

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 854 of 2008

- Firoz Rizvi S/o Shamim Rizvi, aged about 26 years (shopkeeper), permanent resident of Village Rukasa Police Station Dorala Tahsil Sarghana Distt. Merath (Uttar Pradesh)

---- Appellant

Versus

- State Of Chhattisgarh through the Police Station Gudhiyari, Raipur, Collector, Raipur, Distt.Raipur (CG)

---- Respondent

For Appellant	:	Shri Janak Ram Verma, Advocate.
For Respondent/State	:	Shri Vivek Sharma, G.A. and Smt. Madhunisha Singh, PL.

And

CRA No. 879 Of 2008

- Nasibuddin S/o Salimuddin Musalman, aged about 35 years, R/o Ghosiyan Mohalla, Sarghana, P.S. Sarghana, District Merath (UP)

---- Appellant

Vs

- State Of Chhattisgarh through Station House Officer, PS Gudiyari, Raipur, Distt. Raipur (CG)

---- Respondent

For Appellant	:	Shri YC Sharma, Advocate.
For Respondent/State	:	Shri Vivek Sharma, G.A. and Smt. Madhunisha Singh, PL.

And

CRA No. 909 Of 2008

- Mammu @ Mammo @ Noortaki S/o Shri Noor Ahmad Musalman, aged about 45 years, r/o Bhaatkada, Sarghana, PS-Sarghana, Distt.-Meruth (UP)

---- Appellant

Vs

- State Of Chhattisgarh through the Police Station Gudhyri, District Raipur.

---- Respondent

For Appellant	:	Shri Devershi Thakur, Advocate.
For Respondent/State	:	Shri Vivek Sharma, G.A. and Smt. Madhunisha Singh, PL.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment On Board By Justice Pritinker Diwaker

15/05/2017

As these three appeals arise out of the judgment of conviction and order of sentence dated 29.8.2008 passed by the Additional Sessions Judge (FTC), Raipur in ST No.189/2004 convicting the appellant Mammu @ Mammo under Section 395/397 of IPC and appellants Firoz Rizvi and Nasibuddin under Section 395 of IPC and sentencing each of them to undergo imprisonment for life and pay a fine of Rs.5000/- with default stipulation, they are being disposed of by this common judgment.

02. Brief facts of the case are that on 21.6.2002 at about 1.45 pm when employees of Laxmi Mahila Nagrik Sahkari Bank, Gudiyari were taking cash of Rs.12 lac in a suitcase in Maruti Van from Gudiyari to Main Branch, GE Road, Raipur, five unknown persons carrying

weapons in their hands reached there and committed dacoity of the entire amount. It is further said that while committing dacoity, accused/appellant No.1 Mammu @ Mammo @ Nuratki fired gunshot at Yogesh Verma (PW-8), as a result of which he sustained injury on his left knee. A prompt report Ex.P/10 was lodged at 2.10 pm by PW-8 Yogesh Verma, cashier of the bank, on the basis of which offence under Sections 395, 397 was registered against five unknown persons. PW-8 was medically examined by PW-12 Dr. Rajeev Pandey vide Ex.P/20 and he noticed one abrasion on left knee joint of size 6 cm x 3 cm caused by hard and blunt object. On 29.1.2004 accused/appellant No.1 Mammu and accused/appellant No.2 Firoz were arrested from Central Jail, Durg and on 5.2.2004 accused/appellant No.3 Nasibuddin was also arrested from Central Jail, Durg.

Test identification parade of accused/appellants No.1 & 2 was conducted on 3.2.2004 vide Ex.P/2 & P/3 by PW-20 Harbansh Singh Miri, Naib Tehsildar/Executive Magistrate, in which both these appellants were duly identified by PW-1 Akhilesh Kumar Sharma, PW-8 Yogesh Verma and PW-15 Jitendra Verma. Likewise, TIP of accused/appellant No.3 Nasibuddin was conducted on 8.2.2004 vide Ex.P/11 by PW-13 OP Verma, Naib Tehsildar/Executive Magistrate, in which PW-8 and PW-15 identified him.

On the memorandum of appellant No.1 Mammu (Ex.P/1), seizure of knife and one suitcase were seized from the house of appellant No.3 Nasibuddin. Memorandum of appellant No.2 Firoz (Ex.P/16) led to recovery of one motorcycle vide Ex.P/23 and on the memorandum of appellant No.3 Nasibuddin (Ex.P/5), seizure of

countrymade pistol, one bed-sheet, mattress and TV was made vide Ex.P/6 & P/7. After filing of charge sheet, the trial Court framed charges under Sections 395, 397 of IPC and Sections 25 & 27 of Arms Act against the accused/appellants.

