

**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Criminal Appeal No. 2296 of 2000**

Anand Prasad Gupta @ Chhotu s/o Shambhu Prasad Gupta, aged about 26 years, R/o Nagar Nigam Chowk, Kedarpur, Ambikapur, District Sarguja

**---- Appellant**

**Versus**

State of Madhya Pradesh (Now Chhattisgarh) Through Police Station Ambikapur, District Sarguja

**---- Respondent**

**Criminal Appeal No. 2466 of 2000**

Devendra Manjhi @ Pinku Manjhi s/o Bandhan Manjhi, aged about 22 years, R/o village Funder-Dihari, PS Ambikapur, District Sarguja, MP (Now CG)

**---- Appellant**

**Versus**

The State of Madhya Pradesh (Now Chhattisgarh) Through Police Station Ambikapur, District Sarguja

**---- Respondent**

---

|                      |   |                                                               |
|----------------------|---|---------------------------------------------------------------|
| For Appellants       | : | Mr. Jitendra Shrivastava and Mr. Nishi Kant Sinha, Advocates. |
| For Respondent/State | : | Mr. Anil Pandey, Govt. Advocate                               |

---

**SB: Hon'ble Shri Justice Ram Prasanna Sharma**

**Judgment on Board**

**08.11.2017**

1. Both the appeals are being disposed of by this common judgment as they arise out of the judgment dated 24.8.2000, passed by the Second Additional Sessions Judge, Ambikapur, Sessions Division Surguja(CG) in ST. No. 71/1997, wherein the trial Court has convicted the accused/appellants under Sections 307 r/w Section 34, 324 r/w Section 34 IPC and sentenced them to undergo R.I. for 7 years and fine of Rs.400/-, in default of payment of fine to further undergo R.I. for 1 year; and R.I. for 1 year respectively with a direction to run the sentences concurrently.

2. In the present case, names of the injured are Chirstina Toppo(PW2) and Baldeo Toppo(PW1). Baldeo Toppo is husband of Christina Toppo(PW2). It is alleged that one Anjita D/o Yakub Minj was started living with Ramlakhan as his wife and for that father of Anjita objected and called a social meeting. Baldeo Toppo(PW1) is President of Christian Community of the locality to whom the accused/appellant Devendra threatened that he should refrain from doing anything in the matter. On the date of incident i.e. 17.7.1996, the accused/appellants gathered with one Pammu Uraon @ Pramod Uraon and assaulted Christina Toppo(PW2) with a knife and also

assaulted Baldeo Toppo (PW1) by knife. Thereafter, the matter was reported to Police Station Ambikapur on 17.7.1996 at 18.30 pm and after registration of FIR, injured Christina Toppo(PW2) and Baldeo Toppo(PW1) were sent for medical examination. During investigation, statement of the witnesses were recorded and after completion of investigation charge sheet was filed. The trial Court framed charges against the accused/appellants.

3. To substantiate the charge, prosecution has examined as many as 7 witnesses. Trial was conducted and statements of the accused/appellants were recorded under Section 313 Cr.P.C. in which they denied the charges, pleaded innocence and false implication in crime. After hearing both the parties, the trial court convicted and sentenced the appellants as mentioned above.

4. Learned counsel appearing for the accused/appellants submit as under:

- (i) That there is no evidence against the accused/appellant Anand Prasad and no article was seized from his possession and his participation in commission of the crime is not established.
- (ii) That it is not established that the accused/appellant Devendra Manjhi @ Pintu Manjhi has assaulted

either Christina Toppo(PW2) or Baldeo Toppo(PW1) and nothing has been established regarding his participation in crime, therefore, finding of the trial Court is not in the fitness of factual matrix of the case.

- (iii) That there is no seizure of article from any of the appellant and there is no Forensic Science report regarding any article and there is no evidence for which they have been charged.

5. *Per contra*, learned State counsel supporting the impugned judgment submits that the conclusion arrived at by the trial Court is strictly in accordance with law and the same is not liable to be interfered with invoking jurisdiction of appeal.

