

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1111 of 2012**

1. Kewal Singh S/o Punitram Halba Aged About 22 Years R/o Ward No. 16, Kektipara, Rajhara, Police Station Rajhara, Distt. Balod Chhattisgarh
2. Abdul Mazid @ Golu @ Banka S/o Taaj Mohd. Musalman Aged About 22 Years R/o Ward No. 18, Purana Bazar, Rajhara, Police Station Rajhara, Distt. Balod C.G

---- Appellants**Versus**

- State of Chhattisgarh Through The Police Station Rajhara, Distt. Balod C.G.

---- Respondent

For Appellants	:	Shri Roop Naik, Advocate
For Respondent-State	:	Ms. Madhunisha Singh, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****07/04/2018**

1. This appeal has been preferred against the judgment of conviction and order of sentence passed by learned Additional Sessions Judge, Balod, District Durg in Sessions Trial No.19/2012 dated 06.09.2012, whereby the appellants have been convicted under Sections 392 & 397 of the IPC and sentenced to undergo R.I. for 7 years, each in both counts and to pay fine of Rs.50/- - 50/-, each, and in absence of payment of fine amount 3 months additional R.I. was ordered.
2. As per the prosecution case, in the intervening night of 15/16-2-2012, the complainant Chandravati Patel was sleeping in her house and at about 12 am she went out for bathroom and after answering the call of nature came back to the bedroom, she saw that three persons were present inside the

room, one of them was holding a knife, which was placed at her abdomen and threat was extended that if she raises alarm, she would be killed. Further the accused asked for key of the almirah and demanded the valuables which are kept in the almirah, upon which she took out a necklace of worth Rs.45000/- and Rs.40000/- cash which was kept in the almirah and gave it to them. Thereafter, after receiving the goods, all the accused fled away from the scene. Thereafter, the report was made and investigation started. On enquiry, one necklace was seized on the memorandum of Kewal Singh, which was identified and from Abdul Mazid on his memorandum, a knife was seized. Further, the accused Abdul Mazid was identified in the Test Identification Pared. The statements were recorded and after investigation and recording the statements, charge-sheet was filed.

3. During the course of trial, the appellants abjured the guilt and claimed to be tried.
4. On behalf of the prosecution, 7 witnesses were examined. The Court below after evaluating the statements and the documents on record convicted the accused as aforesaid. Hence this appeal.
5. Learned counsel for the appellants would submit that the conviction so recorded by the trial Court cannot be sustained as there is no acceptable evidence. He would further submit that before the Test Identification Pared, the accused were shown to the complainant, therefore, the TIP had lost its significance. He would further submit that the FIR is also delayed by two days and the appellants have been falsely implicated by leaving away the original culprits. Therefore, the conviction may be set aside.
6. Per contra, learned State counsel opposes the arguments advanced by

learned counsel for the appellants and submits that the judgment of conviction passed by the learned trial Court is well merited which do not call for any interference.

7. The victim Chandravati Patel in this case was examined as PW-5. The Court statement would show that she identified both the accused/appellants in Court. Before the Court she stated that she knows the appellants, they are residents of Dalli-rajahara. Further narrating the incident she stated that at about 12 am when she went to bathroom and came back she saw that three boys were present in the room and one of them had covered his face while two were open. Thereafter, they placed one knife on her abdomen and extended threat that if she raises alarm, she would be assaulted and forced her to open the almirah and demanded money. Thereafter, they took the cash and a gold necklace and fled away. She further stated that after the incident she was in shock and therefore, she did not chase them and in the morning only she disclosed this fact to the neighbors. She further stated that at the time of happening of the incident she was alone in the house and her husband had gone out for some business purpose and when her husband came back after two days, she made a report to the police. No virtual cross-examination has been made to this witness.
8. I.O. H.S. Netam (PW-6), who investigated the crime has prepared the map and also seized the receipt (cash memo) of the necklace of Prakash Jewellers, Dalli-rajahara, vide seizure memo Ex. P-6 and the original receipts were proved as Ex. P-6. Perusal of Ex. P-6 would show that it is a receipt of Prakash Jewellers of a necklace of 16.020 gm and name of the complainant Chandravati Patel is mentioned in the receipt. The said necklace was seized from Kewal Singh on the basis of memorandum statement (Ex. P-1). Ex. P-1, the memorandum statement is further proved by Roshan Kumar

Rawte (PW-1) and has affirmed that Kewal Singh, appellant No.1 herein had given such memorandum. On the basis of such memorandum, the seizure of necklace was made from poultry farm vide Ex. P-2. Ex. P-2 is also proved by Roshan Kumar Rawte (PW-1). The said necklace after seizure was put to identification. The identification memo is Ex. P-17. Perusal of Ex. P-17, the identification memo of the necklace, would show that the complainant Chandravati Patel had identified her necklace amongst the other gold ornaments.

9. The Executive Magistrate Rupendra Singh (PW-7), who conducted such identification paraded has stated that the complainant Chandravati Patel had identified and taken out the necklace amongst six other ornaments which were mixed with it and thereafter the identification memo was prepared, which bears signature from A to A. Thereby the necklace, which was looted from the complainant Chandravati Patel was recovered on the basis of memorandum from Kewal Singh and was identified by the complainant. Consequently, the entire chain of events were proved by the prosecution about the loot, memorandum, seizure and identification. No plausible explanation has been given by the accused Kewal Singh as to how he came into possession of the necklace. Ownership of the necklace has been proved by the prosecution by Ex. P-6, the bill of the necklace, which was produced by the complainant. In a result, the involvement of appellant No.1 Kewal Singh was established by the prosecution.

10. Now coming to the involvement of appellant No.2 Abdul Mazid @ Golu @ Banka, in the statement of victim Chandravati Patel (PW-5), primarily she has identified the accused in the Court. After the arrest of Abdul Mazid was made, he was subjected to identification parade. The identification parade of Abdul Mazid is marked as Ex. P-16.

11. Rupendra Singh (PW-7), who conducted the identification parade, has stated that while the identification was carried out, four persons were also mixed with the appellant and during the identification the complainant has identified Abdul Mazid. Further statement of Moolchand (PW-2) would show that the identification was carried out by the police through Chandravati Patel (PW-5), wherein the victim has identified one Kewal Singh also vide Ex. P-3. Further the memorandum statement of Abdul Mazid was recorded, vide Ex. P-4 only on the basis of such memorandum, the seizure of knife was made vide Ex. P-5. Therefore, if the entire evidence are read together, it shows that the prosecution was able to prove the presence of both the appellants on the date of incident i.e. on intervening night of 15/16-02-2012 the appellants entered into the house of the complainant Chandravati Patel and committed loot of cash and ornaments by extending threat on the point of knife. The statement of Chandravati Patel (PW-5) with respect to the identification of the ornaments and the identification of the appellants is not been demolished by the accused.

12. In a result, the finding arrived at by the Court below do not appear to be without any evidence on record, therefore, after close scrutiny I am not inclined to interfere with the judgment of conviction and sentence dated 06.09.2012 passed by the Additional Sessions Judge, Balod, District Durg in Sessions Trial No.19/2012.

13. The appeal has not merit. It is accordingly dismissed.

Sd/-

Goutam Bhaduri
Judge

Ashu