

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 2046 of 1998

Sudhir Kumar Dongre S/o. Babulal Dongre, Aged about 18 years,
resident of Tulsipur, Rajnandgaon, Police Station Rajnandgaon District
Rajnandgaon M.P. now Chhattisgarh

---- Appellant

Versus

The State of M.P. (now Chhattisgarh)

---- Respondent

For Appellant : Mr. Chandra Bhushan Kesharwani, Advocate.
For Respondent/State : Mr. Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgement on Board

27.11.2017

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 03.09.1998 passed by First Additional Sessions Judge, Rajnandgaon Session-Division Rajnandgaon, in Sessions Trial No. 182/1996, wherein the trial Court convicted the accused/appellant under Sections 458 and 398 read with section 34 of the IPC and sentencing him to undergo R.I. for 3 years and to pay fine of Rs. 500/- in default of payment of fine to further undergo simple imprisonment for three months and rigorous imprisonment for seven years with a direction to run all the sentences concurrently.

2. The case of the prosecution, in brief, is that complainant Nishant Arif was residing with her family at Tulsipur, Rajnandgaon. It is alleged that in the mid night of 23.01.1995, she was sleeping in the house with her children as her husband went to Jabalpur (M.P.). In the night, she heard noise and she thought her husband came. Again, she heard noise opening of almirah then she woke up. At that time, the accused/appellant along with other two persons were present in the house, after committing lurking house-trespass or house-breaking at night came to the complainant and one person having knife put his knife on the neck of the complainant and asked for money and ornaments. At the same time, she shouted to her neighbours for help. After hearing the voice of complainant, Rakesh Kumar, Thanuram and Hariram came there and accused persons flee away. The matter was reported to Police Station Rajnandgaon. After registration of FIR, the matter was investigated and identification parade was conducted during the investigation. After completion of investigation, charge sheet was filed before the trial Court wherein the trial Court framed charges as mentioned above to which the appellant did not plead guilty. The trial Court conducted the trial and after completion of evidence of the prosecution side, statement of the appellants under Section 313 of the Cr.P.C. were recorded and after completion of trial, the Additional Sessions Judge considering the material available on record by the impugned judgement convicted and sentenced the accused/appellants as mentioned above.

3. Learned counsel appearing for the accused/appellant submits that the name of any accused is not mentioned in the FIR, therefore, the persons entered in the house of the complainant were not known to the complainant and their family members and they exaggerated their version before the Court. He submits that as per version of Nishant Arif accused persons were shown to her before identification parade, therefore, identification parade which is held after 18 days of the incident lost its significance and same is not reliable. He further submits that section 398 of the IPC attracts, only if anyone is armed with deadly weapon at the time of commission of robbery but in the present case there is no evidence against the accused/appellant having any armed with him.

4. Per contra, learned State counsel supporting the impugned judgment has submitted that the judgment of conviction and order of sentence is passed by the trial Court on the basis of evidence adduced by the prosecution and the same is well founded and there is no illegality or infirmity in it warranting any interference by this Court invoking jurisdiction of the appeal.

5. I have heard counsel for the parties and perused the material available on record.

6. Nishant Arif (PW-2) is the star witness of the prosecution. She deposed that two persons entered in her house at night and one was having knife. Though, she claimed before the Court that the accused was known to her but the name of the accused/appellant was not

mentioned in the FIR which is lodged on the date of the incident. In FIR no one has named as offender. She further deposed that one accused namely Sanjay was having knife in his possession. As per her version accused/appellant was not having any weapon and as per her version when she shouted the neighbours for help the accused persons fled away from there. Huma Aarti (PW-5) deposed that she knows the accused/appellant but from her statement it is not explained as to why the name of the accused/appellant was not mentioned in the FIR.

7. M.D. Tigala (PW-4) is Nayab Tahsildar who conducted the identification parade and as per the statement of Nishant Arif, she identified two persons. Nishant Arif deposed at (para-3) that the identification parade was conducted at Police Station and the same was conducted by the Police authorities. If, Police authorities were present at the time of identification parade then the same rendered worthless. The offence of robbery was not completed and no article is seized from anyone. Seizure of any article is not connecting piece for commission of offence because complainant herself has stated that no article was removed from his possession.

8. Looking to the totality of the fact, the identification of the accused/appellant is under cloud and does not establish that the appellant was in possession of any arm which is essential ingredients for commission of offence under Section 398 of the IPC. Again, when the identification lost its significance it would not be safe for this Court to conclude that it is the accused who entered into the house of the

complainant on the date of incident and after committing lurking house-trespass or house-breaking by night offence under Section 458 and 398 read with section 34 of the IPC is not established beyond shadow of doubt.

9. In the result, the appeal is allowed and the impugned judgment of conviction and order of sentence is hereby set aside. The appellant is acquitted of the charges levelled against him. The appellant is reported to be in jail, It is directed that the appellant be released forthwith, if not required in any other case.

Sd/-
(Ram Prasanna Sharma)
JUDGE