

(1) (3)

Single Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE, 10, JABALPUR

Criminal Appeal No. 481 /99

APPELLANTS
(IN JAIL)

- : 1. Ramesh Kumar,
S/o Dayaram, Aged about 28 years
R/o Dhargaon, Police Station
Pithora, Distt. Raipur
2. Ramanuj
S/o Hetram Pandey, Aged about 30Yrs.
R/o Kulgarh, Police Station Pithora
Distt. Raipur
3. Horilal
S/o Sadhram Aged about 26 years
R/o Dhargaon, Police Station
Pithora, Distt. Raipur

VERSUS

RESPONDENT

: State of Madhya Pradesh

CRIMINAL REVISION UNDER SECTION 374(2) OF CODE OF
CRIMINAL PROCEDURE 1973

2784

17/12/99
S. S. Chatterjee
Advocate
R/o. A. R.

CLERK
17/12/99

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.A.No.481 of 1999

Appellants : Ramesh Kumar and others

Versus

Respondent : State of M.P. (Now State of Chhattisgarh)

JUDGMENT

For pronouncement of Judgment/:

14.01.2015

Sd/-
Inder Singh Ubeweja
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR**Criminal Appeal No. 481 of 1999****APPELLANTS**

1. Ramesh Kumar
2. Ramanuj
3. Horilal

VERSUS**RESPONDENT**

: State of Madhya Pradesh
(Now State of Chhattisgarh)

[Criminal Appeal u/s 374 (2) of the Code of Criminal Procedure, 1973]

Present:

Mr. Abdul Wahab Khan, Advocate for the appellants.
Ms. Sangeeta Mishra, Panel Lawyer for the State.

SB: Hon'ble Mr. Inder Singh Uboweja, J.

J U D G M E N T

(Delivered on ...14... January, 2015)

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 06.02.1999 passed by the 2nd Additional Sessions Judge, Baloda Bazar in Sessions Trial No.167/96, whereby and whereunder after holding the appellants guilty for attempt to commit robbery or dacoity armed with deadly weapons in furtherance of common intention, learned trial Court has convicted them under Section 398/34 of the IPC and sentenced them to undergo R.I. for seven years and to pay fine of Rs. 3,000/- each, in default of payment of fine, additional S.I. for one year and six months.
2. Conviction is impugned on the ground that without there being an iota of evidence against the appellant, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed an illegality.

3. As per case of the prosecution, complainant Jageshwar Sahu (PW-4) went to village Thargaon to attend the marriage ceremony in the house of Udal Sahu along with Bundeli Bai (PW-1), Rambati (PW-2), Geeta Bai, Leela Bai, Jodh Bai, Malti Bai, Pushpa Bai, Santoshi Bai & others. They are all relatives to each other. After attending the marriage ceremony, while they were returning back to their village Karipat, in the midway on fateful night of 21.04.1989 at about 1.00 a.m., three persons armed with axe and knife stopped their bullock cart and had taken their ornaments with a threat that if they will not surrender their ornaments they will kill them. Their faces are covered with clothes and speaking in Chhattisgarhi. After taking the ornaments, they fled from the spot. Thereafter, Jageshwar (PW-4) lodged First Information Report vide Ex.P-1 in the police station – Bilaigarh.
4. During the course of investigation, the appellants were taken into custody. Appellant Ramesh made disclosure statement of knife and bicycle vide Ex.P-6, same were recovered at his instance vide Ex.P-9. Appellant Horilal made disclosure statement of axe and bicycle, same were recovered at his instance vide Ex.P-10. Appellant Ramanuj made disclosure statement of bicycle, lungi and stick, same were recovered at his instance vide Ex.P-11. Other co-accused Ram Singh (he has not filed any appeal) was also taken into custody, he made disclosure statement of ornaments vide Ex.P-4, same were recovered at his instance vide Ex.P-5.
5. Test Identification Parade was conducted by Tahsildar, Bilaigarh on

the request of police station, Bilaigarh vide Ex.P-2. Executive Magistrate, Bilaigarh had conducted identification of ornaments on the request of police station, Bilaspur vide Ex.P-12. Spot map was prepared vide Ex.P-3.

