

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved for Judgment on : 06.09.2018****Judgment delivered on : 03/10/2018****CRA No. 695 of 2015**

1. Digamberlal Jangde S/o Late Paras Jangde, Aged About 38 Years, R/o Village Persadih, Police Station Jaijaipur, District Janjgir-Champa, Chhattisgarh, Chhattisgarh, At present Turipara, Raigarh, Police Station City Kotwali, Raigarh, District Raigarh.
2. Buddhadev Vishwal @ Chiyen S/o Gangaram Vishwal, Aged About 32 Years, R/o Village Gulunda, Police Station- Raigali, District Jharsuguda, Orissa, District : Jharsuguda, Orissa
3. Hasan Ansari S/o Kurban Ansari, Aged About 33 Years, R/o Jehlitand, Police Station Khallari, District Ranchi, Jharkhand, District : Ranchi, Jharkhand

---- Appellants**Versus**

- State Of Chhattisgarh S/o Through Station House Officer, Police Station Dabhra, District Janjgir-Champa, Chhattisgarh, Chhattisgarh

---- Respondent

For Appellant No.1 : Mr. Rishi Rahul Soni, Advocate.

For Appellant No.2 and 3 : Mr. Y.C.Sharma and Ms. Priya Mishra,
Advocates.

For Respondent/State: Mr. Ashok Swarnkar, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Judgment**03/10/2018**

1. This appeal has been preferred against judgment dated 15-05-2015 passed in S.T. No.226/2006 by the First Additional Sessions Judge, Sakti, Distt. Janjgir-Champa, C.G. convicting the appellants under Section 395 and 395/397 of the IPC and sentencing them with R.I. for 7 years along with fine Rs.5000/- and R.I. for 7 years along with fine Rs.5000/-, respectively, with default stipulations and direction

that both the jail sentences shall run concurrently.

2. The case of the prosecution, in brief, is this that on 09-07-2005 at 00.05 a.m. 6 unknown persons entered into the house of complainant Rupsingh Chandra (PW-1) armed with pistol, country-made firearm, *sutali* bomb and committed the offence of loot of one gold necklace worth Rs.8,000/- which was worn by Dujmati (PW-5) and when the complainant and others tried to intervene they were assaulted and injured, resulting in injury caused to Rupsingh Chandra (PW-1), Sudarshan (PW-2), Gadaram (PW-3) and Dujmati (PW-5) and then they exploded one *sutali* bomb to terrorize the family members of the complainant and fled from the spot. While fleeing, the shoes, and a magazine of 9 MM pistol and one round cartridge were left by the culprits. The FIR was lodged by Rupsingh Chandra (PW-1) against unknown 6 persons giving their description. During investigation, the appellants were apprehended on 16-11-2006 along with others in connection with another case of dacoity. On interrogation, they revealed that they were the persons who had in company with appellant No.3, deceased accused Dwarikadas and absconding accused persons namely Mahendra Ray and Suraj Sharma have committed the offence of dacoity in the house of the complainant. The appellants were identified by the injured and the witnesses in TIP.
3. On completion of the investigation charge sheet was filed before the concerned Court. The trial Court framed the charges under Section 395, 397 of the IPC and Section 25 and 27 of the Arms Act. The appellants pleaded not guilty and prayed for trial.

4. On completion of the evidence for prosecution, the appellants were examined under Section 313 of the CrPC, in which they have denied all the incriminating evidence against them, pleaded innocence and false implication. Two defence witnesses were examined in defence. On completion of the trial, the impugned judgment was passed in which, the appellants have been acquitted from the charges under Section 25 and 27 of the Arms Act and convicted and sentenced for the offences as aforementioned.
5. It is submitted by the counsel for the appellants that the appellants have been erroneously convicted by the trial Court, without there being evidence of the prosecution beyond reasonable doubt. The evidence of prosecution witnesses was not trustworthy, they are full of contradictions and omissions, which could not have been made the basis for the conviction against the appellants. The test identification parade of the appellants also suffers from illegality, which should not have been believed. The case rests only on the evidence of interested witnesses, the family members of the complainants. Hence, miscarriage of justice has occurred due to the conviction against the appellants based on such evidence. It is prayed that the appeal may be allowed and the appellants may be acquitted of the charges. In the alternative, it is submitted that if this Court is not inclined to allow this appeal and acquit the appellants, in that case, the sentence of imprisonment imposed upon the appellants in this case may be reduced to the period already undergone in jail by the appellants in this case as the same is too harsh.

Learned counsel for the appellants placed reliance on the

judgment delivered by Hon'ble the Supreme Court in **C.R.A. No.1663 of 2012** on May 6, 2015 between **Iqbal and another and State of U.P**, reported in [2015 (150) AIC 30 (SC)] [Supreme Court], on the point of evidence beyond reasonable doubt.