03. So as to hold the accused/appellants guilty, the prosecution examined 24 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.

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 appellants as mentioned above.

05. Counsel for the appellants submit as under:

- that TIPs of all the accused persons are doubtful because the same have been conducted after expiry of about 19 months from the date of incident.
- That the witness to TIP i.e. PW-15 is not reliable because the accused persons were shown to him in the police station prior to conducting TIP.
- That no incriminating article has been seized from the possession of the appellants and the articles seized from them are commonly found in every household and as such, cannot be connected with the commission of the offence.
- That the TIPs also become doubtful on the ground that no proper description of the accused persons was given by PW-8 while

lodging the FIR, however, he has identified the accused persons in the TIPs.

- That though one countrymade pistol has been seized from the possession of appellant No.3, but there is no ballistic expert report to show that the said weapon was used in commission of the offence.

06. On the other hand, State counsel supporting the impugned judgment has submitted as under:

- that the accused persons were arrested on 29.1.2004 and 5.2.2004 and immediately thereafter, at the earliest opportunity, TIPs were conducted.
- That in the TIP, apart from PW-15 two other witnesses PW-1 and PW-8 were also there and they have duly identified the accused/appellants and remained intact in the Court even during lengthy cross-examination.
- That while lodging FIR, PW-8 has categorically stated that he had seen all the dacoits and would identify them in case occasion so arises.
- Even some description has also been given by PW-8 in FIR and therefore, no fault can be attributed to TIP on this count.
- Even if no incriminating article has been seized from the appellants, it will not adversely affect the case of the prosecution because the incident had taken place in the broad day light, faces of the accused persons were not covered and as such, identification by the bank employees appears to be quite natural and further, there is no evidence as to why they would falsely

implicate the accused persons.

- That as many as five criminal cases are pending against the accused persons, at least three of which are of bank dacoity and therefore, no leniency may be shown to the accused persons.

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

08. PW-1 Akhilesh Kumar Verma, clerk of the bank at the relevant time, has stated that at times he also used to perform the work of security guard and on the date of incident, in between 1-2 in the afternoon, when three of the bank employees were shifting Rs.12 lacs in a suitcase through Maruti Van, he heard the sound of fire and then saw appellant No.1 (after identifying the Court) snatching the said suitcase and running away from the spot. He states that immediately thereafter he informed about the incident to Branch Manager. According to him, other two accused persons present in the court were accompanying accused/appellant No.1. He has further stated that in the TIPs conducted by Executive Magistrate, he identified all the accused persons vide Ex.P/2 & P/3. In cross-examination, this witness remain firm.

09. PW-8 Yogesh Verma, who was working as clerk in the head office of the bank, has stated that he took out Rs.12 lacs from the bank, kept the same in a suitcase for transferring it to the Branch Head; the vehicle was being driven by one Kapil Tigga and when they were about to start, the accused/appellants came there carrying knife and other weapons. One knife was pointed on his neck and then appellant No.1

Mammu snatched away the suitcase from his hand and started running away. He immediately informed about the incident to bank officials, gunshot was also fired aiming at him as a result of which he sustained injury on his knee. He has proved lodging of FIR (Ex.P/10) and stated that he was medically examined. He has further proved the TIPs (Ex.P/2, P/3 & P/11) and stated that the same were conducted by the Executive Magistrates in which he duly identified the accused persons. Though he has also identified the suitcase so seized vide Ex.P/18 and P/19 in the TIP (Ex.P/20), but from the evidence it appears that the requisite number of suitcases were not mixed while conducting TIP of suitcase. Excepting this, this witness has also remained firm in his lengthy cross-examination.

10. PW-15 Jitendra Verma is other witness to had identified the accused persons but from his evidence it appears that prior to conducting TIP in the police station itself the accused persons were shown to him.

