

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved on 10.11.2016**
Pronounced on 05.12.2016**CRA No. 621 of 2001**

1. Muchaki Sukhram, son of Masoram, aged about 22 years, Resident of Mutanpal Patelpara, Police Station – Kodenaar, District – Bastar (C.G.)
2. Poyami Lakhma, son of Sukda, aged about 45 years, resident of village – Mutanpal, P. Station – Kodenaar, District – Bastar.
3. Muchaki Dulgo, son of Bomda, aged about 23 years, resident of village – Mutanpal, Patelpara, (Nakapara), Police Station – Kodenaar, District – Bastar.

---- Appellants**Versus**

- The State of Chhattisgarh

---- Respondent**And****CRA No. 604 Of 2004**

- Sukhu @ Sukhram, S/o Bhadruram Kunja, aged about 35 years, R/o Karli Dhodhapara, at present Muhale Patelpara, P.S. Gidam, District Dantewada (C.G.)

---- Appellant**Vs**

- State Of Chhattisgarh, through P.S. Mardoom, District Dantewada.

---- Respondent

For Appellants	:	Shri Avinash K. Mishra and Smt. Usha Chandrakar, Advocates
For Respondent / State	:	Shgri Ravindra Agrawal, Panel Lawyer.

Hon'ble The Chief Justice
Hon'ble Shri Justice Sanjay Agrawal

C A V Judgment / Order

Per Sanjay Agrawal, J.

1. These appeals have been filed by the convicted accused/appellants against the judgment dated 30.06.2001 passed by the 3rd Additional Sessions Judge, Bastar, place Jagdalpur, in Sessions Trial No. 8/2001 whereby all the accused/appellants have been convicted for having committed offence punishable under Section 395 of the IPC and sentenced them to undergo rigorous imprisonment for life.

2. Both these appeals arise out of the same judgment of the trial Court passed in same Sessions Trial number, therefore, they are being decided by this common judgment.

3. As per prosecution story, the alleged crime was committed on 03.10.2000 at 23:30 hours when as many as four accused persons, aged about 24 – 26 years, armed with *lathi* and *gupti* (sword-stick) entered into the house of the complainant – Boseram. After entering into the house, they asked one Mangdu about the complainant – Boseram and that after caught hold of collar of the complainant, slapped him. Thereafter, they asked him where the amount has been kept and that after opening the Almirah obtained the cash amount and ornaments. They also threatened the complainant – Boseram on the strength of *gupti* (sword-stick) to throw his body in the jungle. They had also caught hold of his father at that time. Thus, in such a manner the accused persons committed the offence of dacoity in the house of complainant Boseram, punishable under Section 395 of the IPC.

4. Based upon the aforesaid offence, First Information Report (Ex.P.1) was lodged by the complainant Boseram on 04.10.2000 at 2.00 pm at Police Station

Madum of District Bastar against as many as five unknown persons under Section 394 of the IPC.

5. The matter was investigated and the accused/appellants were charged for having committed the offence punishable under Section 395 and 394 of the IPC.

6. After hearing the aforesaid charges, all the accused persons have pleaded not guilty.

7. In order to establish the above mentioned crime, the prosecution examined as many as 10 witnesses while none of the witnesses were examined by the accused persons in order to establish their innocence in the said crime.

8. The trial Court after considering the evidence adduced by the prosecution witnesses found the accused/appellants guilty of having committed offence punishable under Section 395 of the IPC and sentenced them as aforesaid.

9. Being aggrieved with the aforesaid conviction and order of sentence, the accused/appellants preferred the above appeals under Section 374(2) of the Code of Criminal Procedure, 1973.

10. We have heard learned counsel for the accused/appellants, learned counsel for the State and have also gone through entire record carefully.

11. The entire prosecution story is based upon the identification of the accused/appellants. Therefore, after recording the F.I.R. (Ex.P.1), the Station House Officer has moved an application (Ex.P.4) on 15.11.2000 before the Chief Judicial Magistrate, Dantewada and praying for identification of accused/appellants in jail. Accordingly, order was passed on the same day by the C.J.M., Dantewada by permitting the identification for the accused/appellants.

