

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQA No. 74 of 2014

(Arising out of judgment/order dated 05/10/2012 in Case No. 37/2009 of the learned 2nd Additional Sessions Judge, Raipur District Raipur)

Smt. Jyoti Prachande, W/o. Praveen Prachande, Aged Aboput 33 years, R/o. In front of Chakraborty Public School, Professor Colony, Sector-1, Near Sakti Mandir, Raipur, Police Station Purani Basti, Post Office Raipur, Tahsil & District Raipur (C.G.)

--- APPELLANT

Versus

1. State of Chhattisgarh through the District Magistrate, Raipur, District Raipur (C.G.).
2. Jeevan Lal Nayak, S/o. Ram Bharosha Nayak, Aged about 66, (Accused No.1).
3. Satyanarayan Nayak, S/o. Jeevan Lal Nayak, Aged about 37 years, (Accused No.2).
4. Manish Nayak, S/o. Jeevan Lal Nayak, Aged about 32 years, (Accused No.3)
5. Gabbar Yadav, S/o. Kailash Prasad Yadav, Aged about 28 years, (Accused No. 4).
6. Premnarayan Nayak, S/o. Jeevan Lal Nayak, Aged About 30 years, (Accused No. 5).

All R/o. Dudhadhari Math, Police Station- Purani Basti, Post Office, Raipur, Raipur, Tahsil and District Raipur (C.G.)

---- RESPONDENT

For the Appellant	:-	Mr. Amiyakant Tiwari, Advocate
For the Respondents	:-	Mr. Arvind Dubey, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Ram Prasanna Sharma

Order on Board By
Prashant Kumar Mishra, J.

08.01.2018

1. Appellant would assail the impugned judgment of acquittal, by which the trial Court has acquitted the accused persons from the charges under Sections 147, 451 and 395 of the IPC.
2. Admittedly, the appellant and her husband are the tenant of the accused persons where from the appellant is operating a grocery shop. It is also admitted that a civil suit as well as proceedings under Section 145 of the Cr.P.C. was pending between the parties on the date of alleged incident.
3. In the above background, present FIR was lodged against the accused persons inter alia alleging that on 02/12/2008 at about 12.00 noon, the accused persons along with 20-25 other members of the locality came into the said shop, committed robbing and after forcibly entering the premises, committed dacoity by taking away Rs. 20,000/-, oils tin, bags of potato and rice etc.
4. In the course of investigation, Investigating Officer has not recovered any of the property which is said to be looted by the accused persons.
5. Considering lacuna in the investigation in respect of non seizure of looted articles and the pending civil and quasi criminal proceedings between the parties, the trial Court has held that the accused persons are not guilty of committing offence under Sections 147, 395 and 451 of the IPC.

6. Assailing the impugned order Mr. Amiyakant Tiwari, learned counsel for the appellant would submit that even if other cases were pending between the parties, a landlord cannot be permitted to evict tenants from the tenant premises by using force of law or by committing dacoity. He would also argue that if investigating officer has committed any irregularity or defect in investigation the complainant/informant should not be made to suffer.
7. Learned State counsel would submit that since the State has not preferred any appeal, it is satisfied with the impugned judgment.
8. We have seen the document available on record. It appears that the parties were at loggerheads for quite some time and the matter was earlier settled before the concerned Superintendent of Police by executing an agreement between the parties. The said agreement concerned about the appellant's promise to vacate the premises before the date of incident. It appears that when the appellant failed to keep his promise, the other party proceeded for vacating the premises and in such process or dispute an altercation leading to scuffle took place for which report was lodged.
9. Ordinarily, the looted articles are considered to be a very material piece of evidence on the basis of which the happening of dacoity is determined. In the case of hand, the said material piece of evidence is lacking because the Investigating officer has not recovered the cash or other looted articles, though the FIR was registered on the date of incident itself. If no recovery is made, it

may be presumed that no such loot has taken place.. Similarly, if no recovery is made, the FIR becomes doubtful and the said doubt is strengthened in the background of litigation between the parties before the civil Court and before the Sub Divisional Magistrate as well under Section 145 of the Cr.P.C.. When the litigation is pending between the parties, there is always chance of exaggerated report, which cannot be ruled out. Therefore, it would never be a safe proposition to convict the landlord for committing dacoity on a report lodged by the tenant. There may be exception but present is not one such case where we have found such evidence which may eventually lead to respondents' conviction.

10. In our considered opinion, the judgment of acquittal does not call for any interference, accordingly the appeal is liable to be and is hereby dismissed.

Sd/-

Judge

Prashant Kumar Mishra

Sd/-

Judge

Ram Prasanna Sharma