

NAFR

## HIGH COURT OF CHHATTISGARH, BILASPUR

**ACQA No. 161 of 2015**

- State of Chhattisgarh Through District Magistrate Durg Chhattisgarh., Chhattisgarh

---- Appellant

**Versus**

- Sukalu @ Santosh Kumar Chelak S/o Sonuram Chelak Aged About 35 Years By Occupation Agriculturist R/o. - Village Chunkatta Police Station Utai District Durg Chhattisgarh., Chhattisgarh

---- Respondent

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|---------------------|--------------------------------------------|
| For Appellant/State | Mr. Ramakant Mishra, Dy. Advocate General. |
| For respondent      | Mr. Shashi Kushwaha, Advocate              |

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**DB: Hon'ble Shri Justice Prashant Kumar Mishra & Hon'ble Shri Justice Ram Prasanna Sharma**

**Oral Judgment****Per Ram Prasanna Sharma, J****(7-3-2018)**

1. This acquittal appeal is preferred against the judgment of conviction and order of sentence dated 24-12-2014 passed by 2nd Additional Sessions Judge, Durg, Sessions Division Durg in Sessions Trial No. 143 of 2013 wherein the said Court acquitted the respondent from the charges punishable under Sections 307 & 323 of IPC, 1860 for committing attempt to murder of one Krishna @ Krishna Kumar Balkishore and for voluntarily causing simple injury to one Santoshi Chelak.

2. In the present case, It is alleged by the prosecution that victim Krishna @ Krishna Kumar Balkishore had an affair with the sister of the respondent/accused namely Santoshi which was objected by the respondent. On 8-3-2013 at about 10.00 pm Krishna Kumar Balkishore was sitting with Santoshi Chelak and at the same time, respondent reached there and assaulted the victim by club and stone by saying that even after his objection he is continuing the affair with Santoshi Chelak and also assaulted Santoshi Chelak. The matter was reported to Police Station Utai and after investigation charge sheet was filed against the respondent and after completion of trial, the trial Court acquitted the respondent as mentioned above.
3. Learned counsel for the appellant/State submits as under:
  - i) The trial Court is not justified in discarding the evidence of victim Krishna @ Krishna Kumar (PW/5) and the evidence of two Doctors namely N.K. Bajpai (PW/9) and K. Thakur (PW/10).
  - ii) The trial Court is also not justified by suspecting very genesis of the case and presence of the respondent in the fateful night on the basis of minor omissions and contradictions.
  - iii) The finding arrived at by the trial Court is perverse warranting interference by this Court to set it right.
4. On the other hand, learned counsel for the respondent submits that the finding arrived at by the trial Court is based on proper marshaling of evidence and same is not liable to be interfered by this Court while invoking jurisdiction of the appeal.
5. We have heard learned counsel for the parties and perused the material available on record.

6. To substantiate the charge, prosecution has examined as many as 11 witnesses.
7. PW/1 Dukhiya Bai is mother of the victim Krishna Kumar Balkishore to whom some people of the village informed about the incident. Dr. Smt. Mamta Gendle (PW/2) examined Santoshi Chelak on 9-3-2013 at Community Health Centre, Utai and found simple injury on her body. PW/3 Rishi Kumar Verma is Patwari, who prepared spot map. PW/4 Manthir Joshi is a witness of seizure, but he did not support the case of prosecution. Lokesh (PW/6) is Kotwar who admitted Krishna Kumar Balkishore in the hospital. PW/7 Sunita Bai is wife of the victim to whom incident was informed by some boy of the village Utai. PW/8 Kantlal is a seizure witness. Dr.N.K. Bajpai (PW/9) examined the victim on 9-3-2013 at District Hospital, Durg and found two injuries i.e., one on his parietal region and second on his temporal region. He opined that the injuries sustained by the victim were grievous in nature. Dr. K. Thakur (PW/10) is the Doctor, who opined that in absence of proper treatment death of victim would have been caused. PW/11 Smt. I.A. Khairane, Police Inspector conducted investigation after registration of the first information report.
8. The case of the prosecution is based on the statement of the victim Krishna @ Krishna Kumar (PW/5) but as per noting of the trial Court, neither he is able to hear nor to speak. From the statement of Sunita Bai (PW/7) victim was not in a position to speak at Hospital. From the version of Sunita Bai (PW/7) and noting of the trial Court, it is clear that neither the victim is able to hear nor to speak, but his statement under Section 161 of the Cr.P.C., was recorded by the Investigating

Officer. It is not clear from the record that when he is not in a position to speak, how his statement under Section 161 of Cr.P.C.. was recorded, therefore, same does not appear to be real.

9. Defence has a right to contradict with earlier statement of any witness, but in the present case recording of statement under Section 161 of Cr.P.C., is under suspicion, therefore, the defence is deprived of its right to cross-examine the victim on the basis of his real or genuine statement recorded under Section 161 of the Cr.P.C.
10. As per version of victim Krishna @ Krishna Kumar (PW/5), Rajia, Dhansai, Mannu were present on the spot and all had consumed liquor including the respondent before the incident. From the version of victim, it is established that five persons i.e., respondent, victim, Rajia,. Dhansai and Mannu were present at the time of incident and Santoshi Bai was not present at that time, but in his earlier statement recorded under Section 161 of Cr.P.C., he has stated that Santoshi Chelak is the cause of incident because victim was sitting with Santoshi Chelak. The story put-forth by this witness before the trial Court is entirely different what is stated by him in his earlier version and he has made a new case while deposing before the court. It is also not clear from the version of victim as to how many of them have consumed liquor of their own and how many have been administered liquor without their knowledge. If alcohol is administered to respondent without his knowledge, then any act done in such intoxicated state is not an offence under Section 85 of the IPC. In this way, it was not safe for the trial Court to accept the version of victim Krishna @ Krishna Kumar that respondent assaulted him or

committed crime. Santoshi Chelak was not examined before the trial Court, therefore, charge for causing injury to her was also not established. It is not a case where the trial Court recorded its finding on the basis of irrelevant facts and extraneous matter.

11. Looking to the overall assessment of the evidence, we are of the view that the finding arrived at by the trial Court is proper and calls for no interference by this Court. Accordingly, the appeal fails and same is hereby dismissed.

Sd/-  
Judge  
**(Prashant Kumar Mishra)**

Sd/-  
Judge  
**(Ram Prasanna Sharma)**

Raju