (PW-1) [brother of the deceased] at 22.55 hours on 27-1-2008 itself he informed the police that at about 9.00 pm he along with his brother Santosh Sharma (PW-2) had gone in search of the deceased. When they reached near Dewangan betel shop, Devridihi, he saw that A1 & A2 with sword and A3 & A4 with knife along with 7-8 other persons were assaulting his brother. When he (PW-1) and Santosh Sharma (PW-2) raised alarm all the persons ran away leaving the deceased on the ground in a pool of blood. Bajrang Singh Gond (PW-3) was also standing at the place of occurrence. The deceased was taken to Apollo Hospital where he was declared brought dead.
4. The trial Court has acquitted the accused persons on the reasoning that apart from 4 accused sent for trial there were 7-8 more persons who had participated in the occurrence, but they were not arrested or sent for trial, therefore, coupled with other material contradictions and omissions the prosecution has failed to prove the case beyond reasonable doubt.

5. Pankaj Sharma (PW-1), Santosh Sharma (PW-2) Bajrang Singh Gond (PW-3), Radheshyam Sidar (PW-5) and Mahabali Dewangan (PW-7) are the eyewitnesses.
6. Pankaj Sharma (PW-1) has named the present 4 accused persons, but contrary to the information provided to the police in the FIR he has deposed that 7-8 more persons were only standing and had not participated in the commission of crime. Similar is the statement of Santosh Sharma (PW-2). Both these witnesses and Neeraj Sharma (PW-6) are the brothers of the deceased. There is material in their statements that the deceased was having criminal background and was facing several criminal cases against him. Three days prior to the incident i.e. on 24-1-2008 the deceased was released on bail. Defence has suggested the witness that on the date of incident itself the deceased had entered the house of Raju Sao and has assaulted him, therefore, the police was in search of him.
7. Mahabali Dewangan (PW-7) is the owner of the betel shop where the incident took place, however, he has not supported the prosecution. This important independent witness is, thus, not supporting the eyewitness. Radheshyam Sidar (PW-5) attributes assault to A1 & A2 and not to A3 & A4. Thus, this witness has also weakened the case of prosecution. In the FIR it has been stated by Pankaj Sharma (PW-1) that he witnessed the incident in the light of street light.
8. The evidence on record would suggest that apart from the present 4 accused persons, 7-8 more persons had assaulted the deceased, but these persons have not been sent for trial. Independent witness Mahabali Dewangan (PW-7) is not supporting the prosecution whereas another independent

witness Radheshyam Sidar (PW-5) has not named A3 & A4, as the persons who assaulted the deceased. Thus, as per his statement only two persons took part in the offence whereas as per the FIR there were at least 11-12 persons [including the present 4 accused persons] assaulted the deceased. Thus, it is doubtful as to which particular assault was responsible for causing death of the deceased.

9. It is settled law that in an appeal against acquittal the judgment rendered by the trial Court can be set aside only when the reasoning and finding recorded by the trial Court is wholly perverse and no prudent person would reach to such conclusion based on evidence on record, however, upon examination of evidence, we are of the opinion that the view taken by the trial Court is one probable view albeit there is a strong case that another view was also probable.
10. In this view of the matter, the judgment of acquittal rendered by the trial Court cannot be set aside for convicting the respondents/accused persons.
11. As a sequel, the present Acquittal Appeal deserves to be and is hereby dismissed.

Sd/-

(Prashant Kumar Mishra)
Judge

Gowri

Sd/-

(Gautam Chourdiya)
Judge