

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 548 of 2014

Judgment Reserved on 02/01/2017

Judgment Delivered on 17/01/2017

- Raja @ Mohanlal, S/o Late Lakhan Lal Barman, aged about 24 years, R/o Vikatganj, Ward No. 02, Near Peepal Tree, Police Station Umaria, Distt. Umaria (M.P.)

---- Appellant

Versus

- State of Chhattisgarh, through Station House Officer, Police Station City Kotwali, Bilaspur, Distt. Bilaspur (C.G.)

---- Respondent

For Appellant :	Smt. Fouzia Mirza, Advocate
For Respondent/State :	Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V Judgment

1. This appeal has been preferred against the judgment of conviction and order of sentence passed by III Additional Sessions Judge, Bilaspur (C.G.), in Sessions Trial No.101/2011 passed on 31/12/2012, whereby the appellant was convicted under Section 394/397 of Indian Penal Code and sentenced to undergo RI for 10 years and fine of Rs.250/-, under Section 450 of IPC and sentenced to undergo RI for seven years along with fine of Rs. 250/- with default stipulation.

2. The case of prosecution is this, that Kishanchand Wadhvani (PW-1) lodged FIR Ex.P/1 on 21/02/2011 at 22.20 p.m., in Police

Station City Kotwali, that at 9.20 p.m. in the same night his wife informed him on telephone, that appellant came to their house and by putting a knife on her neck demanded money and gold jewellery, then using same knife appellant injured Kavita Wadhvani (PW-6) and Khushbu Wadhvani (PW-12). Complainants were admitted for treatment in hospital of Dr. Ghosh. It was reported, that jewellery worth Rs. 7 Lakhs were looted. In the investigation spot map Ex.P/2 was prepared. Blood stained clothes of the injured was seized vide Ex.P/3 and blood stains from the spot were preserved. Articles a pair of slippers, bed sheet were seized vide Ex.P/6. Injured Kavita Wadhvani was medically examined vide Ex.P/7 by Dr. Sumit Ghosh (PW-9) and Khushbu Wadhvani (PW-12) was also medically examined by Dr. Sumit Ghosh. Appellant was apprehended at 2 a.m. before morning of 22/02/2011 in Railway Station, Pendraroad and from his possession the jeweleries of gold, clothes on the body of appellant which were blood stained and one blood stained knife, all these articles were seized vide Ex.P/5. On completion of investigation, appellant was charge-sheeted.

3. Appellant was charged under Section 394 read with Section 397 of IPC and Section 450 of IPC. Appellant denied the charges and demanded for trial. Prosecution examined 14 witnesses. On examination under Section 313 of CrPC, appellant has denied all the circumstances against him in the prosecution evidence and has taken this defence, that he had love affair with Khushbu Wadhvani, daughter of complainant, due to which he has been

falsely implicated. No witness was examined in defence.

4. The grounds in appeal are these, the trial Court has passed the judgment of conviction on erroneous grounds, the prosecution evidence has not been appreciated in true perspective. There had been no legally admissible evidence against the appellant. The version of defence was that appellant was falsely implicated, because he had an affair with the daughter of complainant, it was not at all appreciated by the trial Court. The victims were not examined and treated in any government hospital, but were admitted in private hospital, which is a circumstance against the prosecution. The evidence of Dr. Sumit Ghosh (PW-9) is unreliable, for these reasons the acquittal of appellant is prayed for.

5. It was submitted by counsel for the appellant, that the medical evidence in this case belies the prosecution theory. The circumstance in which the appellant was apprehended in the same night also make the prosecution story suspicious. No test identification parade was conducted for identification of the articles seized from the possession of the appellant. Appellant is continuously in jail since last about 6 years, therefore, he is entitled for benefit of doubt. In the alternative it is prayed that if the Court is not inclined to acquit the appellant, then the sentence part may be modified to the period of custody already undergone.

6. Counsel for the State has argued, that there is no infirmity in the judgment of conviction passed in the trial Court. FIR in this

case was promptly lodged. The medical evidence is totally reliable. Evidence of injured witnesses against the appellant has been trustworthy which has been made the basis of conviction, for these reasons there is no scope for interference in this appeal.