6. I have heard counsel for the parties and perused the material available on record.

7. Baldeo Toppo(PW1) has deposed that another co-accused namely- Pramod has inflicted knife injury on abdomen of his wife Christina Toppo(PW2) and for that the accused/appellant Devendra also participated with co-accused Pramod. He again deposed that Pramod and Devendra have assaulted him by knife, but in cross-examination (para 21) he rebutted his version and stated that only Pramod has assaulted him by knife and it is not correct that the accused/appellants namely Devendra or Anand have assaulted him.

8. Christina Toppo(PW2) has deposed in examination in chief that the accused/appellant Devendra was in possession of the knife and he gave the same to the co-accused Pramod and Pramod assaulted on her abdomen by knife. But, in cross-examination (para 10) she deposed that only Pramod has assaulted her. She further deposed in para 11 that she has not stated before the Police that Pramod assaulted her on saying of accused/appellant Devendra. From the evidence of this witness, it is established that co-accused Pramod has inflicted knife injury on abdomen to Christina Toppo (PW2). But the evidence against accused/appellant Devendra is shaky in nature because at first occasion when her statement was recorded by the Investigating Officer under Section 161 Cr. P.C. she has not stated that the co-accused Pramod had assaulted her by knife on saying of accused/appellant Devendra. From her evidence, the only fact is established that co-accused Pramod has assaulted her by knife. Her statement regarding Devendra does not inspire confidence because she stated different versions at different stage.

9. Ms. Sandhya Toppo (PW3) is daughter of Baldeo Toppo(PW1) and Christina Toppo(PW2). She deposed in examination in chief that the accused/appellants and co-accused Pramod assaulted her mother and they assaulted her father, but she has rebutted her version in cross-examination. She deposed in cross-examination (para 9) that when the accused persons reached to her house, she left the house to call her

father who was at the moment in the house of one Sikunda Lakda and when she returned from the house of the Sikunda Lakda, the incident had already taken place and she had no occasion to witness the incident. She further deposed (para 13) that she has not stated before the Police officer that the accused/appellant Devendra assaulted her mother. As the witness has deposed before the Court that she had no occasion to witness the incident, therefore, no reliance can be placed on testimony of this witness. Smt. Sikunda Lakda(PW4) deposed in examination in chief that the co-accused Pramod assaulted Christina Toppo(PW2) by knife. Albina (PW6) deposed that co-accused Pramod had assaulted her sister by knife. Dr. Bitrij (PW7) examined Christina Toppo(PW2) on 17.7.1996 at 6.30 pm and noticed injury on her abdomen measuring 1 ½" ½" x 1" and she further opined that the injury was grievous in nature and there was possibility of death.

**10.** On careful scrutiny of the evidence, adduced by the prosecution, the evidence against co-accused Pramod Uraon @ Pammu Uraon has inspired confidence whereas the evidence against the accused/appellants Anand Prasad Gupta and Devendra Manjhi @ Pintu Manjhi does not inspire confidence because as per the injured persons, it was the co-accused Pramod Uraon @ Pammu Uraon, who assaulted them by knife.

**11.** From the evidence adduced by the prosecution, it cannot be inferred that the accused/appellants had common intention with co-accused

Pramod Uraon @ Pammu Uraon because it is not proved by the evidence that the appellants had knowledge that co-accused Pramod Uraon @ Pammu Uraon was possessing knife. Therefore, the act of the co-accused Pramod Uraon @ Pammu Uraon is his independent act and for his independent act, liability cannot be fastened upon the other accused/appellants.

**12.** On overall scrutiny of the evidence, It is established that the liability can be fastened only against the co-accused Pramod Uraon @ Pammu Uraon and he has not filed any appeal against the conviction and sentence. It also appears from the record that he has served the full term of sentence. As the commission of offence by the present appellants is not established, the finding of the trial Court regarding conviction of the appellants is not sustainable. Therefore, the accused/appellants are acquitted of the charges under Sections 307 r/w Section 34 and 324 r/w Section 34 IPC and their conviction and sentence are set aside. Thus, both the appeals are allowed.

**13.** The appellants are reported to be on bail. Their bail bonds stand discharged.

Sd/

**(Ram Prasanna Sharma)**  
**JUDGE**