

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 690 of 1999

1. Kanta alias Kamta, S/o Dharamdas Satnami, aged 24 years, R/o 5/8/2-D Bhilai Nagar Village Sukhari, P.S. Utai, District Durg, M.P. (Now C.G.)
2. Daljit Singh, S/o Mehaga Punjabi, aged 24 years, R/o Ward No.13 Titurdih & Scindhiya Nagar, Durg, M.P. (Now C.G.)

----Appellants

Versus

- The State Of Madhya Pradesh, through P.S. Bhilai Nagar, District, Durg, M.P. (Now C.G.)

---- Respondent

For Appellant No.1	Smt. Renu Kochar, Advocate.
For Appellant No.2	Shri Amiyakant Tiwari, Advocate.
For State/Respondent	Shri Adhiraj Surana, Dy. G.A.

Hon'ble Shri Justice Gautam Chourdiya

Judgment on Borad

18.07.2018

1. This appeal arises out of the judgment of conviction and order of sentence dated 06.03.1999 passed by learned 6th Additional Sessions Judge, Durg, M.P (Now C.G.) in Sessions Trial No. 432/93, whereby, the appellants stands convicted and sentenced as under:-

Conviction	Sentence
Under Sections 394 & 397 of Indian Penal Code	R.I. for 7 years & fine of Rs.500/- to each appellants, in default of fine 2 months R.I.

2. Prosecution case in brief is that on the date of incident i.e. 13.04.1992 at about 10:55 pm, victim Sarju Prasad was returning to his home after performing his duties at MPS. Near monument two boys were standing who stopped him. One of the boys took out the knife and started asking for money. The other boy snatched his Atlas Cycle and ran away. The other boy who was having knife attacked the victim on his back (buttock). After the incident, the victim lodged FIR Ex.P-8. The victim was sent for medical examination vide Ex.P-6. As per medical report, he received incised wound on left side of buttock horizontally of size 1"x1/2"x1/2". There was swelling on left side angle of mouth. It was opined that the injury was caused by hard and sharp object. Thereafter, he was admitted for treatment. Bed head ticket vide Ex.P-7 was got prepared.
3. During investigation test identification parade was conducted by PW-1 G.R. Rathor, Tehshildar, wherein the victim identified both the persons. Memorandum of the accused/appellants were recorded vide Ex.P-4 & Ex.P-5 respectively. In pursuance of the memorandum Ex.P-5 given by accused Kanta alias Kamta, cycle was recovered vide Ex.P-2. In pursuance of the memorandum Ex.P-4, knife was recovered as per Ex.P-3.
4. After completion of investigation charge sheet was filed against the accused/appellant under Sections 394 & 397 of IPC and Section 25 of Arms Act. However, while framing charge the trial Court framed charge against the accused/appellant under Section 394 & 397 of IPC and

Section 25 of Arms Act.

5. So as to hold the accused/appellant guilty, the prosecution examined 9 witnesses in all. Statements of the accused persons 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 their defence, no witness has been examined.
6. 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 in para-1 of this judgment.
7. Learned counsel for the appellants submits that prosecution has failed to prove the presence of the accused/appellants on the date of the incident. No independent witnesses proved memorandum and seizure. Accused/appellants are not duly identified by the victim during test identification parade. The TIP which was conducted by PW-1 G.R. Rathor was not in accordance with the practice and procedure required to be followed. Both accused/appellants have been falsely implicated. Judgment of trial Court is contrary to the fact and evidence available on record. Identification Parade was biased. Article used in the incident was not produced before the Court nor exhibited and that weapon was deadly weapon was not proved by prosecution. The judgment of

trial Court deserves to be set aside.

8. Opposing the submission of counsel for the appellants, it has been vehemently argued by learned counsel for the State that the impugned judgment has been passed keeping in view the entire evidence adduced by the prosecution in the light of the provisions of the act and as such there is no illegality or infirmity in it warranting interference by this Court.
9. Heard counsel for the respective parties and perused the material on record.
10. PW-9 Sarjuprasad is a victim. He stated in his evidence that about 4-5 years back at about 10:45 pm he was going to Sector-4 from Maroda. The accused persons present in the Court stopped him near Jawahar Garden, Sector-5. One of the accused having beard stabbed him on his buttock and his name is Daljeet Singh. The other accused namely Kanta @ Kamta snatched his cycle and ran away. Thereafter, he lodged the FIR (Ex.P-8). In the FIR he gave full description of the accused persons. The FIR lodged promptly without any delay. He has further deposed that he identified both the accused persons during TIP vide Ex.P-1 and he also narrated the manner and act of the accused.
11. PW-1 G.R. Rathor, who conducted the test identification parade proved Ex.P-1. The accused/appellants were

identified by Sarjuprasad and he also stated that necessary procedure for conducting TIP has been complied with.

