

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRIMINAL APPEAL No. 441/2001**

(Arising out of judgment dated 24-4-2001 passed by Additional Sessions Judge, Korba in ST No. 167/1999)

Chottu @ Retesh son of Hira Das Mahant aged 22 years, R/o. Jayaprakash Colony, Korba, Distt. Korba, CG

---- Appellant**Versus**

State of Chhattisgarh

---- Respondent

For appellant : Shri Vimlesh Bajpai, Advocate.
For State : Shri Vinod Tekam, Panel Lawyer

JUDGMENT ON BOARD**Hon'ble Shri Sharad Kumar Gupta, Judge****25-9-2018**

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.

Sd/-
(Sharad Kumar Gupta)
Judge