6. Statements of the witnesses were recorded under Section 161 of the Code of the Criminal Procedure, 1973 (for short 'the Code'). After completion of investigation charge sheet was filed before the Court of Judicial Magistrate First Class, Baloda Bazar, who in turn committed the case to the Court of Sessions, Raipur from where learned 2nd Additional Sessions Judge, Baloda Bazar received the case on transfer for trial.
7. In order to prove the guilt of the accused/appellants, prosecution has examined as many as eight witnesses. The accused were examined under Section 313 of the Code in which they denied the circumstances appearing against them and innocence and false implication in the crime in question is claimed.
8. After providing opportunity of hearing to the parties, learned 2nd Additional Sessions Judge has convicted & sentenced the appellant as aforementioned.
9. I have heard learned counsel for the parties, perused the judgment impugned and record of the Court below.
10. Learned counsel for the appellant has vehemently argued that in the present case, the prosecution has utterly failed to prove that the appellants were involved in the incident. Their names are not mentioned in the FIR (Ex.P-1). Memorandum and seizure were not

proved beyond reasonable doubt. Identification of the appellants and ornaments are not properly proved, therefore, the appellants are entitled for acquittal from the charges leveled against them.

11. On the other hand, learned State counsel opposed the appeal and supported the judgment of conviction and order of sentence passed by the trial Court.
12. In order to appreciate the arguments advanced on behalf of the parties, I have to examine the evidence available on record.
13. In the present case, conviction of the appellants is based on memorandum, seizure and identification of accused / appellants and ornaments. Complainant Jageshwar (PW-4) and Bundeli Bai (PW-1), Rambati (PW-2), Jhulbai (PW-3), Pilabai (PW-5) are the witnesses of the incident. They have stated in their evidence that three accused Ramesh Kumar, Horilal and Ramanuj came near the *Baghmalla* drain and stopped their bullock cart and by threatening them about life they looted their ornaments. First Information Report was lodged by Jageshwar (PW-4). He admits that he has reported FIR (Ex.P-1) and that report was written by his version, this fact is also supported by the Investigating Officer J.P. Dubey (PW-7). According to the First Information Report (Ex.P-1), three unidentified persons have committed robbery, so it is very clear that at the time of incident none of aforementioned witnesses were knowing this fact that who has done the incident.
14. Investigation Officer J.P. Dubey (PW-7) has stated that he has taken the appellants / accused in custody and recorded their disclosure



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statements vide Exs. P-6, P-7 & P-8 and seized the articles at their instances vide Exs. P-9, P-10 & P-11. Prosecution has not conducted identification of the articles which were seized by seizure memos Exs. P-9, P-10 & P-11, so much so there was no evidentiary value of that discovery and seized articles. Prosecution has not examined the officers, who conducted the identification parade of accused / appellants and identification of seized ornaments. Prosecution has not given any explanation for not-examination of L.N. Nag, Tahsildar Bilaigarh and Samir Nag, Executive Magistrate of Bilaigarh. Therefore, without examining the above witnesses, identification parade of accused / appellants vide Ex.P-2 and identification of ornaments vide Ex.P-12 rendered the prosecution case unproved. There is no single incriminating evidence against the appellants, which connect them with the crime in question. Therefore, while convicting and sentencing the appellants under Section 398/34 of the IPC, the trial Court has not considered the aforesaid circumstances and evidence and thereby committed an illegality.

15. Consequently, the appeal deserves to be allowed and is hereby allowed. Conviction and sentences imposed upon the appellants under Section 398/34 of IPC are hereby set aside and they are acquitted of the said charges.
16. It is stated that the appellants are on bail. Their bail bonds shall continue for a further period of 6 months as per requirement of Section 437-A of the Code.

Sd/-
Inder Singh Ubeweja
Judge