

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 31-8-2018****Pronounced on 7-9-2018****CRIMINAL APPEAL No. 935/2001**

(Arising out of judgment of conviction and order of sentence dated 13.09.2001 passed by Special Judge, Atrocities and Additional Sessions Judge, Raipur in ST No. 296/2000)

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1. Chidiya alias Purushottam (since deceased)
2. Santosh alias Kuppu Madrasi, son of Subramaniam Swami, R/o. Cuna Bhatta, Gudhiyari, Thana Gudhiyari, Distt. Raipur (CG)

...Appellant**Versus**

The State of Chhattisgarh, through Police Station Gudhiyari, District Raipur (CG)

For appellant : Mr. Sachin Nidhi, Adv. on behalf of Mr. Y.C. Sharma,
Advocate

For State : Shri Satish Gupta, Govt. Advocate

Hon'ble Shri Sharad Kumar Gupta, Judge**C.A.V. JUDGMENT**

1. In this criminal appeal the challenge is levied to the judgment of conviction and order of sentence dated 13.09.2001 passed by Special Judge, Atrocities and Additional Sessions Judge, Raipur in ST No. 296/2000 whereby and whereunder he convicted and sentenced appellant Santosh alias Kuppu Madrasi as hereunder :

Conviction	Sentence
U/s 452 IPC	RI for 1 year and fine Rs.500/-, in default RI for 15 days.
U/s 324 IPC	RI for 1 year and fine Rs.1,000/-, in default RI for one month.

2. In brief the prosecution story is that complainant Sanjay Singh was a resident of Chhota Ashoknagar, Raipur. On 14.07.1999 he was sleeping in his house, at about 14:30 hrs. dead appellant Chidiya @ Purushottam along with one person entered in his house and caused injury by knife on his left leg. On telephonic information ASI D.R. Verma reached on the spot where complainant narrated incident to him. He lodged the Dehati Nalisi on the spot. Thereafter, first information report was lodged in PS Gudihari. After completion of the investigation a charge-sheet was filed u/s 452 and 307 r/w 34 IPC against present appellant and dead appellant Chidiya @ Purushottam. Trial Court framed charges against dead appellant Chidiya @ Purushottam u/s 452, 307 IPC and against the present appellant u/s 452, 307/34 IPC. They abjured the charges and faced trial. To bring home the charges prosecution examined as many as 9 witnesses. They did not examine any witness in their defence.
3. After conclusion of the trial, Trial Court convicted dead appellant for offences punishable u/s 452, 324 IPC and sentenced him for offence punishable u/s 452 to undergo RI for one year and to pay fine Rs. 500/- and for offence u/s 324 to undergo RI for 1 year and to pay fine Rs. 1,000/- with default stipulations and present appellant as aforesaid.
4. During the pendency of the appeal, appeal abated against the dead appellant Chidiya @ Purushottam on 08.01.2015 and appeal was survived only for the present appellant.

5. Counsel for the appellant argued that Trial Court has not appreciated the evidence in proper perspective. His name was not narrated by complainant in Dehati Nalisi. No effort had been made for the identification of the appellant. Thus, the conviction and sentence of the appellant are bad in eyes of law. Hence, appellant may be acquitted from the aforesaid charges.
6. Counsel for the State argued that the conviction and sentence of the appellant is based on clinching evidence. The conviction and sentence of the appellant do not call for interference by this Court.
7. P.W. 6 Sanjay Singh says in para 2 of his statement given on oath that when he was sleeping in his house, dead appellant Chidiya alias Purushottam and the present appellant Santosh alias Kuppu had come to his house, the present appellant caused three injuries on his left leg by knife.
8. In Dehati Nalishi Ex. P-3 which was recorded on the very day the name of the appellant has not been mentioned. It has also not been mentioned that complainant knew alleged person by face who had come along with the dead appellant in his house. No test identification parade of appellant was conducted during investigation. Moreover, P.W. 6 Sanjay Singh does not explain in his statement given on oath during trial that, why he had not disclosed the name of the appellant at the time of recording Ex. P-3 or stated that he knew the alleged such person by face who had come along with the dead appellant in his house. Moreover, in Ex. P-3 it has been also not mentioned that allegedly the

another person who had come along with the dead appellant in his house, had caused the injuries on his left leg by knife, the prosecution case is that, dead appellant had caused the knife injuries to the complainant. In these circumstances, this Court disbelieves aforesaid statement of P.W. 6 Sanjay Singh, in this reference that allegedly the appellant had also come in his house and caused three injuries in his left leg by knife.

9. After the appreciation of the evidence discussed herebefore this Court finds that prosecution has failed to prove beyond reasonable doubt the offences punishable under sections 452 and 324 of the IPC against the appellant.
10. Consequently, the appeal is allowed. The impugned judgment of conviction and order of sentences regarding the appellant are set aside. The appellant Santosh alias Kuppu Madrasi is acquitted of the charges punishable under sections 452 and 324 of the IPC extending him benefit of doubt. The fine amount, if deposited, be refunded to the appellant.
11. The appellant is reported to be on bail. His bail bonds stand cancelled subject to the provisions of Section 437-A, Cr.P.C.

Sd/-
(Sharad Kumar Gupta)
Judge