

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 709 of 2003**

Ramsatta Patel S/o Daduram, aged 19 years, R/o Jhabdi P.S.
Kasdol, District Raipur (CG)

---- Appellant**Versus**

State Of Chhattisgarh Through Station House Officer, P.S.
Kasdol, District Raipur (CG)

---- Respondent

For Appellant	: Shri S.K. Mishra, Advocate
For State/ Respondent	: Shri Vinod Tekam, Panel Lawyer

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****27.01.2018**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 31.03.2003 passed by the 2nd Additional Sessions Judge, Baloda Bazar, Sessions Division Raipur (CG) in ST No.382/2002, whereby and whereunder the learned trial Judge after holding the appellant guilty for commission of offence under Section 307 of the Indian Penal Code, convicted and sentenced him to undergo R.I. for 5 years and to pay fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 3 months.

2. The conviction is impugned on the ground that without there being any iota of evidence, the Court below has convicted and

sentenced the appellant as aforementioned and thereby committed illegality.

3. In the present case, names of the victims/injured are Firatram and Geeta Bai. As per prosecution case, Firatram was sleeping in his house and his wife Geeta Bai was also sleeping in the same room, at about 1.00 am, on 7.5.2002, someone caused grievous injuries on their heads. The matter was reported to Police Station Kasdol. During investigation, it is revealed that the appellant is the perpetrator of the crime. After investigation charge sheet was filed. The appellant did not plead guilty, therefore, trial was conducted and after completion of the trial, the trial Court has convicted and sentenced the appellant as above.

4. Learned counsel for the appellant submits as under :

I. Nobody is named in the FIR and the case of the prosecution is based on suspicion. Suspicion, however, strong cannot take place of proof.

II. Versions of prosecution witnesses are full of contradictions and omissions and improvements and no reliance can be placed on it.

III. There is no memorandum in the case and any seizure made contrary to the letter and spirit of law is not admissible.

5. On the other hand, learned counsel for the State supported the judgment and submits that the finding arrived at by the trial Court is based on evidence and not liable to be disturbed.

6. I have heard Learned Counsel for the parties, perused the judgment impugned and record of the Court below.

7. To sustain the conviction, prosecution has examined as many as 10 witnesses.

8. In the present case, FIR is lodged on the date of incident i.e. 7.5.2002 in which no one is named as culprit.

9. Firatram(PW1) is injured person, but in his statement (para 7) he deposed that on the basis of suspicion he is stating that it was the appellant who assaulted him. Smt. Geeta (PW6) is another injured who deposed in her examination in chief that it is known to them after the incident that the appellant has assaulted her. She admits in her cross-examination that she has not told anyone that the appellant had assaulted her. From her statement it is not established that she has seen the appellant on the date of incident. She is not stating the source from which she received information regarding the appellant that he is the author of the crime.

10. Rathram Kaushik (PW2) deposed that someone assaulted Firatram. Chhotulal Banjare(PW3) deposed that in the presence of police, the appellant made confession but, the same is not admissible in evidence and hit by Section 25 of the Evidence Act,1872. Rest of the witnesses have assisted the prosecution.

11. On overall assessment of the documents and oral evidence it is not established that it was the appellant who assaulted Firatram and Geeta. Looking to the FIR it is not clear that till recording of the FIR, it was known to anyone as to actually who assaulted Firatram and Geeta.

12. Taking into consideration, the evidence in its entirety, this Court is of the opinion that prosecution is not able to sustain the charge. Therefore, the finding arrived at by the trial Court is not sustainable.

13. Accordingly, the appeal is allowed. The conviction and sentence of the appellant are set aside and he is acquitted of the charges framed against him.

14. The appellant is reported to be on bail. His bail bonds stand discharged.

Sd/

(Ram Prasanna Sharma)

JUDGE