

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 70 of 2010**

Heera Lal, S/o Late Sadhu, aged about 50 years, R/o Semardarri,
Bilai Dand, Tahsil & Police Station – Marwahi, District Bilaspur,
(C.G.)

---- Applicant

Versus

1. State of Chhattisgarh, through Police Station Marwahi, District – Bilaspur (C.G.).
2. Santosh Singh, S/o Amar Singh, aged about 22 years,
3. Prem Singh, S/o Amar Singh, aged about 25 years,
4. Ram Kumar Singh Gond, S/o Mahesh Gond, aged about 23 years,
5. Lakhan Singh, S/o Sunder Singh, aged about 40 years,
6. Kewal Singh, S/o Samaru Singh, aged about 25 years,
7. Jagmohan Singh, S/o Samaru Singh, aged about 36 years,
8. Shiv Kumar, S/o Jai Singh, aged about 24 years,
9. Kumar Singh, S/o Rai Singh, aged about 36 years,
10. Sawan Singh @ Guddu, S/o Raghunath Singh, aged about 19 years,
11. Nirmal Singh, S/o Lakhan Singh, aged about 19 years,
12. Ajit Singh, S/o Chote Lal, aged about 25 years,
13. Mahesh Singh, S/o Ram Dayal, aged about 50 years,
14. Chhattar Singh, S/o Shiv Dayal Singh, aged about 29 years,
15. Gulab Singh, S/o Jai Singh, aged about 30 years,
16. Jai Singh, S/o Sunder Singh, aged about 54 years,

17. Amar Singh, S/o Ram Dayal, aged about 51 years,
18. Arjun Singh, S/o Jai Singh, aged about 19 years,
19. Raghunath Singh, S/o Shiv Prasad Singh, aged about 36 years,
20. Umendra, S/o Mangal Singh, aged about 24 years,

All R/o Semardarri, P.S. - Marwahi, District Bilaspur (C.G.).

---- Respondents

For Applicant:	Mr. Vinod Deshmukh, Advocate.
For State:	Mr. Avinash Singh, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal and
Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

Arvind Singh Chandel, J.

28/10/2021

1. Invoking jurisdiction under Section 397 read with Section 401 of the Cr.P.C., this revision has been preferred by the applicant questioning the judgment of acquittal recorded by the Additional Sessions Judge (F.T.C.), Pendraroad, District- Bilaspur on 07.12.2009 in Sessions Trial No. 22/2009.
2. As per the case of the prosecution, applicant/complainant Heera Lal (PW-1) had taken temporary electric connection for his well in which the accused Chhatter Singh unauthorizedly connected his connection and using electricity which was objected by the applicant herein, then the accused/respondents No. 2 to 20 in furtherance of common object entered into his house with deadly

weapons, lathi, axe, etc. and assaulted the applicant and his son namely Rakesh Kumar (PW-2), his family members namely Lalita Bai (PW-3), Usha Bai (PW-4) and Sunita Bai (PW-5) and broken the door and roof of complainant's house and caused injuries, sufficient to cause death. First Information Report (Ex.P-1) was lodged by Heera Lal (PW-1) on date 12.03.2008 at 1:20 PM at Village Semardarri, Bilai Dand, Tahsil & Police Station – Marwahi, District Bilaspur, (C.G.). After all the formalities, respondent No.2-20 were charge-sheeted for offence under Sections 147, 148, 294, 323, 506-Part II, 452, 427, 325, 307 of the Indian Penal Code and were tried under Sections 148, 452, 427, 323, 325, and 307 read with Section 149 of the Indian Penal Code. In order to prove the case of prosecution, 12 witnesses were examined and 14 documents were exhibited on behalf of the prosecution. No defence witness has been examined. The trial Court after appreciating the oral and documentary evidence on record by its impugned judgment acquitted respondents No.2 to 20 of the aforesaid offences extending the benefit of doubt, against which, this criminal revision is preferred by the applicant.