12. For carrying out the identification parade, the S.D.O. Dantewada, vide its

order dated 20.11.2000, has appointed the Tahsildar, Dantewada, for the said purpose. Accordingly, the identification parade (Ex.P.6) was conducted in his presence on 24.11.2000 from 12.30 PM to 01.30 PM in the sub-jail, Dantewada where the complainant Boseram and one Mangdu - son of Chaitu have identified the accused persons amongst as many as 9 accused persons in the said jail.

13. In the aforesaid identification parade (Ex.P.6), the complainant Boseram has identified the following 4 accused persons :-

- i. Sukhu @ Sukar @ Sukhram, son of Bhadru, aged 35 years.
- ii. Lakhamu Poyami, son of Sukda, aged 45 years.
- iii. Muchaki Sukhram, son of Masa, aged 22 years.
- iv. Muchaki Bhanu, son of Lakhma, aged 45 years.

While Mangdu, son of Chaitu has identified the following two accused persons :-

- i. Sukhu @ Sukar @ Sukhram, son of Bhadru, aged 35 years.
- ii. Pite Dulgo, son of Bomda, aged 23 years.

14. From a perusal of the aforesaid identification parade, it is clear that as many as 5 accused persons were identified and based upon that, the said 5 accused persons were charged in connection with the said crime and were tried by the prosecution. However, from a perusal of the first information report (Ex.P.1) lodged by the complainant – Boseram coupled with the prosecution witnesses, particularly, P.W.6 (Boseram Podiyami), P.W.7 (Baghma) and P.W.8 (Kuhrami Mangdu), it is clear that only 4 accused persons entered into the house of the complainant – Boseram. The trial Court has also proceeded with the matter that as many as 5 accused persons were involved in the matter. However, the prosecution has failed completely to explain as to how 5 persons were tried in the matter, particularly, when only 4 unknown persons entered into the house of complainant – Boseram. In any case, the Supreme Court in the matter of **Matru Alias Girish Chandra vs.**

The State of Uttara Pradesh, reported in (1971) 2 SCC 75 has observed that the identification tests do not constitute substantive evidence. It can only be used as a corroborative of the statement in Court.

15. Besides, the Tahsildar G.R. Kuhara (P.W.2), in whose presence the said identification parade was conducted, was also unable to point out the manner in which the accused / appellants were identified. Based upon such a weak identification parade, it is difficult to hold or to arrive at a conclusion that the accused / appellants are involved in the said crime. Therefore, findings as recorded by the trial Court convicting the accused/appellants based upon such a weak identification parade cannot be held to be sustainable.

16. It is pertinent to mention here that the seizure memo (Ex.P.15), by which, certain articles recovered from the accused Sukhu could not be established by its attesting witness, namely, Hemla Budhram (P.W.3). It is highly shocking and surprising for this Court that how the seizure memo (Ex.P.16) by which certain articles were recovered from one Musaram Poyami, son of Manglu is relevant in order to convict the accused / appellants in connection with the said crime as the said person (Musaram Poyami) was not the accused in the matter. Therefore, in view of the foregoing discussions, the accused/appellants cannot be held liable for the commission of alleged offence punishable under Section 395 of the I.P.C.

17. We, therefore, set aside the judgment dated 30.06.2001 passed by the learned 3rd Additional Sessions Judge, Bastar place Jagdapur, in Sessions Trial No. 08/2001 convicting the appellants under Section 395 of the I.P.C. and, the accused/appellants are hereby acquitted of the charges framed against them. They shall be set at liberty forthwith.

18. The accused/appellants are on bail. Their bail bonds shall remain effective for a period of 6 months, in view of the provisions prescribed under Section 437-A

of the Criminal Procedure Code, 1973.

19. The appeals are allowed.

Sd/-
(Deepak Gupta)
Chief Justice

Sd/-
(Sanjay Agrawal)
Judge