

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 455 of 2012**

1. Jayayu Alim @ Jiya @ Jiyauddin S/o. Mansoor Ali Mafidar, R/o. Kabir Nagar M.I.G.60, P.S. Amanaka, Raipur (C.G.) Permanent R/o. Near Kela Badi Masjid, P.S. Padmanabhpur, Durg (C.G.)

---- Appellants

Versus

1. State of Chhattisgarh Through: District Magistrate, Raipur (C.G.)

---- Respondent

And**CRA No. 798 Of 2012**

1. Ravi Yadu S/o S/o Harish Yadu Aged About 20 years, Caste – Yadav, R/o Kota , Near Siddheshwari Temple , P.S. Saraswati Nagar , Near Railway Crossing Raipur C.G.

---- Appellant

Vs

1. State of Chhattisgarh, through - P.S. Pandri ,Distt. Raipur C.G.

---- Respondent

For Appellant in Cr.A.No.455/2012 – Mr. V.C.Ottalwar with Mr. Syed Majid Ali and Mr. Akhtar Hussain, Advocates

For Appellant in Cr.A.No. 798/12 – Mr. S.P.Sahu, Advocate.

For Respondent/State : Mr. Neeraj Jain, G.A. and Ms. Pushpa Dwivedi, P.L.

Hon'ble Shri Justice T.P.Sharma
Hon'ble Shri Justice Inder Singh Uboweja

Judgement on Board by T.P.Sharma, J.**18/03/2015**

Criminal Appeals No. 455 and 798 of 2012 filed on behalf of the appellants, arising out of common judgment dated 07.04.2012, are being disposed of by this common judgment.

2. By filing Criminal Appeals No. 455 and 798 of 2012, the appellants have challenged the legality, validity and propriety of the judgment dated 07.04.2012 passed by the Sixth Additional Sessions Judge, Raipur (C.G.) in Sessions Trial No. 203/2009 whereby and whereunder the trial Court, after holding the appellants guilty for committing robbery by using deadly weapon, i.e., acid, in furtherance of conspiracy, convicted the appellants under Section 394 read with Section 397 and 120-B of the I.P.C. and sentenced them to life imprisonment with fine of Rs.1000/- each and to undergo RI for seven years with fine of Rs.1000/- each. In default to pay fine amount, appellants shall undergo additional RI for six months on each count.

3. Initially Khushboo was one of the accused persons, but, she has died during course of trial.

4. Conviction is impugned on the ground that without there being any iota of evidence against the appellants, the Court below convicted and sentenced the appellants and thereby committed illegality.

5. As per case of prosecution, appellant Ravi Yadu was working in Avinash Builders, but, six months prior to date of incident, i.e., 07.07.2009, he has left his job, thereafter he along with deceased – Khushboo and co-accused Jiya @ Jayayu Alim @ Jiyauddin entered into conspiracy to commit robbery by using deadly weapon and in furtherance of such conspiracy, on 07.07.2009 they purchased an acid bottle, which was safely kept by appellant Ravi Yadu. On 07.07.2009, appellant Ravi Yadu reached Aamapara with the help of co-accused Jiya by motorcycle. Ravi Yadu met with victim Deepak Kumar Sahu (P.W.1), who was working as Accountant in Avinash Builders, at 3.15 pm at Millenium Plaza and accompanied him by motorcycle to Daldalseoni where victim had gone for recovery of money from one Ravi Fatnanni. Victim received Rs.20 lakhs from Ravi Fatnani and kept the same in a bag brought with him from Millennium Plaza. After receiving such huge amount, victim accompanied by the appellant Ravi Yadu was returning to Avinash Builders by motorcycle and on way at lonely place appellant Ravi Yadu has stopped the vehicle on the pretext of answering the call of

nature and at the time of stopping the vehicle, which was being driven by the victim P.W.1 Deepak Kumar Sahu, appellant Ravi Yadu poured acid over his head from back side. On account of pouring acid, victim made hue and cry for help and appellant Ravi Yadu snatching the motorcycle and money fled from the spot. Victim continued to make shouts, but, nobody came over there and thereafter persons from Sahara News Channel came and took him to Mecahara Hospital where he was given treatment and finally he was shifted to Kalda Nursing Home where Police came and enquired about the incident and lodged Dehati Nalishi vide Ex.P.1. As a result of acid attack on him, victim lost his eyes. His dying declaration was recorded by P.W.5 Srikant Verma vide Ex.P.8.