7. Considering the material on record and the arguments submitted from both the sides the question in this appeal is, whether the conviction against the appellant is supported by evidence of prosecution beyond all reasonable doubt?

8. Witness on the spot Smt. Kavita Wadhvani (PW-6) states that appellant was previously employed as driver. On the date of incident, between 8.30 – 9.00 p.m. appellant came to her house and asked for some food, when she went to kitchen then appellant followed her and assaulted with knife on her neck. She started shouting then appellant told her not to shout as he has kidnapped her daughter, in the meanwhile she tried to calm down the accused, but he demanded gold and money from her, on which she went inside her house then appellant again came near and assaulted her with knife on her neck and causing injury to her. She raised alarm then her daughter Khushbu Wadhvani (PW-12) came in the same room, appellant caught hold of Khushbu Wadhvani and assaulted on her neck with knife causing injury, which started bleeding. Later on this witness give the box containing gold jewellery and a bag to the appellant. Appellant was also demanding money which she could not give, then appellant left the place. She immediately called on telephone her husband Kishanchand Wadhvani (PW-1) and informed about the incident.

Her statement in examination-in-chief has remained un-rebutted, in cross-examination. Some contradictions and omissions compared to her previous statement Ex.D/1 are of no consequence and insignificant, to affect the credibility of her statement before the Court. By giving some extra detail before the Court does not make the statement of the witness un-reliable.

9. Another witness on the spot Khushbu Wadhvani (PW-12) has stated, that she heard the cry of her mother and came on the spot, she saw her mother bleeding from her neck and also saw that appellant-accused holding the knife in his hand, who warned her not to raise alarm, otherwise he would kill her. Then her mother told her that appellant was demanding money and gold, on finding gold it was given to the appellant. Appellant kept the knife on her neck and demanded cash, but cash could not be given, then using the same knife appellant caused injury on her neck and threatening that if she disclosed anything he will kill her brother. Appellant took the box containing gold jewelery and fled from the spot. In cross-examination her statement remained un-rebutted, some minor omission and contradiction has been established compare to previous statement Ex.D/4, which is insignificant.

10. Kishanchand Wadhvani (PW-1) is the complainant, who lodged FIR Ex.P/1. He learnt about the incident from Kavita Wadhvani (PW-6) and has informed the police accordingly. Anil Wadhvani (PW-4) has stated, that he was informed on 21/02/2011 at about 9 p.m. by his uncle Kishanchand Wadhvani, that some incident has taken place at his residence. He immediately went to

the residence of complainant and saw, that Kavita Wadhvani and her daughter Khushbu Wadhvani having injuries of knife. He and his brother immediately shifted both the injured to the nursing home of Dr. Ghosh. He was informed that it was appellant who came to their residence and after causing injuries looted gold jewellery has fled from the spot. There is no statement in his cross-examination to rebut the statement given in examination-in-chief. Murlidhar Santani (PW-7) is hearsay witness. Similar is the statement of Goverdhan Das Motwani (PW-11).

11. The statement of key witness of the incident has remained intact, according to which it was appellant who entered the house of complainant armed with a knife and after having injured Kavita Wadhvani (PW-6) and Khushbu Wadhvani (PW-12) committed robbery by taking away jewelery box from their residence. Statement of these witnesses is also supported by the statement of Dr. Sumit Ghosh (PW-9), who has stated that on the night of 21/02/2011 he examined Kavita Wadhvani (PW-6) and found one incised wound of size 7'x4' which involved external carotid artery and external jugular vein and was bleeding, this wound were operated vide report Ex.P/7. Similarly he also examined Ku. Khushbu Wadhvani (PW-12) and found on her neck one incised wound of size of 5'x3', bleeding with the muscles being cut and also had a linear cut of wind pipe. He operated the same and his report vide Ex.P/8 has been proved. In cross-examination he admitted that no information was given by him to the police. He further stated that there was no requirement to inform the police

because police official immediately came to the hospital. In cross-examination his statement in examination in chief has remained unchallenged. It is admitted that such injury can be caused in attempt to commit suicide, but this had been theory of defence. Just on the basis of an answer to a hypothetical question it cannot be assumed that the victims in this case attempted to commit suicide.

