

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 415 of 2001

- Ghanshyam Kabootara, S/o Laxmi Narayan, aged about 30 years, R/o Village-Jabranpara, Police Station-Earach, Distt. Jhanshi (Uttar Pradesh).

---- Appellant

Versus

- State Of Madhya Pradesh (Now Chhattisgarh) through Police Station – Gharghoda, Distt. Raigarh (CG)

---- Respondent

For Appellant	:	Smt. Smriti Shrivastava, Advocate.
For Respondent/State	:	Smt. Smitha Ghai, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Arvind Singh Chandel

Judgment On Board By Justice Pritinker Diwaker

23/10/2017

This appeal arises out of the judgment of conviction and order of sentence dated 7.12.2000 passed by the II Additional Sessions Judge, Raigarh in ST No.123/1995 convicting the appellant under Sections 395 & 397 of IPC and sentencing him to undergo imprisonment for life, pay a fine of Rs.500/- and RI for seven years with default stipulation respectively.

02. Brief facts of the case are that in the night intervening 11/12.11.1993 about 6-8 unknown persons entered the house of PW-1 Kursoram duly armed with weapons like club and axe, and after causing injuries to about 11 persons, committed dacoity of various articles including gold and silver ornaments as well as cash of

Rs.15000/-. On 12.11.1993 FIR (Ex.P/1) was lodged by PW-1 against 6-8 unknown persons under Sections 395 & 397 of IPC. Accused Ghanshyam Joshi, Ghanshyam Kabootara (present appellant) and Dara Das were arrested on 15.11.1993 and their memorandum statements were recorded. Memorandum of the appellant Ghanshyam Kabootara is Ex.P/4, based on which certain gold and silver ornaments were seized vide Ex.P/7. Recovery of certain articles has also been made on the memorandum of other accused persons. The seized articles were put to identification vide Ex.P/32, P/33 & P/34 and they were duly identified by PW-2 Kumari Bedmati and PW-3 Dirip Kunwar. Test identification parade (Ex.P/21) of the accused persons was conducted by PW-10 CR Ratre, Tehsildar where PW-4 Devdhar identified all the accused persons including the appellant. Charge sheet was filed against three accused persons namely Ghanshyam Joshi, Ghanshyam Kabootara (appellant herein) and one Daradas, showing other accused persons namely Mohan @ Baba Kabootara, Bindu Kabootara, Jordan Kabootara, Ramsharan and Kabra Kabootara absconded. While framing charge, the trial Judge framed charges under Sections 395 & 397 of IPC against these three accused persons.

03. So as to hold the accused persons guilty, the prosecution examined 16 witnesses in all. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. In defence, they examined one Chandramani Sharma as DW-1.

04. The trial Court after hearing counsel for the respective parties and

considering the material available on record, by the impugned judgment convicted and sentenced the accused persons as mentioned above.

05. Accused No.1 Ghanshyam Joshi had preferred an appeal against the said judgment i.e. Cr.A.No.413/2001, however, he expired on 10.1.2010 and therefore, his appeal stood abated and dismissed as such vide order dated 3.8.2016. Accused No.3 Dara Das had also preferred an appeal i.e. Cr.A.No.417/2001 which was dismissed for being infructuous vide order dated 30.6.2014.

06. Counsel for the appellant submits that she is not pressing this appeal on merits and would confine her arguments only to the sentence part. It has been argued that the appellant is completely blind, has already remained in jail for more than eight years and therefore, his sentence may be reduced to the period already undergone by him.

07. On the other hand, State counsel supporting the impugned judgment has submitted that conviction of the accused/appellant is strictly in accordance with law. She submits that considering the gravity of the offence, no leniency is required to be shown to the appellant and the sentence awarded by the trial Court needs no interference by this Court.

08. Heard counsel for the respective parties and perused the material on record.

09. PW-1 Kursoram is a person in whose house the dacoity had taken place. While supporting the prosecution case he has stated that

in the night intervening 11/12.11.1993 about 7-8 persons entered his house carrying deadly weapons and torch with them, one of them caused him injury by axe as a result of which he became unconscious. He states that the accused persons also caused injuries to his other family members Devdhar, Dirip Kunwar, Bedmati, Nili, Hemlata, Guddi, Pappu and Sanjay and had taken away gold and silver ornaments as also cash from his house. He states that he lodged the FIR (Ex.P/1). About 15-20 days after the incident, identification of the articles and the accused persons was done.

10. PW-2 Bebmati, wife of PW-1, has also stated that 8-9 persons had entered her house and committed dacoity. She, however, has failed to identify the accused persons in the Court. She identified some of her articles in the test identification. PW-3 Dirip Kunwar, wife of PW-4 Devdhar, too has stated that dacoits had entered her house and caused injuries to number of villagers and took away ornaments and cash. She has stated that the accused persons had covered their faces and she could identify only one whose face was open. PW-4 Devdhar is also an injured witness. He is brother of PW-1 Kursoram. While supporting the prosecution case he has stated that in the test identification parade he had duly identified all the three accused who were tried including the appellant. PW-5 Dr. MD Joshi medically examined PW-1 Kursoram and upon x-ray being done, found no bony injury on his skull. PW-6 Tunaram has turned hostile. PW-7 Manikdas is a witness to memorandum and seizure. However, he has not supported the prosecution case. PW-8 Gulab Singh Patel, Patwari, prepared the spot map Ex.P/9. PW-9 Dr. AM Gupta medically

examined PW-11 Sanjay Kumar Patel vide Ex.P/11 and noticed incised wound over left eye, clotted blood on occipital region and swelling on the back side of neck. He also examined PW-4 Devdhar vide Ex.P/17 and found a crushed wound on the left side of the head, patient was in shock and was vomiting. He also examined PW-13 Dushyant Kumar vide Ex.P/12 and noticed lacerated wound on the frontal region of the head, crushed wound on the back side of head and swelling on the back.

11. PW-10 CR Ratre, Naib Tehsildar, conducted test identification parade of the accused persons vide Ex.P/21 where PW-4 Devdhar duly identified all the three accused persons including the appellant. PW-11 Sanjay Patel, son of PW-1, who also suffered injuries in the said incident, has supported the prosecution case and stated that on the date of incident about eight persons entered his house, committed marpeet with him and other family members and also looted gold & silver ornaments and cash. PW-13 Dushyant Patel, injured witness, has also supported the prosecution case. PW-14 KS Dhruv, investigating officer, has duly supported the prosecution case. PW-16 Jageshwar Patel is a witness of test identification parade (Ex.P/32, P/33 & P/34) conducted in respect of the articles and has supported the prosecution case. He has stated that the articles were duly identified by PW-2 and PW-3.

12. Close scrutiny of the evidence makes it clear that in the night intervening 11/12.11.1993 about 6-8 unknown persons duly armed with weapons like club and axe forcibly entered the house of PW-1 Kursoram, caused injuries to number of persons present there and

committed dacoity of various articles including gold and silver ornaments as well as cash of Rs.15000/-. PW-1 Kursoram, PW-3 Dirip Kunwar, PW-4 Devdhar, PW-11 Sanjay and PW-13 Dushyant have duly supported the prosecution case. A prompt report was lodged by PW-1 against 6-8 unknown persons under Sections 395 & 397 of IPC. During investigation, accused Ghanshyam Joshi, Ghanshyam Kabootara (present appellant) and Dara Das were arrested on 15.11.1993 and their memorandum statements led to recovery of looted articles and when those articles were put to identification vide Ex.P/32, P/33 & P/34, the same were duly identified by PW-2 Bedmati and PW-3 Dirip Kunwar. This apart, in the test identification parade of the accused persons including the appellant vide Ex.P/21, conducted by PW-10 CR Ratre, Tehsildar, PW-4 Devdhar identified all the accused persons including the appellant. PW-10 CR Ratre, Naib Tehsildar who conducted test identification parade of the accused persons has also supported the prosecution case.

The prosecution case also gets support from the medical reports of the injured persons. PW-9 Dr. AM Gupta has stated that upon medical examination of PW-11 Sanjay Kumar Patel vide Ex.P/11 he noticed incised wound over left eye, clotted blood on occipital region and swelling on the back side of neck whereas PW-4 Devdhar suffered a crushed wound on the left side of the head, he was in shock and was vomiting vide Ex.P/17 and that PW-13 Dushyant Kumar had sustained lacerated wound on the frontal region of the head, crushed wound on the back side of head and swelling on the back vide Ex.P/12. Defence has utterly failed to elicit anything from the aforesaid witnesses which could make the prosecution case unreliable or doubtful. Thus, in view

of the above unrebutted ocular and medical evidence available on record, complicity of the accused/appellant in commission of the offence stands proved beyond all reasonable doubt. As such, his conviction under Section 395 & 397 of IPC being based on proper appreciation of the evidence is hereby affirmed.

13. The next question which arises for consideration is as to what would be the appropriate sentence to be imposed on the appellant?

14. Considering the fact that the incident had taken place in the year 1993 i.e. 24 years back, the appellant has already served more than eight years of jail sentence and particularly the fact that the appellant has completely turned blind as has been reported by the concerned Station House Officer, we are of the opinion that ends of justice would meet if the appellant is sentenced under Section 395 of IPC to the period already undergone by him.

15. In the result, the appeal is allowed in part. While maintaining conviction of the appellant under Sections 395 & 397 of IPC as also sentence under Section 397 of IPC, his sentence under Section 395 of IPC is reduced to the period already undergone by him. He is reported to be outside the jail, therefore, he need not surrender.

Sd/

(Pritinker Diwaker)

Judge

sd/

(Arvind Singh Chandel)

Judge