
(2018) 09 CHH CK 0383
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 441 Of 2001

Chottu @ Retesh

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 25-09-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 307

Citation : (2018) 09 CHH CK 0383

Hon'ble Judges : Sharad Kumar Gupta, J

Bench : Single Bench

Advocate : Vimlesh Bajpai, Vinod Tekam

Final Decision : Allowed

Judgement

Sharad Kumar Gupta, J

1. In this criminal appeal the challenge is levied to the judgment of conviction and order of sentence dated 24-4-2001 passed by Additional Sessions

Judge, Korba in ST No. 167/1999 whereby and whereunder he convicted appellant u/s 307 of the Indian Penal Code (hereafter called as 'IPC') and

sentenced him to undergo RI for 5 years and fine Rs. 5,000/-, in default of payment of fine, to further undergo SI for 1 year.

2. In brief the prosecution story is that on 16-2-1999 at about 10 am at TP Nagar, Korba, appellant and co-accused caused the injury on the abdomen

of complainant Sanjay Kumar Baksel by Gupti on account of intervention by the complainant in an earlier incident. After completion of the

investigation a charge-sheet was filed against the appellant and said co-accused. Trial Court framed charges against the appellant under Section 307,

IPC and against said co-accused under Section 307/34, IPC. After conclusion of the trial, Trial Court convicted and sentenced the appellant as

aforesaid and acquitted the said co-accused from the offence punishable under Section 307, IPC.

3. Being aggrieved, the appellant has preferred this Criminal appeal.

4. Counsel for the appellant argued that Trial Court has not appreciated the evidence in proper perspective. Thus, the conviction and sentence of the appellant are bad in eyes of law. Hence, appellant may be acquitted of the aforesaid charge.

5. Counsel for the State argued that the conviction and sentence of the appellant are based on clinching evidence. The conviction and sentence of the appellant do not call for interference by this Court.

6. P.W. 11 complainant Sanjay Kumar Baksel says in para 1 of his statement given on oath that someone had caused injury on his abdomen by sharp edged weapon. He had not seen the assailant. He has turned hostile.

7. P.W. 5 Vijay Kumar Srivas says in para 3 of his statement given on oath that he had seen that appellant was fleeing away along with knife.

8. Mere fleeing away from the spot along with weapon is not sufficient to involve such person in crime. Thus, prosecution does not get any help from the aforesaid statement of para 3 of P.W. 5 Vijay Kumar Srivas.

9. In the case in hand, prosecution has failed to prove RFSL report. Thus, prosecution does not get any help from the alleged seizure Ex. P-1

according to which one Gupti was seized from the appellant, alleged seizure Ex. P-3 according to which one full shirt was seized from the appellant.

10. Looking to above mentioned facts and circumstances of the case, this Court finds that prosecution has failed to prove the charge punishable under

Section 307, IPC thus the trial Court has committed illegality in convicting and sentencing the appellant as aforesaid. Hence, the appeal is allowed and

aforesaid conviction and sentence of the appellant are hereby set aside. The appellant is acquitted of the charge under Section 307, IPC.

11. As per the report of Central Jail, Bilaspur, the appellant had been released from jail on 26-10-2002 on completion of sentences extending him benefit of remission.

12. In compliance of the non-bailable warrant issued by this Court, the appellant has been arrested and is in jail. Since his appeal itself is allowed, he be released forthwith.