12. PW-2 K.P. Singh, is the retired Sub-Inspector. On the date of the incident he was posted as Sub-Inspector in the Bhilai Nagar, Police Station. He seized the knife at the instance accused Kanta alias Kamta. He further stated that he recorded the memorandum statements of both the accused persons and in pursuance thereof he effected the recoveries.

13. PW-3 Dr. G.S. Thakur, is the Senior Medical Officer, he stated that he examined the victim and noticed one incised wound of 1"x1/2"x1/2" on the left side of buttock. He also noticed swelling on the left side of the mouth. He opined that the injury is simple in nature. He proved his report Ex.P-6. PW-8 Dr. B.P. Panda, has also examined the victim. He also noticed the stab injury of size 2 cmx 0.5 cm and he gave his report Ex.P-7A.

14. PW-4 Deepak Thakur & PW-5 Bharat are witnesses of memorandum. Both the witnesses have not supported the prosecution case. PW-6 Prakash who is the witness of seizures Ex.P-2 and Ex.P-3 has been declared hostile and not supported the prosecution case.

15. On closed scrutiny of the evidence adduced by the prosecution, it appears that PW-9 victim has categorically

proved the contents of the FIR in his Court evidence wherein he has given full description of the accused persons on the date of the incident. He also identified the accused persons in the TIP. There was no previous any enmity between the victim and the accused/appellants. PW-3 Dr. G.S. Thakur and PW-8 B.P. Panda, examined victim and proved the injuries found on the body of the victim. There is no reason to disbelieve the evidence of PW-1 G.R. Rathor, PW-8 Dr. B.P. Panda, PW-6 Prakash and PW-9 Sarjuprasad. Even in examination-in-chief the victim has identified both the accused persons.

16. The other argument raised by counsel for the appellants is that the TIP was not conducted in accordance with law, as during TIP full description of the persons was not mentioned and the names of other 12 persons who were present during TIP were not mentioned.
17. True it is that the names of 12 persons who were present during TIP were not mentioned in the TIP proceeding and PW-1 G.R. Rathor has stated in his cross-examination that he has not given full description in the TIP and he had shown only face of the persons.
18. It was vehemently argued by learned counsel for the appellants that the prosecution has failed to prove that the appellants had used deadly weapon for assaulting the

victim.

19. PW-3 G.S. Thakur, who found incised wound on the left buttock of the victim has opined that the injury was caused by hard and sharp object and the injury was simple in nature. Though, he admitted in cross-examination that the prosecution had not produced any sharp or deadly weapon for examination before him. He also stated that any person may receive such injuries if he falls on the pieces of glass or on sharp edged door.
20. The seized knife was not produced before the Court nor the particular of weapon was given by the I.O. in the Court and no particular was given to the appellant to challenge the nature of weapon. Thus, the prosecution has fails to prove that the appellants used any deadly weapon.
21. It is settled law that neither can the appellant be held guilty of the offence under Section 397, IPC. A perusal of Section 397, IPC would show that the aforesaid section would only have application if the evidence is that during the course of commission of robbery or dacoity, 'the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person.'
22. For the foregoing reasons and the close scrutiny of the evidence, prosecution has proved its case under Section 394 IPC beyond all reasonable doubt and hence the

conviction of the appellants under Section 394 is maintained. However, sentence imposed on the accused/appellants under Section 397 is not maintainable because the prosecution has failed to prove that the appellants used any deadly weapon and that weapon was also not produced before the trial Court and accordingly, the conviction and sentence imposed under Section 397 of the IPC are set aside and the appellants are acquitted of the said charge. The incident happened in the year 1992 i.e. more than 26 years have elapsed. The record shows that the appellants remained in jail for 15 months. Therefore, ends of justice would be served if the appellants sentenced to the period already undergone by them with fine of Rs.500/- to each appellants, in default of fine 2 months R.I. The appeal is partly allowed. Ordered accordingly.

23. The appellants are on bail. Surety and personal bonds earlier furnished at the time of suspension of sentence shall remain operative for a period of six months in view of the provisions of Section 437-A of the Cr.P.C. The appellants shall appear before the higher Court as and when directed.

Sd/-
Gautam Chourdiya
Judge

Akhilesh

