

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 567 of 2010**

Sudeshwar @ Chethala son of Dashrath Mistri, aged 21 years, by occupation Agriculturist resident of village Deviganj Police Station Ramanujganj, District Surguja (CG)

---- Appellant**Versus**

State Of Chhattisgarh Through Police Station Ramanujganj District Surguja (CG)

---- Respondent

For Appellant : Shri Ashok Swarnakar, Advocate

For State/ Respondent : Shri Anand Dadariya, Govt. Advocate

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****17.02.2018**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 29.1.2005 passed by the Additional Sessions Judge (FTC), Ramanujganj, Sessions Division Sarguja (CG) in ST No.348/2001, whereby and whereunder the learned trial Judge after holding the appellant guilty for commission of offence under Sections 395 and 398 of the IPC and Sections 25(1) and 27(1) of the Arms Act, 1959, convicted and sentenced him to undergo R.I. for 10 years and fine of Rs.5,000/-, R.I. for 7 years, R.I. for 3 years and fine of Rs.2,000/- and R.I. for 3 years and fine of

Rs.3,000/- respectively with default stipulations. All the sentences were directed to run concurrently.

2. The conviction is impugned on the ground that without there being any iota of evidence, the Court below has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. As per the prosecution case, on 27.10.2002 at about 10.30 am, Vinod Prasad (PW1), Driver of Omprakash Bus was driving the public transport bus bearing registration No. CG 15ZA /0103 carrying passengers. While he was crossing near Kanakpur, the appellant along with other co-accused persons intercepted the Bus on the point of country made pistol and brought down him and assaulted with club. They snatched Rs.1,000/- from his pocket and watch from hand. They also snatched the cash amount of tickets from Bus Conductor and other articles and money from the passengers of the Bus. Vinod Kumar (PW1) reported the matter to Police Station Ramanujganj and after registration of F.I.R. police swung into action. Rs.15,500/- one pistol (loaded country made pistol) and substance for preparation of cartridge was seized from the appellant as per his discovery statement Ex.P/8 and seizure Ex. P/9,. Firearm seized from the appellant was sent to Ballistic Expert for examination and after examination the expert opined that the said firearm is in service condition. Sanction for prosecution was obtained under Section 39 of the Arms Act and the same was accorded by the District Magistrate, Sarguja vide Ex. P/25.

Identification parade was conducted by the Executive Magistrate. The appellant was identified by witness Nisar (PW7). After investigation charge sheet was filed. The appellant did not plead guilty, therefore, trial was conducted and after completion of the trial, the trial Court has convicted and sentenced the appellant as above.

4. Learned counsel for the appellant submits as under :

I. In identification parade, the appellant was not identified before the Executive Magistrate that shows the appellant was not present at the time of commission of offence.

II. Kanhairam (PW2) deposed that one Katta was seized from the appellant, whereas, the seizure memo Ex. P/9 shows that one loaded gun was seized, thus, both statements are contradictory in nature and the same witness stated about recovery of money but not deposed regarding exact amount.

III. In absence of any corroborative piece of evidence, the finding arrived at by the trial Court is not sustainable.

5. On the other hand, learned counsel for the State supported the judgment and submits that the finding arrived at by the trial Court is based on proper marshelling of evidence and not liable to be interfered with invoking jurisdiction of appeal.

6. I have heard Learned Counsel for the parties, perused the judgment impugned and record of the Court below.

7. To sustain the conviction, prosecution has examined as many as 16 witnesses.

8. Vinod Prasad (PW1) is Driver of the Bus. He deposed that at the time of incident, the appellant and other co-accused persons stopped the Bus near Kanakpur on the point of Katta/pistol and they brought down him and assaulted with club and snatched Rs.1,000/- and one wrist watch (HMT company). He further deposed that the accused persons also snatched currency notes from the Bus Conductor, Sunil (PW3) and also robbed money and articles from the passengers and assaulted them. They again directed the passengers and him to board on the Bus and not to leave the place before 2 hours and thereafter, they fled away. He further deposed that he drove the Bus along with the passengers to Police Station Ramanujganj where he lodged the report Ex. P/1. Spot map was prepared vide Ex.P/2. He was examined by the Doctor and he identified the accused persons in the Identification Parada vide Ex.P/3. Bus Conductor, Sunil (PW3) deposed on the same line. Kalamuddin (PW5) deposed on same line.

9. Nisar(PW7) has identified the present appellant in dock identification. Identification in Court i.e. dock identification is a substantive piece of evidence and admissible in evidence. If dock identification is otherwise reliable then reliance can be placed upon the same.

10. In the matter of *Suraj Pal & Others Vs. State of Haryana*, reported in 1995(2) SCC 64, it has been held that dock identification is accepted if otherwise found to be reliable. From the evidence of Nisar (PW7) it is established that the incident had occurred in broad day light and he had full opportunity to see the entire incident and the person who committed robbery. It is not a case where the incident is committed in some dark place where facility of light was not available. True it is that certain contradictions are there in the statements of seizure witnesses, but the same is not sufficient to discard the evidence of Nisar (PW7) who is an eye witness to the incident. Thus, version of Nisar (PW7) inspires confidence of the Court and it is trustworthy. Therefore, the finding arrived at by the trial Court is sustainable under the law and not liable to be reversed.

11. As regard question of conviction is concerned, offence under Section 398 IPC is related to attempt to commit robbery or dacoity but, here offence of dacoity is completed, therefore, independent conviction for offence Section 398 IPC is not sustainable under the law. Conviction/sentence under Section 398 IPC is hereby set aside.

12. It is established from the evidence that the appellant was having firearm at the time of commission of offence and he used the same for the purpose of robbery and again the said arm is workable as per report of Ballistic Expert. The sanction for prosecution under Section 39 of the Arms Act is accorded as per the letter and spirit of law, therefore, conviction under Section 25 & 27 of the Arms Act is sustainable.

13. The appellant is convicted under Section 395 read with Section 398 IPC and the sentences awarded by the trial Court except for Section 398 IPC are maintained.

14. Accordingly, the appeal is liable to be and is hereby dismissed. The trial Court will execute the sentence part if the appellant had not already suffered full term.

Sd/

(Ram Prasanna Sharma)
JUDGE