12. The arguments submitted on behalf of appellant, that the conduct of complainant and injured to approach a private hospital for treatment should be viewed with suspicion is baseless. As stated by Dr. Sumit Ghosh (PW-9), Kavita Wadhvani (PW-6), Khushbu Wadhvani (PW-12) had received injury on their neck involving vital organs. A layman can understand they immediately needed treatment because of such injuries for which the injured persons were admitted to nursing home of Dr. Ghosh and soon after the treatment started, which was the necessity of that occasion. Hence there is no ground of suspicion on the basis of this reason.

13. The theory of defence the injury is was self inflicted is totally ruled out. Question was put to Kavita Wadhvani (PW-6) and to Khushbu Wadhvani (PW-12) in cross-examination which was categorically denied. It is not logical that two persons shall attempt to commit suicide at the same time.

14. Another ground of defence that the appellant had an affair with Khushbu Wadhvani (PW-12), which was the reason of false

implication. This ground in defence was nowhere established. No question was put to Kishanchand Wadhvani (PW-1) father of Khushbu Wadhvani in his cross-examination, Anil Wadhvani (PW-4) uncle of Khushbu Wadhvani and Kavita Wadhvani (PW-6) mother of Khushbu Wadhvani, in their cross-examination that appellant and Khushbu Wadhvani had any affair for which they had objection. This question was put in cross-examination of Khushbu (PW-12) alone, of which she has denied. Had it been a ground of defence from beginning this question would have been constantly put to all the witnesses. Hence, raising such question at later stage of trial suggests that it is a cooked up story for defence, which is not worth believable.

15. The argument in appeal that manner in which appellant was apprehended in the same night raises suspicion. Anil Wadhvani (PW-4) in cross-examination has stated that he along with police party departed from the police station, Bilaspur at about 10.45 p.m. and arrived at Pendra Road 5 to 10 minutes before 2 a.m. He does not remember, that on which platform the appellant was found, apprehended and the articles were seized from his possession. It was argued, that how the police party came to know of the whereabouts of the appellant-accused persons, which led to following and apprehending him should be viewed with suspicion. This arguments is of no consequence and insignificant. The methods adopted by Police in investigation, the information system of the Police and other manner and modes adopted by them to trace the culprit should not be questioned before a Court. The

Court is concerned only with this, that evidence brought before it is legally acceptable evidence or not. Hence, the method and manner in which the appellant was apprehended need not be questioned and cause no doubt.

16. It was for defence to establish a parallel story of defence alleging the conspiracy by the complainant and others and bringing to prove on record, in which the defence has failed. Hence the mode of apprehension of appellant on the night of incident does not raise any doubt and this fact cannot be regarded as having any effect on the evidence produced by the prosecution.

17. Lastly the arguments submitted on behalf of the appellant, that no test identification parade was conducted for identification of articles seized from the possession of appellant holds no grounds. The reasons being this, that there is no question of identification of appellant in this case, the appellant-accused was previously engaged for work by complainant. Complainant and his family members specially Kavita Wadhvani (PW-6) and Khushbu Wadhvani (PW-12) knew him well, who have witnessed the whole incident. It was stated by these witnesses that they had in their possession a box containing gold jeweleries which was taken away on the point of knife by causing injuries to them by the appellant himself. Hence, it completes the definition of theft and robbery, that the property was in possession of these witnesses which was removed forcefully and under threat without their consent by the appellant.

18. Especially when the culprit is not known and not a previous acquaintance, only then there is necessity of test identification parade to link the chain through the identification of articles as the article of theft. This is definitely not such a case, hence, this argument is also does not hold in favour of appellant.

19. On the basis of finding arrived at in this appeal and the reason aforementioned, it is found that the finding of conviction of trial court needs no interference.

20. The arguments submitted on behalf of the appellant that he is still undergoing jail sentence and is in jail since six years, hence his sentence may be modified. This is a kind offence which is regarded as immoral as well as such incidence is of grave concern and threat to the security in society. In such cases, no mercy could be shown to the culprits, hence for these reasons, there is no requirement for modification of sentence awarded to the appellant. This appeal is dismissed accordingly.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE