

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 476 of 2002**

- Delip Kumar Khoonte S/o Gyaneshwar Khoonte, aged 23 years. R/o Bamhan Goodi - Pangoan P.S. Baloda Bajar, District Raipur. (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh

---- Respondent

For Appellant.	-	Smt. Savita Tiwari and Smt. Smriti Shrivatava, Advocates.
For Respondent	-	Shri Ravindra Agrawal, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker**Judgment On Board****19/03/2018**

This appeal arises out of the judgment of conviction and order of sentence dated 16.04.2002 passed by the 2nd Additional Sessions Judge, Baloda Bazar, District Raipur, in Sessions Trial No.61/01 convicting the accused/appellant under Sections 397 IPC, 25 of the Arms Act and sentencing him to undergo R.I. for seven years and R.I. for three years respectively.

02. As per the prosecution case, on 24.11.1997 at 1.30 AM report was lodged by victim Kamal Prasad Sahu (PW/6) alleging in it that in the previous night at about 7.30 PM when he was returning on his bicycle carrying cash of Rs.18,000/-, he was apprehended by two accused persons, out of which, one fatty and healthy accused person

who had covered his face by cloth showed knife to him, present appellant made search of his bag and took out Rs.18,000/- from it and thereafter present appellant threw chilli powder in his eyes and fled from the spot. On the basis of this prompt report, FIR (Ex.P/1) was registered against unknown person under Section 394 IPC. On 25.11.1997, victim Kamal Prasad Sahu was medically examined by Dr. Y. K. Sharma (PW/21) who gave his report Ex.P/10-A noticing following injuries:-

- (i) Edema and blackening of skin of left lower lid, with sub-conjunctive hemorrhage.
- (ii) Abrasion with soft tissue swelling over left zygomatic region of cheek.
- (iii) Soft tissues swelling in the size of 2" x 2" behind and below left ear.
- (iv) Abrasion of 1/4 cm x 1/4 cm over proximal phalanx of left middle finger.

03. Further case of the prosecution is that on 09.03.1998, present appellant and other accused named as Resham Lal had committed another offence under Section 394, 397 and 201 IPC vide Crime No.35/1998 at Police Station Kasdola and while committing the said offence, fatty and healthy accused (Resham Lal) sustained knife injury from the present appellant and during treatment he expired on 11.03.1998.

04. In the present case, on 06.04.1998 memorandum of the accused/appellant was recorded vide Ex.P/11 wherein he has admitted about the commission of offence and based on which, one bicycle vide Ex.P/5 and cash of Rs.6000/- vide Ex.P/6 were seized. On the basis of his second memorandum recorded in other case, one knife (Khukri),

cash of Rs.20,000/- and chilli powder were seized. The accused/appellant was put to identification vide Test Identification Parade (Ex.P/8) dated 06.04.1998 and he was duly identified by complainant Komal Prasad Sahu (PW/6). After filing of the charge sheet, the trial Court framed charge under Sections 397 IPC and Section 25 of the Arms Act against the accused/appellant.

05. So as to hold the accused/appellant guilty, prosecution examined as many as 11 witnesses in support of its case. Statement of the accused/appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

06. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment. Hence, this appeal.

07. Learned counsel for the appellant submits :

(i) That there was no source of light at the place of occurrence and, therefore, question of identification of the appellant by the victim does not arise.

(ii) That as per FIR (Ex.P/1), accused/appellant had covered his face and, therefore, also question of identification does not arise.

(iii) That the test identification parade has been conducted on 06.04.1998 i.e. after about more than 5 months of the incident and, therefore, the same would be of no consequence.

(iv) That the accused/appellant has already remained in jail for more than four years and four months and, therefore, lenient view may be taken while sentencing him.

08. On the other hand, supporting the impugned judgment it has been argued by the State counsel as under:-

(i) That as per FIR (Ex.P/1), at the time of commission of offence, it is other accused (Resham Lal) who had covered his face, whereas the face of present appellant was opened.

(ii) That no relevant question has been put to witnesses regarding source of light at the place of occurrence.

(iii) That after arrest of the accused/appellant in another case, vide Crime No.35/1998 dated 09.03.1998, his memorandum was recorded in both the cases wherein he has disclosed about the commission of offence, thereafter the recovery was made and the appellant was put to identification vide Test Identification Parade dated 06.04.1998. It has been further argued that in the facts and circumstances of the case, it cannot be said that there was any delay in conducting test identification parade.

(iv) That the test identification conducted by the prosecution is flawless and that itself is good enough to uphold the conviction of the appellant.

(v) That it also appears that the appellant is habitual offender where apart from the present case he was also involved in Crime No.35/1998 of P.S. Kasdol for the offence under Sections 394, 397 and 201 IPC. It has been also argued that in second offence appellant also caused injury to Resham Lal resulting in his death.

(vi) That the appellant has been convicted under Section 397 IPC for which the minimum sentence as prescribed under the law is seven years and, therefore, sentence cannot be reduced.

