

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 138 of 2002**

Sadique Ansari S/o Mohd. Kasim, aged about 26 years, Occupation Driver, R/o Police Line, Rajnandgaon, Tahsil and District Rajnandgaon

----Appellant**Versus**

State of Chhattisgarh, Through the District Magistrate, Durg (C.G.)

---- Respondent

For Appellant	:	Mr. Pushpendra Kumar Patel, Advocate
For Respondent	:	Ms. Smita Ghai, PL

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****20/11/2019**

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 30/01/2002 passed in Sessions Trial No. 201/2001 by the Special Judge and Additional Sessions Judge, Durg whereby the Appellant has been convicted under Section 25 of the Arms Act and sentenced to undergo RI for 1 year and to pay fine of Rs. 1000/- with default stipulation.
2. Facts of the case are that on 10/06/2000 at about 8:00 pm, acquitted accused Bhudhu @ Birbal was in a tempo trax bearing registration No. MP24 RC 0039 at G.E. Road, Durg and was planning with other accused persons to commit Dacoity near petrol pump at Sardhar Dabha. It is alleged that for the said act, all the accused have assembled and were found to possess swordd without any license. R.C. Trivedi (PW4) on being received this information reached to the spot and made a raid. On being searched 5 numbers of swords were found inside the vehicle

which was seized from co-accused Budhu vide Ex.P-3. Vehicle and its documents were seized from the Appellant. Statements of witnesses were recorded under Section 161 of the Cr.P.C. After completion of investigation, a charge-sheet has been filed. Trial Court framed the charges under Section 399 and 402 of the IPC and Section 25 of the Arms Act against the Appellant as well as other accused person. As many as 5 prosecution witnesses have been examined. No defence witness has been examined. Statement of the Appellant under Section 313 of the Cr.P.C was recorded, wherein he has pleaded his innocence and false implication in the matter.

3. After trial, the trial Court has acquitted all other accused persons from all the charges, however, the Appellant has been convicted and sentenced as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned Counsel appearing for the Appellant submits that the Appellant has been wrongly convicted by the trial Court without there being any reliable evidence available on record. He further submits that vide Ex.P-3, the swords were seized from the acquitted accused Budhu, but the trial Court has acquitted him and convicted the Appellant only on the basis that the Appellant was driver and owner of the said vehicle and he had possession over the said swords. He further submits that the case of the prosecution itself shows that the swords were found below the seats of the said vehicle. Therefore, It cannot be said that the Appellant being an owner and driver, was within the knowledge that the swords were kept below the seats. Thus, the trial Court has wrongly convicted the Appellants.
5. Per contra, learned Counsel appearing for the State supported the

impugned judgment and submits that the sentence awarded by the trial Court is just and proper and requires no interference.

6. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.
7. In this case, the seizure witnesses namely Somdas (PW2) and Gopal (PW3) have not supported the case of the prosecution and have turned hostile. The case is only based on the statement of Investigating Officer R.C. Trivedi (PW4). He has categorically stated in his statement that while searching the vehicle, he found 5 swords below middle seat of the said vehicle. He further stated that acquitted accused Budhu had told that the swords belonged to him, instead thereof the trial Court has convicted the Appellant only on the ground that being a driver and owner of the said vehicle, the possession over the swords belongs to the Appellant. Since, the Investigating Officer himself had admitted the fact that the swords were found below the middle seat of the vehicle and co-accused Budhu himself admitted that he kept those swords there, in these circumstances, there is no conclusive evidence that the swords kept by the accused Buddhu below the seat was within the knowledge of the Appellant. Therefore, the finding of the trial Court is only based on presumption. Apart from this, there is no evidence on record on the basis of which it can be said there was exclusive possession over the swords by the Appellant. Thus, the conviction of the Appellant is not sustainable. The impugned judgment dated 30/01/2002 passed in Sessions Trial No. 201/2001 by the Special Judge, Durg is quashed.
8. Consequently, the Appeal is allowed. The Appellant is acquitted from the charges framed against him. It is reported that the Appellant is on bail.

His bail bond be discharged.

9. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge

Rahul