3. Mr. Vinod Deshmukh, learned counsel for the petitioner would submit that the trial Court is absolutely unjustified in acquitting respondents No.2 to 20 extending the benefit of doubt whereas the prosecution has clearly proved the ingredients of offence under Sections 148, 452, 427, 323, 325, and 307 read with Section 149 of the Indian Penal Code beyond reasonable doubt. He further submits that first appellate Court has failed to appreciate the

statement of the prosecution witnesses. From the statement of prosecution witnesses it is clear that accused persons have assaulted the complainant by which he suffered injuries which is sufficient to cause death, as such the judgment is liable to be set aside.

4. None present for respondents No. 2 to 20.
5. We have heard learned counsel appearing for the parties, considered their rival submissions made herein above and also went through the records with utmost circumspection.
6. In order to judge the correctness of the judgment of acquittal recorded by the trial Court, it would be appropriate to notice the categories exhaustive on which the revisional jurisdiction can be exercised by this Court at the instance of a private complainant, which has been authoritatively laid down by their Lordships of the Supreme Court in **Sheetala Prasad and others v. Sri Kant and another**¹ in which, in para-12 their Lordships have laid down the categories on which this Court can exercise the revisional jurisdiction filed at the instance of a private complainant .
7. In the matter of **Sheetala Prasad** (supra), it has been held that this Court can exercise the revisional jurisdiction (i) where the trial Court has wrongly shut out evidence which the prosecution wished to produce, (ii) where the admissible evidence is wrongly brushed aside as inadmissible, (iii) where the trial court has no jurisdiction to try the case and has still acquitted the accused, (iv) where the

1 (2010) 2 SCC 190

material evidence has been overlooked either by the trial court or the appellate court or the order is passed by considering irrelevant evidence, and (v) where the acquittal is based on the compounding of the offence which is invalid under the law. Their Lordships observed as under:-

“12. The High Court was exercising the revisional jurisdiction at the instance of a private complainant and, therefore, it is necessary to notice the principles on which such revisional jurisdiction can be exercised. Sub-Section (3) of Section 401 of Code of Criminal Procedure prohibits conversion of a finding of acquittal into one of conviction. Without making the categories exhaustive, revisional jurisdiction can be exercised by the High Court at the instance of private complainant

(1) where the trial court has wrongly shut out evidence which the prosecution wished to produce,

(2) where the admissible evidence is wrongly brushed aside as inadmissible,

(3) where the trial court has no jurisdiction to try the case and has still acquitted the accused,

(4) where the material evidence has been overlooked either by the trial court or the appellate court or the order is passed by considering irrelevant evidence and

(5) where the acquittal is based on the compounding of the offence which is invalid under the law.

15. The High Court has further concluded that no offence punishable under Section 324 IPC is committed by the appellants. This finding could have been recorded only in an appeal filed by the appellants. In the face of prohibition contained in Section 401(3) of the Code of Criminal Procedure, it was all the more incumbent upon the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method. Further, the matter is remitted to the learned Additional Sessions Judge for the purpose of passing fresh order of conviction and imposition of sentence on the appellants in the light of what is observed in the impugned judgment.”

8. In **Logendranath Jha and Others Vs. Shri Polai Lal Biswas**²

(para-7), the Supreme Court has held that the High Court while

² AIR 1951 SC 316

dealing with a revision petition by a private party against an order of acquittal cannot interfere to it in absence of error on point of law.

9. Reverting to the facts of the present case in light of aforesaid judgment delineating the scope of interference in the judgment of acquittal recorded by the trial Court, it would appear that learned Additional Sessions Judge while acquitting respondents No.2 to 20 has recorded the following findings:-

(i) That, as stated by Heera Lal (PW-1), Rakesh Kumar (PW-2), Ashok (PW-8), the Sarpanch of the village namely Pratap who was present at the spot was not examined by the prosecution and material witnesses namely Heera Lal (PW-1), Rakesh Kumar (PW-2) have not fully supported the case of the prosecution.