6. After commission of offence, appellant Ravi Yadu fled from the spot by the motorcycle snatched from the victim and made calls to co-accused Khushboo and Jiya by Cell Phone and they met with Ravi Yadu near fly-over bridge. Ravi Yadu gave the bag with currency notes to co-accused Khushboo. Khusboo gave five bundles of currency notes of rupees five hundred denomination to appellant Ravi Yadu. Thereafter, he fled away by motorcycle towards Simga where he purchased one black colour rexin bag, T-shirt and jeans pant, after that he went to Bemetara and on way to Bemetara he thrown the bag containing acid. At Bemetara Bus-Stand Manoj Dhabha he left the motorcycle after locking the same and fled by Bus to Jabalpur where he stayed at Hotel Pankaj Palace and purchased cloths. He mentioned his name as Basant in the Hotel. He further proceeded by bus for Maihar where he stayed at Purnima Hotel mentioning his name as Rajeev Sharma and after visiting Maihar temple he went to Nagpur and stayed at Al-Mustaqeem Hotel & Lodging, Momipura, showing his name as Ravi Yadu. From Nagpur while he was coming back to Raipur, he was caught hold by the Police at Pardi Nalah.

7. Injured Deepak Kumar Sahu was examined P.W.17 Dr. Netram Beck on 07.07.2009 vide Ex.P.19. He was referred and admitted in burn unit. He was unconscious and his face and head were completely burnt by acid. His shoulders and

chest were also burnt by acid. He was shifted to Kalda Cosmetic Surgery Institute & Burn Centre where he was examined by P.W.19 Dr. Sunil Kalda vide Bed Head Ticket Ex.P.20. Dr. Sunil Kalda noticed serious burn injuries, especially, on both eyes, ear, face, head, shoulders and back. Victim has lost his both eyes because of serious acid burn injuries. Plastic surgery was conducted. He was badly affected by the acid burns. Percentage of burn injuries was assessed to 50 to 55. Dr. Sunil Kalda has given his report vide Ex.P.21.

8. During course of investigation, spot map was prepared by Patwari vide Ex.P.2. Documents Ex.P.4, 5 and 6 were seized vide Ex.P.3. Papers and other material relating to purchase of acid bottle and burnt items were seized from the spot vide Ex.P.7. Hero Honda Splendor motorcycle, left at Bemetara Hotel, was seized vide Ex.P.9. Appellant – Ravi Yadu was taken into custody. He made disclosure statement on 11.07.2009 vide Ex.P.15 relating to motorcycle, purchase of cloths, money bag, Sim card and other cloths. The same have been recovered at his instance vide Ex.P.16. Appellant – Jiya @ Jayayu Alim @ Jiyauddin was taken into custody, he made disclosure statement of currency notes of Rs.9,80,000/- and bag vide Ex.P.17 and the same have been recovered along with Mobile phone at his instance vide Ex.P.18.

9. F.I.R. was lodged vide Ex.P.22. Spot map was prepared vide Ex.P.26. Seized articles were sent for chemical examination to F.S.L. vide Ex.P.40 and presence of Sulphuric Acid on the articles has been confirmed vide Ex.P.43.

10. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code').

11. After completion of investigation, charge sheet was filed before the Court of Chief Judicial Magistrate, Raipur, who committed the case to the Court of Sessions, Raipur. The learned Additional Sessions Judge has received the case on transfer for trial.

12. In order to prove the guilt of the appellants, prosecution has examined as many

as 27 witnesses. Accused persons were examined under Section 313 of the Code, in which, they denied the circumstances appearing against them and innocence and false implication in crime in question was claimed.

13. After providing an opportunity of hearing, the learned Additional Sessions Judge has convicted and sentenced the appellants as aforementioned.

14. We have heard Mr. V.C.Ottalwar with Mr. Syed Mazid Ali and Mr. Akhtar Hussain, Mr. S.P.Sahu and Mr. Neeraj Jain, learned counsel for the parties and perused the record of trial Court including judgment impugned.

15. Mr. V.C.Ottalwar, learned counsel for the appellant – Jiya @ Jayayu Alim @ Jiyauddin, vehemently argued that the appellant has been convicted under Section 394 read with Section 397 and 120B of the I.P.C. Although prosecution has utterly failed to prove the case against the appellant – Jiya, evidence of P.W.1 Deepak Kumar Sahu, injured and victim, is material in the present case. As per his evidence, he was attacked by acid by co-accused Ravi Yadu, appellant was not present on the spot and as per admissible and inadmissible documents, after commission of robbery by causing injury by acid by the appellant – Ravi Yadu and while he was fleeing from the spot, then he has called present appellant – Jiya and Khushboo near fly over bridge where the appellant met with Ravi Yadu, who handed over money bag to them.

