

**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Reserved for orders on :03/01/2020**

**Order passed on :28/02/2020**

**CRR No. 617 of 2007**

1. Bharat Chauhan S/o Shri Arjun Chauhan, aged about 30 years, R/o Village Junwani, P.S. Chakradharnagar, District- Raigarh (C.G.) .. (complainant)

**---- Applicant**

**Versus**

1. Karuna Sagar Malakar S/o Shri Tejram Malakar, aged about 40 years, Occupation – agriculture, R/o Village Junwani, P.S. Chakradhar Nagar, District Raigarh (C.G.)
2. Mehattar Dhanuhar S/o Lodhu Dhanuhar, aged about 35 years, R/o Junwani, P.S. Chakradhar Nagar, District Raigarh (C.G.)
3. State of Chhattisgarh, through the Station House Officer, P.S. A.J.K. Raigarh, District Raigarh (C.G.)

**--- Respondents**

**ACQA No. 461 of 2010**

- State of Chhattisgarh Through the District Magistrate, District Raigarh (C.G.)

**---- Applicant/Appellant**

**Versus**

1. Karunasagar malakar, S/o Shri Tejram Malakar, Aged about – 40 years, Occupation – Kastkar, R/o Village Junwani, P.S. Chakradharnagar, District Raigarh (C.G.)
2. Mehattar Dhanuhar, S/o Lodhu Dhanuhar, Aged about – 35 years, R/o Village Junwani, P.S. Chakradharnagar, District Raigarh (C.G.)

**--- Non-applicants/Respondents**

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For Applicant (in CRR No.617/2007) – Mr. A.N. Bhakta and Mr. Vivek Bhakta, Advocates.

For Respondents No.1 and 2 (in both the cases) – Mr. Sumit Singh Rathore, Ms. Rashmi Sen and Ms. Soni Mishra, Advocates.

For State (respondent No.3 in CRR No.617/2007 and applicant/appellant in ACQA No.461/2010) – Shri Adil Minhaj, Govt. Advocate.

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**Hon'ble Shri Justice Rajendra Chandra Singh Samant**  
**CAV Order**

**28-02-2020**

1. These Criminal Revision No.617 of 2007 and Acquittal Appeal No.461 of 2010 are arising out of the same judgment dated 27-08-2007 passed in Special Criminal Case No.05/2007 by Special Court Raigarh acquitting respondents

No.1 and 2 from the charges under Section 323, 323/34, 294, 506B, 323/34 of the IPC and Section 3(1)(x) and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'the SC/ST Act'). Therefore, both are being disposed off by this common order.

2. Criminal Revision No.617 of 2007 has been filed by complainant Bharat Chouhan challenging the legality, propriety and correctness of the impugned judgment.

Acquittal Appeal No.461 of 2010 has been filed by the State challenging the acquittal of respondents No.1 and 2 praying to set aside the impugned judgment of acquittal, convict respondents No. 1 and 2 and award suitable punishment to them.

3. Respondents No.1 and 2 got chargesheeted by the Scheduled Castes and Scheduled Tribes Welfare Police Station Raigarh. It was alleged that the complainant Bharat Chauhan was on numerous occasions abused by respondent No.1 stating that he is Gada (गाड़ा) (SC) by caste and he is not in agreement with the wife of respondent No.1 who was Sarpanch at that time and also used to threaten him. The incident alleged is of 24-01-2006 when the complainant was accosted by respondents No.1 and 2 on his path, then threatening to kill him respondent No.1 caught hold of the complainant and asked respondent No.2 to assault him till he dies. The complainant was assaulted by respondent No.2 and when he fell down on ground both the respondents kicked and boxed him on various parts of the body because of which he suffered injuries. Ramdas, Gourishankar Chauhan (PW-5), Deendayal Malakar (PW-2) intervened and rescued the complainant. The complainant was later on again assaulted by respondents No.1 and 2 in village with clubs when he saved himself by running away. A written complaint Ex.-P/7 was given in the police station, on the basis of which FIR (Ex.-P/1) was lodged and offences were registered against respondents No.1 and 2. The case was

investigated and the charge sheet was filed.

4. Respondents No.1 and 2 were charged with offences under Section 323, 323/34, 294, 506B and 323/34 of the IPC and Section 3(1)(x) and 3(1)(x) of the SC/ST Act. The respondents No.1 and 2 pleaded in denial. The learned trial Court after completion of the trial has passed the impugned judgment, in which it has been held that the prosecution has failed to prove the charges against respondents No.1 and 2 by bringing evidence beyond reasonable doubt.