(ii) That, according to the case of prosecution, the incident occurred about 1:30 P.M. but Lalita Bai (PW-3) and Sunita Bai (PW-5) in their Court statements deposed that the alleged incident occurred in the morning at about 6:00 A.M. Thus, the prosecution story seems to be suspicious.

(iii) That, in the F.I.R. (Ex.P-1), names of respondents No.2 to 20 were mentioned but author of the F.I.R. namely Heera Lal (PW-1) in his Court statement has stated the names of only nine accused persons and did not know the names of other remaining accused persons. Therefore, names of all the respondents mentioned in the F.I.R. becomes suspicious.

(iv) That, the other material witness namely Ashok Gond was not examined by the prosecution and Ashok (PW-8) and Ram Singh (PW-9) have also not

fully supported the case of prosecution. Therefore, the prosecution case becomes suspicious.

(v) That, according to the case of prosecution, Rakesh Kumar (PW-2) has sustained injuries on the date of incident but he deposed that he sustained injuries prior to one day of the alleged incident. Therefore, prosecution story is doubtful.

10. We have carefully gone through the statements of prosecution witnesses i.e. Heera Lal (PW-1), his son Rakesh Kumar (PW-2), Lalita Bai (PW-3), Usha Bai (PW-4), Sunita Bai (PW-5), Ashok (PW-8), and Ram Singh (PW-9).

11. Heera Lal (PW-1) who lodged the F.I.R. has deposed that at the time of incident, accused persons namely Chhattar Singh, Gulab Singh, Umendra Singh, Nirmal Singh, Sawan Singh, Jai Singh, Lakhan Singh, Jagmohan Singh and Kewal Singh came and started quarrelling, at that time Sarpanch of the Village namely Pratap was also present at the spot and was trying to stop and settle the problem. Rakesh Kumar (PW-2) and Ashok (PW-8) have deposed that at the time of incident, Sarpanch of the Village namely Pratap was present there but he being independent witness, was not examined by the prosecution. Furthermore, Heera Lal (PW-1) has mentioned the names of all respondents/accused persons in the F.I.R. (Ex.P-1) but in his Court statement, he has stated the names of only nine accused persons, namely Chhattar Singh, Gulab Singh, Umendra Singh, Nirmal Singh, Sawan Singh, Jai Singh, Lakhan Singh, Jagmohan Singh and Kewal Singh. Therefore, prosecution has failed to establish and explain that how the names of nineteen

accused persons appeared in the matter. With regard to the credibility of statement of Rakesh Kumar (PW-2), after examining his statement, it appears that in his Court statement, he has deposed that alleged incident occurred after he left the spot and he further deposed that he sustained injuries, one day prior to the alleged incident, which is contrary to the case of prosecution. Thus, this witness is also not a credible witness.

12. According to the case of prosecution, alleged incident occurred about 1:30 P.M., but in their Court statements, both Lalita Bai (PW-3) and Sunita Bai (PW-5), who are the daughter-in-law and wife of Heera Lal (PW-1) respectively, have deposed that the alleged incident occurred in the morning. Both were also unable to state the names of accused persons. Therefore, it also becomes suspicious that by whom and at what time the alleged incident occurred.

13. Looking to the entire evidence adduced by the prosecution, it appears that prosecution has failed to prove the offences beyond reasonable doubt. The above-stated findings recorded by learned Additional Sessions Judge are duly supported by material available on record. These findings are neither perverse nor contrary to record.

14. On the basis of aforesaid analysis, we are of the considered opinion that the applicant/complainant has failed to make out a case in terms of para-12 (1 to 4) of **Sheetala Prasad's** case (supra) to warrant interference in the judgment of acquittal passed by learned Additional Sessions Judge and there is no error of law in

the order of acquittal. We do not find any merit in this criminal revision.

15. Accordingly, the criminal revision deserves to be and is hereby dismissed.

Sd/-

(Sanjay K. Agrawal)
Judge

Sd/-

(Arvind Singh Chandel)
Judge