

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRA No. 73 of 2011**

1. Mohammad Hussain Khan, S/o. Deen Mohammad, Aged about 22 years, R/o. Khakrelu, Katra Mohalla, Police Station House Khakrelu, District Fatehpur, Uttar Pradesh.

Present Address Tekanaka, Nari Road, Police Station Jhari Patka, District Nagpur, Maharashtra.

2. Mohammad Sharif, S/o. Mohammad Rahim, Aged about 22 years, R/o. Hardauli, Police Station Baberu, District Banda, Uttar Pradesh.

---- Appellants**Versus**

State Of Chhattisgarh, Through Police Station Out Post Tumgaon, District Mahasamund, Chhattisgarh

----Respondents

For Appellants	:	Mr. Gajendra Kumar Sahu, Advocate
For State	:	Ms. M. Asha, Panel Layer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****06/01/2018**

1. The two appellants in the instant case stands convicted for the offence under Section 397/34 of Indian Penal Code. In addition, the appellant No.1 was also convicted for the offence under Section 25(1)(B)(a) of the Arms Act. For the offence under Section 397/34, the two appellants were sentenced to undergo rigorous imprisonment for 7 years and for the arms act, the appellant No.1 has been sentenced to undergo rigorous imprisonment for one year and fine of Rs.100/- with default stipulation.
2. The case of the prosecution against the present appellants is that on 04.11.2007 at around 9 p.m., while the complainant Sudhir Uikey was driving a truck from Dubri (Orissa) to Raipur loaded with iron along with Kusnapal, the Cleaner of the truck, the present appellants joined the Driver and Cleaner and since they were known to the complainant, they took lift from him and en-route the appellant is

said to have on the point of a country-made pistol and the knife is said to have snatched the truck from the possession of the complainant and threw the complainant out of the truck and tried to flee. Meanwhile, the complainant somehow caught hold of the body of the truck and climbed on the rear portion of the truck and raised an alarm then the other trucks moving on the road blocked the route of the present appellants and caught hold of them. The intimation in this regard was sent to the police authority also and F.I.R. was lodged and later on a case was registered against the appellants for the offence under Section 397/34 of I.P.C. and Section 2(1)(B)(a) of the Arms Act.

3. The matter was put to trial before the before the 1st Additional Sessions Judge, Mahasamund, where the case was registered as Sessions Case No. 71/2009. Vide the impugned judgment dated 29.11.2010, the learned Court below reached to the conclusion that the appellants are guilty of the offence under Section 397/34 of the I.P.C. and that the appellant No.1 was, in addition, guilty of the offence under Section 25(1)(B)(a) of the Arms Act and sentenced the appellants for the period as reflected in paragraph No.1 of this judgment. The contention of the counsel for the appellants is that the prosecution in the instant case has not been able to prove its case beyond all reasonable doubts in as much as, one of the main witnesses the alleged cleaner in the truck Kushnapal has not been examined at all. He further submits that the seizure witnesses examined have also turned hostile.
4. According to the appellants, prosecution has also not conducted any identification test of the accused persons, with which the

identification part could have been established and thus prayed for setting aside of the impugned judgment and also prayed for the acquittal of the appellants for the offence for which they have been charged.

5. The State counsel on the contrary has opposed the appeal and submits that the prosecution in fact has been able to prove its case beyond all reasonable doubts and that the statement of the complainant Sudhir Uikey (PW-10) itself is sufficient to establish the case of the prosecution. She further submits that the statement of PW-10 further stands corroborated from the statement of PW-2 Ramprasad, who is one of the workers of the Dhaba, where the appellants and the complainant had stopped for having dinner and tea. Thus, in the light of the aforesaid evidence, the State counsel prayed for the rejection of the appeal.
6. Having heard the arguments on either side and on perusal of record, it is relevant to take note of the evidence of the prime witness i.e. the victim himself PW-10 Sudhir Uikey. In his evidence, Sudhir Uikey has specifically stated the entire episode as to how the incident occurred and the role played by each of the appellants and also that the appellant No.1 was known to him from earlier times, which by itself shows that they were known to each others and as such the issue of identification would not have been there.
7. Further, the witness PW-10 has also disclosed the manner in which the incident occurred and how the appellants were later caught red handed by the passerby's and the other villagers in and around the area of incident.

8. In the cross-examination, there is not much which has been extracted by the defence with which the statement of the complainant or for that matter other witnesses who have been examined were held to be doubtful. What is also relevant is the fact that the four persons were together have also being acknowledged by the worker in the Dhaba where the appellants and the complainants had stopped for having their dinner and tea. Thus, stand of PW-10 the complainant stands substantiated or corroborated from the statement of Ramprasad (PW-2).
9. Given the facts and circumstances of the case as also the evidence of the victim complainant PW-10, this Court does not find the order of the Tribunal to be in any manner erroneous or contrary to the evidence, which have come. Moreover, the defence has not been able to bring out anything with which the statement of the complainant Sudhir Uikey could be doubted or disbelieved.
10. Under the said facts and circumstances of the case, no strong case has been made out by the appellants calling for an interference with the impugned judgment. The appeal thus fails and is accordingly rejected.
11. It has been informed that the appellants must have already completed the jail sentence as they were not granted bail at any point of time. Thus, if the appellants have already been released from jail on their completion of the jail sentence, no further step need to be taken, if not necessary action be taken, accordingly the appeal stands rejected.

Sd/-
(P. Sam Koshy)
Judge