11. PW-12 Dr. Rajeev Pandey medically examined PW-8 Yogesh Verma vide Ex.P/20 and found one abrasion on left knee joint of size 6 cm x 3 cm which was caused by hard and blunt object. PW-13 OP Verma, Dy. Collector, who at the relevant time was Naib Tehsildar, conducted TIP of appellant No.3 Nasibuddin vide Ex.P/11 on 8.2.2004, in which PW-8 and PW-15 identified him. PW-14 Biharilal Naik, Patwari, prepared the spot map Ex.P/22. He has supported the prosecution case. PW-17 PS Rathore, Inspector, conducted part of the investigation and proved the same. PW-20 Harbansh Singh Miri, Naib Tehsildar, conducted Test identification parade of appellants No.1 & 2

on 3.2.2004 vide Ex.P/2 & P/3, in which both these appellants were duly identified by PW-1 Akhilesh Kumar Sharma, PW-8 Yogesh Verma and PW-15 Jitendra Verma. He has also supported the prosecution case. PW-23 Virendra Sharma, investigating officer, has duly supported the prosecution case.

12. Close scrutiny of the evidence makes it clear that on 21.6.2002 at about 1.45 pm when cash of Rs.12 lacs, kept in a suitcase, of Laxmi Mahila Nagrik Sahkari Bank, Gudiyari was being transferred in a Maruti Van to Main Branch, Raipur, the accused/appellants and two other persons carrying weapons in their hands reached there and committed dacoity of the entire amount. In the test identification conducted on 3.2.2004, appellants No.1 & 2 were duly identified by PW-1 Akhilesh Kumar Sharma and PW-8 Yogesh Verma. Similarly, appellant No.3 Nasibuddin was also correctly identified in the test identification conducted on 8.2.2004 by PW-8. Though PW-15 Jitendra Verma, who was also one of the witnesses of the test identification, has not supported the prosecution case, but in view of unrebutted evidence of PW-1 & PW-8 the identity of the appellants stands proved beyond reasonable doubt. PW-13 OP Verma, Dy. Collector, who at the relevant time was Naib Tehsildar and conducted TIP of appellant No.3 Nasibuddin and PW-20 Harbansh Singh Miri, Naib Tehsildar, who conducted Test identification parade of appellants No.1 & 2, have fully supported the prosecution case in respect of test identification. We have no reason to disbelieve the statements of aforesaid witnesses (PW Nos., 1, 8, 13 & 20). Furthermore, there is absolutely no contrary evidence available on record to show as to why these persons would falsely implicate the accused/appellants.

13. As regards delay in conducting identification, the record goes to show that the appellants No. 1 & 2 were arrested on 29.1.2004 and appellant No.3 on 5.2.2004 from Central Jail, Durg and thereafter, TIP in respect of appellants No. 1 & 2 was conducted on 3.2.2004 and that of appellant No.3 on 8.2.2004. Though some delay is there in conducting TIP, but the fact remains that the appellants have been correctly identified in the test identification by PW-1 & 8 and the defence has miserably failed on that point. In these circumstances, mere delay in conducting test identification cannot be said to be fatal to the prosecution case.

14. It is necessary to state here that TIP does not constitute substantive evidence. Identification test is primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation of an offence is proceeding on the right lines. Identification can only be used as corroborative of the statement in Court. It is well settled that the substantive evidence is the evidence of identification in Court and the test identification parade provides corroboration to the identification of the witness in Court, if required. Even if there is no previous TIP, the Court may appreciate the dock identification as being above board and more than conclusive. (See *Matru alias Girish Chandra Vs. State of Uttar Pradesh, (1971) 2 SCC 75*; *Santsoh Singh Vs. Izhar Hussain and another, (1973) 2 SCC 406*; *Malkhansingh Vs. State of MP, (2003) 5 SCC 746*; *Visveswaran Vs. State, (2003) 6 SCC 73*.)

15. Even though no incriminating articles has been seized at the instance of the appellants, it hardly makes any difference because the

accused/appellants have been duly identified as the persons who committed the offence. Moreover, present is a case of bank dacoity and as such, the question of seizure of money after 19 months of the incident may not arise and that too when the accused persons were in jail in connection with some other dacoity cases. From the record it appears that number of other criminal cases are also pending against the accused persons.

16. We also find no substance in the argument of the appellants that for want of any identifying features in the FIR, the test identification by the witness becomes doubtful. From perusal of the FIR, it is evident that while lodging FIR, PW-8 had categorically stated that he had seen all the dacoits and would identify them in case occasion so arises and had also given some description of those dacoits.

17. For the aforesaid reasons, we are of the opinion that the trial Court was fully justified in convicting the appellants under Sections 395 of IPC on the basis of evidence adduced by the prosecution. Accordingly, all the three appeals being without any substance are hereby dismissed.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(R.C.S. Samant)

Judge