

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.A. No. 1061 of 2016

Abdul Saleem @ Lala @ Lali, S/o. Mohd. Yusuf Ansari, Aged About 35 Years, R/o. Village- Pandri-Kenwaripara, Police Station- Raghunath Nagar, District- Balrampur Ramanujganj.

---- Appellant

Versus

State Of Chhattisgarh, Through : The P.S. Basantpur, Distt. Balrampur – Ramanujganj, Chhattisgarh.

---- Respondent

CR.A. No. 1166 of 2016

Imtiyaz Kalifa, S/o. Ismail Kalifa, Aged About 47 Years, R/o. Nagar Utari, Chachariya, Police Station - Nagar Utari, District Gadwa Jharkhand.

---- Appellant

Versus

State Of Chhattisgarh, Through : The P.S. Basantpur, Distt. Balrampur – Ramanujganj, Chhattisgarh.

---- Respondent

CR.A. No. 1171 of 2016

Mohd. Harun, S/o. Abbas Ali, Aged About 40 Years, R/o. Village Badwar, Police Station -Ramkola, District Surajpur, Chhattisgarh.

---- Appellant

Versus

State Of Chhattisgarh, Through : The Station House Officer, Police Station Basantpur, District Balrampur Ramanujganj, Civil District Surguja Ambikapur Chhattisgarh.

---- Respondent

AND

CR.A. No. 1311 of 2016

Imran Ansari, S/o. Shri Ismaile Ansari, Aged About 35 Years, R/o. Village Madarsa Chauck, Balsokara, Police Station -Chanho, District Ranchi, Jharkhand.

---- Appellant

Versus

State Of Chhattisgarh, Through : Police Station Basantpur, District Balrampur- Ramanujganj, Civil District - Surguja, Chhattisgarh.

---- Respondent

For Appellants

In Cr.A. No.1061 of 2016 : Mr. Sunil Sahu, Advocate

In Cr.A. No.1166 of 2016 : Mr. Jitendra Shrivastava, Advocate

In Cr.A. No.1171 of 2016 : Mr. D.N. Prajapati, Advocate

In Cr.A. No.1311 of 2016 : Ms. Arpana Singh, Advocate on behalf of
Mr. Bhupendra Singh, Advocate

For Respondent/State : Mr. Ashish Shukla, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

06/12/2018

1. All the above appeals are heard and decided together by this common order as they are preferred against against the judgment of conviction and order of sentence, passed by the Additional Judge of Additional Sessions Judge, Ramanujganj, District – Surguja (Ambikapur) (C.G.), passed in Sessions Trial No.222/2013, passed on dated 26.07.2016, whereby convicting

the appellants for the offence under Section 395 and 397 of the Indian Penal Code and sentencing them to undergo R.I. for 10 years and fine of Rs.1000/- and R.I. for 7 years respectively, with default stipulations.

2. The case of the prosecution in brief is this that on 12.02.2013, the passenger bus bearing No. UP-66-T-0277 departed from Ambikapur to Banaras at about 11.15 at night. On the way at about 00.30 am on 13.02.2013, one of robbers pointed gun at the driver of the bus and told him that the bus is now high-jacked. Thereafter, that robber and his associates assaulted and injured the number of passengers and looted mobile phones, cash, jewellery etc. worth Rs.7.00 lakhs from the passengers and then left the bus and fled away from the spot. FIR vide Ex.P-28 was lodged in the Police Station -Basantpur. The police has investigated the case, made seizure of some articles from the spot vide Ex.P-1 and recorded the statement of the witnesses. Saeed Ansari, Abdul Salim @ Lala, Moieed Ansari @ Pappu, Imran Ansari were apprehended and interrogated and at their instance country made fire arms, mobile phones, vehicle jeep bearing No.C.G.-15-CL-5339 and its papers were seized vide Ex.P-7 to Ex.P-12 and Ex.P-14 and Ex.P-15. Test identification parade was conducted vide Ex.P-14 in which Saeed Ansari, Imran Ansari, Moieej Ansari @ Pappu and Lala @ Lali @ Abdul Salim were identified by the concerned witnesses. Seizure of one motor cycle bearing registration No.C.G.-15-E-9744 and its keys

were made vide Ex.P-13. Revenue Officer prepared map of the spot vide Ex.P-27. Seized articles pistols, country made fire arm and live cartridges were sent for examination to Reserve Police Inspector, Balrampur, who examined the same and gave report vide Ex.P-21 to Ex.P-24. After completion of investigation charge-sheet was filed before the concerned trial Court.

3. Appellants and the other accused persons were charged with offence under Section 395 and 397 of the Indian Penal Code and Section 25/27 of the Arms Act. The appellants denied the charges and prayed for trial. The prosecution examined as many as 21 witnesses on its behalf. On examining the appellants under Section 313, they denied all the incriminating evidence against them and pleaded innocence and false implication. No witness was examined in defence. On completion of trial, judgment has been delivered, in which the co-accused persons namely Saeed Ansari, Moieej Ansari @ Pappu, Krishna Kumar Sahu @ Sonu and Girjashankar have been acquitted of all the charges, whereas the appellants stand convicted as mentioned herein above.
4. It is submitted by the learned counsel appearing on behalf of the appellants that the appellants have been erroneously convicted by the trial Court without there being any evidence of prosecution. No case is made out against the appellants according to the evidence present on record of the trial Court.