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

10. Sudarshan Dubey (PW/1) is a Patwari who prepared spot map vide Ex.P/1. Nandu Ram Sahu (PW/2), witness to seizure Ex.P/2 and P/4, though turned hostile, but has admitted his signature thereon. Komal Prasad Verma (PW/3), witness to seizure (Ex.P/4) by which chilli powder was seized, has admitted his signature. Firat Ram (PW/4) is a witness to whom the incident was narrated by complainant Kamal (PW/6) immediately after it had taken place. Sanjay Bajpai (PW/5), witness to seizure (Ex.P/4), memorandum of the accused/appellant (Ex.P/11), seizure of bicycle vide Ex.P/5 and test identification parade (Ex.P/8), has supported the prosecution case. Kamal (PW/6) is a complainant. He has stated that he knew the accused/appellant. On the date of incident, when he was coming towards his house from Baloda Bazar on bicycle after selling paddy in Krishi Upaj Mandi and collecting Rs.18081/-, on the way, two persons stopped his bicycle including the present appellant. One person caught hold of his collar and second who stood by his bicycle took his bag in which cash was kept. He has also stated that the person who caught hold of his collar was fatty and healthy, carrying *Khukri* in his hand, put to his stomach and gave fist blow on his face, whereas other who was lean and thin, searched his bag and took out Rs.18,000/- from it. He has further stated that thereafter chilli powder was thrown in his eyes. While identifying the accused/appellant in the Court, he has stated that he was the person

who took the amount from his bag. He has also stated that he was medically examined, his bag was seized vide Ex.P/2, spot map was prepared at his instance and in the test identification parade the accused/appellant present in the Court was identified by him. In the cross-examination, he remained firm and no question was put to him regarding availability of light at the place of occurrence. He has clarified that only one person had covered the face whereas other not. Kaushal Sahu (PW/7) is brother of the complainant to whom the incident was narrated by complainant after it had taken place. Dr. Sanjay Kumar Dadu (PW/8) conducted postmortem examination of co-accused in another case. Prithvi Dubey (PW/9) - Sub Inspector, registered the FIR (Ex.P/1) and did investigation. Dr. Y.K. Sharma (PW/10) medically examined the complainant and gave MLC (Ex.P/10-A). This witness has also stated that one Khukri was also produced before him and after examination he gave his report (Ex.P/12) opining that the injuries sustained by the complainant could have been caused by the said Khukri. B.C. Sahu (PW/11) - Additional Tehsildar, conducted Test Identification Parade vide Ex.P/8. He has stated that the complainant had identified the accused/appellant in the test identification parade.

10. Close scrutiny of the evidence makes it clear that on 24.11.1997 when complainant Kamal (PW/6) was returning to his house after selling his paddy and carrying cash of Rs.18,000/- in his bag, he was stopped by two accused persons, out of which one who was fatty and healthy caught hold of his collar and the present appellant searched his bag and took out Rs.18,000/- from it. While lodging the FIR (Ex.P/1), Kamal (PW/6) has given description of two accused persons stating therein that accused person who was fatty and healthy had covered his face,

whereas other was thin (present appellant). In the test identification parade (Ex.P/8) and in the Court, accused/appellant was duly identified by victim PW/6. That apart, on the memorandum of the accused/appellant (Ex.P/11), looted cash was seized vide Ex.P/6. Furthermore, nothing incriminating has come in the evidence of PW/11 who conducted test identification parade (Ex.P/8). The witnesses to seizure PW/2 (hostile), PW/3 and PW/5 have admitted their signature on the seizure memo. The statements of complainant PW/6 and Additional Tahsildar (PW/11) inspire full confidence of this Court and I have no reason to disbelieve the statement of these witnesses.

11. I find no substance in the argument of counsel for the appellant that there was no availability of light at the place of occurrence, the accused person had covered his face and, therefore, question of identification does not arise.

No question was put to witnesses regarding availability of light at the place of occurrence and complainant (PW/6) has categorically stated in the FIR (Ex.P/1) and in the Court statement that the accused, who was fatty and healthy, had covered his face, and not the present appellant, who took out cash of Rs.18,000/- from his bag. PW/6 in the test identification parade and in the Court has duly identified the accused/appellant and nothing incriminating has come in the evidence of PW/11 to discredit his testimony and pointing test identification parade to be of no consequence. So far as delay in conducting test identification parade is concerned, the accused/appellant was arrested in another offence under Sections 394, 397 and 201 IPC having Crime No.35/98 at P.S. Kasdol and thereafter test identification parade of appellant was conducted in which he was duly identified by PW/6.

12. For the reasons set out above, this Court is of the considered opinion that the findings of the Court below are strictly in conformity with the material available on record and the Court below has not committed any error in passing the judgment impugned.

13. The appeal thus has no substance and it is liable to be dismissed. Dismissal recorded accordingly. Appellant is reported to be on bail. He be taken into custody and sent back to jail for serving remaining sentence.

Sd/-

(Pritinker Diwaker)
JUDGE