

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 11 of 2010

Sanjay Kashyap, aged about 19 years, S/o Shri Shiv Gopal Kashyap, R/o New Puraina, Near Church, Raipur (C.G.)

---- Applicant

Versus

1. Smt. Padmini Bai, W/o Vishram, aged about 42 years.
2. Ku. Anita Sahu, D/o Vishram Sahu, aged about 19 years.
3. Leeladhar @ Pappu, S/o Vishram Sahu, aged about 26 years.
4. Umesh Kumar @ Chhotu, S/o Vishram Sahu, aged about 19 years.

All R/o New Puraina, Near Church, Police Station-Telibandha, Raipur (C.G.)

5. State of Chhattisgarh, Through Police Station- Telibandha, District- Raipur (C.G.)

---- Respondents

For Applicant : Mr. Varun Sharma, Advocate.
For Respondent No. 1 to 4 : Mr. Rajbahadur Singh,
Advocate on behalf of Mr.
Awadh Tripathi, Advocate.
For State/ respondent : Mr. Praveen Shrivastava, P.L.

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Shri Justice Narendra Kumar Vyas

Judgment On Board

31/03/2021

Per Manindra Mohan Shrivastava, J.-

1. This criminal revision arises out of judgment of acquittal dated 28.10.2009 passed by the learned Seventh Additional Sessions Judge, Raipur (C.G.) in Sessions Trial No. 104/2009

whereby, the accused of the case were acquitted from commission of the charges under Section 307/34 of I.P.C.

2. This revision has been admitted only against acquittal of accused/respondent No. 3 & 4 namely Leeladhar @ Pappu and Umesh Kumar @ Chhotu, who are real brothers.
3. In an incident of assault which is alleged to have been inflicted on Sanjay Kashyap (PW-1), Shiv Gopal Kashyap (PW-2) & Smt. Devmati Kashyap (PW-3) on 13.02.2009, FIR was lodged against Smt. Padmini Bai, Ku. Anita Sahu, Leeladhar @ Pappu & Umesh Kumar @ Chhotu on the allegations that on that day, these accused came together and assaulted Shiv Gopal and when Devmati and her son- Sanjay came to rescue, they were also assaulted with stick and club. According to the prosecution, there was long standing enmity between the parties and also earlier some criminal cases were instituted. In order to prove its case, prosecution examined Sanjay Kashyap (PW-1), Shiv Gopal Kashyap (PW-2), Smt. Devmati Kashyap (PW-3), who were said to be injured witnesses and in addition, the prosecution also examined Ku. Anjusha Kashyap (PW-4), Rupabai Sahu (PW-5) & Bishambhar Ram Sahu (PW-6) as eyewitnesses of the incident. Anjusha is sister of Sanjay, Rupabai is maid servant in the family of victim and Bishambhar is said to be the neighbour.
4. Though the witnesses came out with the story of assault given by accused on Sanjay Kashyap, Shiv Gopal Kashyap & Smt.

Devmati Kashyap, learned trial Court after scrutiny of the evidence on record, taking notice of contradictions and omissions and also failure of the prosecution to explain injury sustained by Smt. Padmini Bai and Ku. Anita Sahu, granted benefit of doubt and acquitted the accused persons.

5. This revision has arisen out of the aforesaid judgment of acquittal.
6. Learned counsel for the applicant would argue that the learned Court below, while granting acquittal to Leeladhar @ Pappu & Umesh Kumar @ Chhotu, has given too much of importance and weightage to minor omissions and contradictions which do not in any manner whittle down the reliability of the evidence of those, who actually suffered injuries namely Sanjay Kashyap (PW-1), Shiv Gopal Kashyap (PW-2) & Smt. Devmati Kashyap (PW-3). According to him, the evidence of these witnesses is corroborated in all material particulars from the evidence of Anjusha Kashyap (PW-4), Rupabai Sahu (PW-5) & Bishambhar Ram Sahu (PW-6). They would submit that the learned Court below was swayed by the fact that in the past also, an incident of *Marpeet* had taken place between Padmini and Devmati, in which, on the report of Padmini, Devmati was imposed fine of Rs. 500/-. He would further argue that the learned Court below gave undue weightage to minor injuries and abrasion found on the body of Padmini Bai and Anita Sahu. These injuries were not serious injuries so as to call for any explanation and it was quite

possible that during the course of scuffle and assault between the parties, some minor scratches injuries could be caused, but only on that ground, the evidence of the eyewitnesses could not be disbelieved. According to learned counsel for the applicant, once the injured witnesses have clearly supported the prosecution case and there is medical evidence also to support the evidence of the prosecution witnesses, merely because the injuries on some of the accused could not be explained, the entire case of the prosecution could not be set at naught.