Further on account of acquittal of 4 accused persons out of 8 in total, the conviction under Section 395 and 397 of the Indian Penal Code is itself bad-in-law. The evidence given by the witnesses of the prosecution is not reliable and trustworthy, which could not have been formed the basis of conviction against the appellants. The evidence on identification of the appellants is totally doubtful, which has been made the basis of conviction by the trial Court. All the independent witnesses of memorandum and seizure have not supported the prosecution case. Therefore the appellants are entitled for acquittal. In the alternative it is prayed that in case, the Court is not inclined to allow this appeal and acquit the appellants in that case, sentence of imprisonment imposed upon the appellants may be reduced to the period of detention already undergone by them in jail as they are going to complete near about six years in jail from the date of their arrest.

5. Counsel for the State opposes the grounds raised in appeal and the submissions made in this respect. It is submitted that the prosecution has proved its case beyond all reasonable doubts. Santosh Kumar Singh (P.W.-5) and Arvind Pathak (P.W.-6) have clearly identified the appellants and have stated that they were the persons, who had been engaged in looting the passengers on the date of incident. Rest of the witnesses have clearly given statement regarding the offence committed by them. As clear identification is established only on the basis of the statement given by the Santosh Kumar Singh (P.W.-5) and Arvind Pathak

(P.W.-6), therefore, no case is made out for acquittal of any of the appellants. Hence there is no room for interference in the impugned judgment, hence, the appeals be dismissed.

6. I have heard the learned counsel for the parties and perused the record of the Court below.
7. Suresh Dubey (P.W.-1) was the passenger of the bus, who has stated that on the date of incident 5-6 robbers, entered into the bus and on the point of revolver, country made fire arm, looted cash and mobile phones from this witness as well as from the other passengers. He has not identified any of the accused person/robbers. Neither made any identification of the appellants.
8. Kameshwar Patel (P.W.-4) in the hotel owner, where the bus stopped, Rambabu Keshari (P.W.-7), Rakesh Tiwari (P.W.14) and Swatantra Kumar (P.W.-18) are passengers of the bus and another passenger of the same bus Vinod Verma (P.W.-19) have though stated about the commission of offence of loot, but they have not identified any of the appellants or other accused persons.
9. Key witness in this case are Santosh Kumar Singh (P.W.5) and Arvind Pathak (P.W.-6). Santosh Kumar Singh (P.W.-5) has given statement before the Court that he was one of the passenger on the bus that was looted. He has stated that four persons came armed with pistol and looted the passengers robbing them of their possession. In paragraph- 4, he has made clear statement that

he had identified the appellants in this case. Although he has made statement in cross-examination that the persons, who were looted the bus had covered their faces with cloths below their eyes, but he was able to see rest of the faces and he has also admitted that he saw the persons whom he has identified as culprits covered faces, even then he has able to identify them. Arvind Pathak (P.W.-6) has given similar statement regarding the offence committed and regarding the identification of the appellants.

10. Kunjlal Singh (P.W.-13), the Executive Magistrate has conducted test identification parade vide Ex.P-14, in which the identifying witness identified the appellant Imran Ansari, Abdul Salim @ Lala @ Lai. But the identifying witness Daljeet Ram (P.W.-8) has not supported the prosecution case and given statement that he is unable to make clear identification of the appellants present before the Court. Rameshwar (P.W.-10) denied the identification of the appellants at the time of identification parade.
11. Another witness of test identification parade Vinod Verma (P.W.-19) has given similar statement about not identifying the accused persons witness in the test identification parade and one more witness Kunjbihari (P.W.-21) has given similar statement by not supporting the prosecution case.
12. Inspector P. Tete (P.W.-16) has given statement about lodging of FIR (Ex.P-28), prepared spot map vide Ex.P-27 and getting the

injured persons medically examined. He made seizure of bus bearing No. UP-66-T-0277 from the spot vide Ex.P-1 and recorded the statement of the witness under Section 161 of Cr.P.C. He has stated that he apprehended the appellant – Lala @ Lali @ Abdul Salim and on interrogating him, he led to discovery of one mobile phone and cash of Rs.5000/- vide his memorandum statement Ex.P-1 and on that basis cash Rs.2200/- and one mobile phone was seized vide Ex.P-7.

13. He has stated that on interrogating the appellant -Imran Ansari, he made memorandum statement vide Ex.P-5 and on that basis seizure of gold in melted condition was made vide Ex.P-15 and seizure of one mobile phone, one country made firm arm, one live cartridge of 315 bore and cash Rs.2,500/- was made vide Ex.P-9. Similarly on interrogating the appellant Mohd. Harun, he gave memorandum statement vide Ex.P-16 and led to recovery and seizure of motor cycle bearing registration No.C.G.-15E-9744 and its keys vide Ex.P-13. On interrogating the accused appellant - Imtiyaz Khalifa, he lead to recovery of his mobile phone and another mobile phone and cash of Rs.1,800/-, which was seized vide Ex.P-12. He has stated about requesting for conduction of test identification parade to the Executive Magistrate and about making rest of the investigation procedure. In cross-examination, statement of this witness has remained un-rebutted. Mangesh Soni, A.S.I. (P.W.17) has helped in the investigation.

14. After closely scrutinizing all the evidence of the relevant witnesses, I am of this opinion that the conviction against the appellants recorded by the trial Court does not suffer from any infirmity. Therefore, the conviction against them is sustainable. Considering on the alternative prayer made by the counsel for the appellants regarding reduction of sentence imposed upon the appellants, as it appears that there is no mention of any previous criminal record of the appellants, the appellants are in jail since about 5 years and 9 months. After over all consideration of the facts and circumstances of the case, I am inclined to allow this prayer. Therefore, the appeal is allowed in part. The conviction of the appellants in offences under Section 395 and 397 is upheld, whereas the sentence imposed upon them is modified to the period of imprisonment already undergone by them in jail for both the offences. The appellants are reported to be in jail. They be set at liberty forthwith, if not required in any other case.

Sd/-
(Rajendra Chandra Singh Samant)
Judge