5. It is submitted by learned counsel for the applicant that the learned trial Court has committed a grave error in acquitting respondents No.1 and 2 by the impugned judgment. The evidence present was beyond reasonable doubt being unrebutted by the respondents side. The complainant Bharat Chauhan (PW-1) as well as Deendayal Malakar (PW-2) had very clearly given statement against respondents No.1 and 2 which was not rebutted in their cross-examination and was sufficient to hold, that respondents 1 and 2 had committed offences under Section 323, 294, 506B of the IPC and also offence under Section 3(1)(x) of the SC/ST Act. The statement of other witnesses have been wrongly discarded by the trial Court holding that they are related to the complainant which is against the principle of law laid down.

Placing reliance on the judgment of Hon'ble the Supreme Court in the matter of **Md. Rojali Ali and others Vs. The State of Assam, Ministry of Home Affairs through the Secretary** in Criminal Appeal No.1839 of 2010 dated 19-02-2019 and on the judgments of Hon'ble the Supreme Court in the matter of **Dalip Singh Vs. State of Punjab**, 1954 SCR 145 and **Jayabalan Vs. Union Territory of Pondicherry**, (2010) 1 SCC 199, it is submitted that in case witnesses are related then only rule of caution applies while appreciating and there is no such rule that such evidence has to be discarded.

Placing reliance on the judgment delivered by Hon'ble the Supreme

Court in the matter of **Laltu Ghosh Vs. State of West Bengal**, delivered on 19-02-2019 in Criminal Appeal No.312 of 2010 it is submitted, that in this case Hon'ble the Supreme Court has very clearly held that merely by virtue of being relative of the victim, a witness cannot be said to be an interested witness. Therefore, the learned trial Court has taken totally wrong view to discard the evidence of relatives of the complainant.

Hence, the impugned judgment is bad in law which is liable to be set aside and there is material to find proved that respondents No.1 and 2 have committed offences and accordingly the revision petition be allowed and respondents No.1 and 2 be convicted and sentenced.

6. Learned counsel for respondents No.1 and 2 opposes the submissions made by learned counsel for the applicant and submits that the learned trial Court has not committed any error in passing the judgment of acquittal in this case. The applicant has made totally false allegations against respondents No.1 and 2 in the FIR lodged by him. The medical report does not support the version of the applicant and the eye-witnesses are totally not believable. The applicant had enmity with respondents No.1 and 2, therefore, his statement has to be appreciated with caution. Deendayal Malakar (PW-2) has been examined as eye-witness, but his statement suffers from serious discrepancies, contradictions and omissions, because of which he has been rightly disbelieved. Smt. Jamunabai Chauhan (PW-3) is a hearsay witness who is wife of the complainant. Vedram Sahu (PW-4) and Gourishankar Chauhan (PW-5) are unreliable witnesses. Another witness of prosecution Manoj Bhagat (PW-7) is a hostile witness. Therefore, there was no evidence to hold that respondents No.1 and 2 have committed any offence. Therefore, it is prayed that the revision petition be dismissed.

7. Heard learned counsel for the parties and perused the record of the trial Court.

8. On perusal of the deposition of applicant Bharat Chauhan (PW-1), Deendayal Malakar (PW-2), Smt. Jamunabai Chauhan (PW-3), Vedram Sahu (PW-4), Gourishankar Chauhan (PW-5), Doctor Sharad Awasthi (PW-6), Manoj Bhagat (PW-7) and Rajeshwar Singh (PW-8), I find that the reasoning given by the learned Court below for not believing the evidence of these witnesses who appeared to have stated in support of the prosecution are not sufficient, satisfactory and to the point. Therefore, this reasoning present in the impugned judgment for rejecting the prosecution case needs re-examination.

9. Section 401 Sub-section 3 of the IPC provides that the High Court is not empowered to convert a finding of acquittal into one of conviction in a revision petition, therefore, all that a High Court can do in such a case is this, that the impugned judgment can be set aside and be remanded again to the trial Court to re-consider and decide the case afresh. Therefore, this revision petition, CRR No.617 of 2007 is allowed and the impugned judgment of acquittal against respondents No.1 and 2 is hereby set aside. The case is remanded back to the trial Court and the learned trial Court is directed to afford opportunity to the prosecution and defence for submitting arguments in the case and decide the case afresh on merits without being influenced by any observations made in this order. Respondents 1 and 2 are directed to give appearance before the trial Court on 7<sup>th</sup> of April, 2020.

10. The criminal revision stands disposed off.

11. In the light of the order passed with respect to CRR No.617 of 2007, the ACQA No.461 of 2010 also stands disposed off.

Sd/-  
**(Rajendra Chandra Singh Samant)**  
Judge