7. On the other hand, learned counsel appearing for respondent No. 3 & 4 would submit that the learned trial Court has minutely scrutinized the evidence on record. Taking into consideration the nature of injuries, exaggeration which has been considered by the Court below and that the injuries on Padmini and Anita, could not be explained by the prosecution, the trial Court has granted acquitted giving benefit of doubt to the accused persons taken into consideration at plausible defence emerging from the cross-examination of the witnesses that the defence version of the victims of the present case being the assailant could not be ruled out.
8. We have heard learned counsel for the parties and gone through the records.
9. The illegality which is sought to be emphasized during the course of the argument, which has invited out attention, is that though the injured witnesses have supported the prosecution

case and there is medical evidence of they having sustained injury, though minor one, only on the ground that the some of the accused sustained injury, which remained unexplained, acquittal could not be ordered. The main plank of submission is that since the evidence of injured witnesses is supported and corroborated with the evidence of Anjusha (PW-4), Rupabai Sahu (PW-5) and Bishmabhar Ram Sahu (PW-6), all the implication of the manner in which the incident happened, and as to who was the aggressor, could not be doubted.

10. At first place, this is clear that two of the accused namely Smt. Padmini Bai & Ku. Anita Sahu were also involved in the incident along with Leeladhar @ Pappu and Umesh Kumar @ Chhotu. In the background of the incident, it is an admitted position that the victims belong to one family whereas, the applicants belong to another family. It is also an admitted position on record that earlier also a dispute had arisen and on the report of Padmini, fine of Rs. 500/- was imposed on Devmati. This shows that the parties were in inimical term and there was no cordiality between them.
11. However, there is no material on record nor any evidence led by the prosecution that immediately before the alleged incident, which is said to have happened on 13.02.2001, some incident of altercation on the part of either them, had taken place. Therefore, the background is of old enmity with no recent dispute/ quarrel/ fight immediately preceding the date of incident in the present case.

12. In the present case, all the witnesses of the prosecution, which includes the injured witnesses Sanjay, Shiv Gopal & Devmati, have not come out as to what was the genesis of sudden fight and dispute between the parties. The evidence of the witnesses do not clearly spell out that the cause of dispute, all of a sudden accused assault was preceded by some other overtact by the party. According to the witnesses, when Shiv Gopal came back from the market, all of a sudden all the accused namely Leeladhar @ Pappu, Umesh Kumar @ Chhotu, Anita Sahu & Padmini Bai opened assault. There is evidence on record that both the parties are living in front of each other. Why would suddenly, the other party, even assuming that they had old enmity, would suddenly rush and assault has not come out anywhere in the evidence of the prosecution. In a criminal case, the prosecution is required to lead cogent and reliable evidence to inspire confidence in the case of the prosecution, which includes the genesis of the dispute. But the genesis of the dispute is not clearly spelt out from the evidence of the prosecution witnesses and on this aspect, neither the witnesses of the prosecution have spoken anything or nor have given different version.
13. The aforesaid absence of genesis of the dispute in the story of the prosecution, in the background that two of the accused namely Padmini Bai and Anita Sahu have sustained injury, their injury report upon medical examination has been placed on record. Nowhere in the evidence of any of the prosecution

witness, it has been explained as to how the two lady members of the family of Leeladhar and Umesh, sustained injury. In this background, the non-explanation of injury assumes importance because in the cross-examination of the accused, many suggestions have been put up including a suggestion of the victim party is the aggressor coming to assault lady member of the accused family.

14. Present is not a case where anyone in either of the group has sustained any serious injury. Injuries are mostly minor in nature whether in the victim or the complainant.
15. In this background of totality of the circumstances spelt out from the evidence of the prosecution witnesses themselves, particularly non-explanation of injuries on the lady members of the other party, the trial Court has found the case of the prosecution exaggerated. The possibility and plausibility of accused person first assaulted in the incident and thereafter, they also coming out to do something on such provocation of grave nature, could not be ruled out. This principle has been applied by the learned trial Court while granting acquittal.

Therefore, while one view possible in the case, if the evidence of the witnesses are mechanically accepted along with the injuries, the possibility and plausibility of the other view, which has actually been taken by the learned trial Court, cannot be ruled out and therefore, in the absence of any patent illegality or complete misleading of the evidence on record or ignoring any material piece of evidence, in our

considered opinion, there is no ground to interfere with the judgment of acquittal at this stage after more than eleven years particularly when the injuries sustained by both the parties are only simple in nature. Therefore, we are not inclined to interfere with the judgment of acquittal passed by the learned trial Court.

16. This criminal revision is therefore dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Narendra Kumar Vyas)
Judge

Arun