In the light of evidence of P.W.1, the case of conspiracy punishable under Section 120 B of the I.P.C. may be considered against the present appellant because he was neither present on the spot at the time of commission of robbery nor was he present in such distance to create panic and fear in the mind of injured witness. Even he was not having any knowledge about the previous conspiracy between the appellant and co-appellant Ravi Yadu. Therefore, conviction and sentence of the appellant – Jiya under Section 394 read with Section 397 is not sustainable in law. However, conviction and sentence of the appellant – Jiya under Section 120 B of the I.P.C. may be considered. Having argued so, learned counsel submits that the

appellant deserves acquittal of the charge under Section 394/397 of the I.P.C.

16. Mr. S.P.Sahu, learned counsel for the appellant – Ravi Yadu, vehemently submits that evidence of P.W.1 Deepak Kumar Sahu and evidence of other witnesses does not inspire confidence and trustworthy. As per evidence of P.W.1 Deepak Kumar Sahu (victim and injured) and other witnesses' evidence, victim and appellant Ravi Yadu were working together in Avinash Builders. Appellant – Ravi Yadu lost his Job from Avinash Builders six months prior to date of commission of incident. Victim was not having any knowledge that appellant met with him at Millennium Plaza and he will accompany him for recovery of Rs.20,00,000/-, therefore, there cannot be any conspiracy for commission of offence. These were the facts, which by itself are sufficient to reject the testimony of all prosecution witnesses. Evidence of P.W.1 clearly reveals that on account of some previous enmity or motive, he has falsely implicated the appellant.

17. On the other hand, Mr. Neeraj Jain, learned counsel for the State, opposed the appeal while submitting that evidence of P.W.1 Deepak Kumar Gupta, injured witness, medical evidence, evidence of disclosure statement and recovery of articles are sufficient to prove the guilt of both the appellants and is sufficient to prove the fact that both the appellants entered into conspiracy for commission of offence and in furtherance of such conspiracy, the appellants have committed the aforesaid offence. Appellant Jiya was in getting touch with appellant Ravi Yadu. At the time of commission of offence, he called appellant Jiya by Cell phone while he was fleeing from the spot and within few minutes appellant Jiya reached near fly over bridge where the appellant Ravi was present. This shows that close association and involvement of appellant Jiya in commission of robbery by using deadly weapon after hatching conspiracy.

18. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution. In the present case, fatal injury caused by Sulphuric Acid to the victim P.W.1 Deepak Kumar Sahu has not

been substantially disputed on behalf of the appellants, but also established by the evidence of P.W.1 Deepak Kumar sahu, P.W.17 Dr. Netram Beck, Dehati Nalishi Ex.P.1F.I.R.Ex.P.22, medical report Ex.P.20, P.W.19 Dr. Sunil Kalda, his report Ex.P.21 and bed head ticket Ex.P.20 and P.W.22 Ravi Namdeo. Fatal injury on injured P.W.1 Deepak Kumar Sahu leading to removal of his both eyes has been caused by acid.

19. As regards complicity of the appellants in crime in question, P.W.1 Deepak Kumar Sahu has specifically deposed that before the incident he went to the Millennium Plaza where appellant met him and both of them proceeded to Daldalseoni by motorcycle for recovery of amount of Rs.20,00,000/-. He demanded and obtained Rs.20,00,000/- from Ravi Fatnani P.W.18. After receiving money and keeping the same in the back, he was returning his office, i.e., Avinash Builders, along with appellant Ravi Yadu. On way to his office, appellant Ravi Yadu stopped the motorcycle at lonely place on the ground of attending call of nature and when he stopped the motorcycle appellant Ravi Yadu attacked him by pouring acid on his head, upon which, he shouted and appellant Ravi Yadu snatched the motorcycle and money bag and fled from the spot. He was crying for help, but nobody has come to help him and after one hour one person of Sahara News Channel, namely, Ravi Namdeo P.W.22 came to him and took him to Medical College Hospital, Raipur, from where he was shifted to Kalda Nursing Home. P.W.11 Ajay Kumar Mishra has deposed that after incident he was informed by P.W.1 Deepak Kumar Sahu that appellant Ravi Yadu thrown acid over him and committed robbery. Defence has cross-examined these witnesses at length but has not been elicited anything in his cross-examination to discredit their testimony relating to fact that appellant Ravi Yadu has not poured acid over him.

20. P.W.26 Bahadur Singh Jagrit, City Superintendent of Police, has deposed in para 7 of his evidence that on 11.07.2009 Ravi Yadu has been taken into custody and he made disclosure statement of articles vide Ex.P.15, in which, amount of Rs.1,37,500, shirt and other clothes burnt by acid, watch, receipt of Purnima Hotel, ticket of Bharat, Vijayant Travels, colour photo of appellant – Jiya, Sim card and visiting

card have been seized from the appellant – Ravi Yadu vide Ex.P.16. He has deposed on the basis of disclosure statement that appellant – Jiya was taken into custody, he has recorded his statement vide Ex.P.17 and on the basis of disclosure statement of appellant – Jiya, a sum about Rs.17,00,000/- has been seized from him along with mobile, which finds support from the evidence of other witnesses. Motorcycle owned by Deepak Kumar Sahu has been seized from Bemetara vide Ex.P.9, which also finds support from the disclosure statement of appellant Ravi Yadu vide Ex.P.15. Article Ex.A.24, visiting card of Hotel Al-Mustaqeen Hotel and Lodging, Nagpur, article A.25, ticket of Bharat, Vijayant Travels, articles A.26 to 29, receipts of Hotel Purnima, Maihar showing the fact that appellant Ravi has travelled from Raipur to Bemetara, Jabalpur, Maihar and Nagpur.

21. The evidence adduced on behalf of the prosecution inspires confidence and trustworthy that on 07.07.2009 at about 3.30 pm appellant Ravi Yadu has committed robbery of Rs.20,00,000/- and motorcycle by using acid, which by itself is deadly weapon and has caused dangerous and fatal injury to the victim Deepak Kumar Sahu. The evidence adduced on behalf of the prosecution that after fleeing from the spot, the appellant called co-accused Jiya and deceased Khushboo, who were ready and immediately reached to fly over bridge. Recovery of huge amount from the possession of appellant Jiya further proved the fact that there was conspiracy amongst all the three accused persons for commission of such offence.

22. After appreciating the evidence available on record, learned Court below has convicted the appellant Ravi Yadu under Section 394 read with Section 397 and 120 B of the I.P.C. The trial Court has also convicted the appellant – Jiya @ Jayayu Alim @ Jiyauddin under Section 394 read with Section 397 and 120 B of the I.P.C. While convicting the appellant Ravi Yadu and sentencing the appellant under Sections 394 read with Section 397 and 120 B of the I.P.C., the trial Court has not committed any illegality whereas while convicting and sentencing the appellant – Jiya under Section 120 B of the I.P.C., the trial Court has also not committed any illegality.

23. In the light of fatal and dangerous injury caused to the victim P.W.1 Deepak Kumar Sahu leading to removal of his both eyes, by convicting Ravi Yadu under Section 394 read with Section 397 and 120 B of the I.P.C., and sentencing him to life imprisonment and seven years with fine of Rs.1000/- on each count and in default to pay fine amount further to undergo RI for six months each, the trial Court has not committed any infirmity and illegality. While convicting and sentencing appellant Jiya @ Jayayu Alim @ Jiyauddin under Section 394 read with Section 397, in absence of any evidence which shows that he was present on the spot or he was present in a reasonable distance causing fear and panic upon the injured witness Deepak Kumar Sahu, the trial Court has committed an illegality. Prosecution has also failed to lead any evidence to show that appellant Jiya was present on the spot at the time of commission of robbery. Therefore, the act of appellant – Jiya squarely falls within the ambit of Section 411 of the I.P.C. for receiving and obtaining stolen property knowing the same was robbed amount.

24. Consequently, Criminal Appeal No.798 of 2012 filed by Ravi Yadu is liable to be and is hereby dismissed. Criminal Appeal No. 455 of 2012 filed by appellant Jayayu Alim @ Jiya @ Jiyauddin is partly allowed. His conviction and sentence under Section 120 B of the I.P.C. is hereby affirmed. However, conviction of the appellant – Jiya under Section 394 read with Section 397 of the IPC and the sentence imposed thereunder are altered to Section 411 of the I.P.C. and he is sentenced to RI for three years with fine of Rs.5000/- and in default of which he shall further undergo RI for one year. Both sentences imposed upon him shall run concurrently. Amount of fine shall be paid to P.W.1 Deepak Kumar Sahu as compensation under Section 357 of the I.P.C.

25. At this juncture, we are pertinent to make a note that present case is brutal case of commission of robbery by throwing hazardous object, i.e., Sulphuric Acid, by virtue of which, fatal injury affecting both eyes of the victim P.W.1 Deepak Kumar Sahu has been caused. Both eyes of the victim Deepak Kumar Sahu have been removed. Considering the medical evidence, it can be safely inferred that how much money has

been spent in treatment of victim. As per evidence of P.W.19 Dr. Sunil Kalda and Ex.P.21, more than Rs.5,00,000/- has been spent for treatment of the victim and some amount is required for his future treatment. Considering the aforesaid facts, State Legal Services Authority is recommended to decide adequate quantum of compensation in accordance with sub-section (2) of Section 357 of the Cr.P.C. and we also recommend the same to the State Government as per Section 357A (1) of the Cr.P.C. for immediate payment compensation to the victim.

Judge

Judge