Learned counsel for the appellants further placed reliance on the judgment delivered by Calcutta High Court in **C.R.A. No.451 of 2013** on November 26, 2013 between **Md. Abdul @ Bapi and State of West Bengal**, reported in [2014 (133) AIC 679 (CAL., H.C.)] (CALCUTTA HIGH COURT), on the point of reduction of the sentence.

6. Per contra, learned counsel for the State opposes the grounds raised in this appeal and the submission made on behalf of the appellants. It is submitted that the prosecution has proved its case beyond reasonable doubt and there is no room for interference in the impugned judgment. The conviction against the appellants is based on cogent and reliable evidence of prosecution beyond reasonable doubt. Hence, the appeal may be dismissed.
7. Heard learned counsel for the parties and perused the record of the trial Court.
8. Rupsingh Chandra (PW-1) identified the appellants in dock and stated that on the date of incident the appellants with others forced entry to the house in the midnight and assaulted the witness on his head with pistol causing injury to him. The appellants and others looted the gold necklace worn by mother of this witness and also injured father, mother and brother of this witness by assaulting them. He has stated that he identified the present appellants in the

TIP correctly vide Ex.-P/3. In cross examination he admitted that he was not acquainted with the appellants earlier. There is no such statement in his cross-examination so as to contradict his statement in the examination-in-chief, also, as to draw any other inference. Although, he has made statement in para 23 of his deposition that he had seen the masked men at the time of incident and the persons were not masked in the TIP. This statement has relevance because in the FIR lodged by this witness he has stated that culprits had covered their faces with clothes and during the incident cover of only one culprit had come out. There is no statement by this witness to this effect in his examination-in-chief to explain that face of which culprit was seen by him, which is an omission regarding which the prosecutor has not put any question to him. Although he has denied rest of the suggestions given by the defence on the point of the TIP, but, the statement in the FIR about faces of culprit being seen covered has a relevance for the reason that in such case the witness could have identified only one person, whereas, he has identified all the appellants.

9. Surdarshan (PW-2) has narrated about the incident and has stated that the culprits had covered their faces with clothes and he could not identify any of the culprits in the TIP, but, later on, he improved his statement that he identified all the culprits vide Ex.-P/6.
10. Gadaram (PW-3) has similarly stated about the incident of loot of gold necklace, but he has stated that he did not identify any of the accused persons.
11. Dujmati (PW-5) is another witness of the spot whose necklace was

looted by the culprits. She has also stated that the culprits were wearing masks, although she could see their eyes and on that basis she has identified them. She has not stated about seeing the full face of any of the culprits including the appellants. On leading question being asked by the prosecutor she stated that she identified the appellants and deceased accused Dwarikadas. In cross-examination by defence she has stated that she identified one culprit who had marks of chicken pox on his face, but then she admitted that she cannot explain, as to she has identified which of the accused who were present before the Court. She has denied other adverse suggestions regarding the TIP.

12. Laxmi Devi Chandra (PW-6) has not identified the appellants/accused persons in the Court, though she has narrated about the incident. Similar statement has been given by Kheerbai (PW-7), Koshilyabai (PW-8), Dinesh Kumar Khandelwal (PW-9).
13. Neelam Toppo (PW-4), Executive Magistrate has stated before the Court that in the identification parade vide Ex.-P/3, Rupsingh Chandra (PW-1) identified appellant No.1, deceased accused Dwarika and one accused Mahendra who is now absconding. He did not identify appellant No.2 Buddhadev. He has stated that in another TIP Sudarshan (PW-2) identified appellant No.1, deceased accused Dwarika and absconding co-accused Mahendra Roy vide Ex.-P/6. He also did not identify appellant Buddhadev. He has further stated that Gadaram (PW-3) did not identify any of the accused persons vide Ex.-P/7, but, Dujmati (PW-5) identified Dwarika (deceased accused) and appellant No.2 in the TIP vide

Ex.-P/8. He has stated that in another TIP vide Ex.-P/9 Rupsingh Chandra (PW-1) identified appellant No.3 Hasan Ansari. He has given other details of the TIP regarding the manner in which the TIP was conducted. There is no such statement in his cross-examination so as to contradict his statement given by him in his examination-in-chief.

14. After considering on all the evidence present in the case regarding the identification of the appellants/accused persons in the TIP, the question which comes up, is this that, according to the contents of the FIR (Ex.-P/1) the faces of all the culprits were covered with clothes and cloth of only one culprit had slipped at the time of incident who has not been particularly identified in any of the witness in TIP stating that this was the person whose cloth had slipped, whereas, the witnesses have identified as many as 5 persons and there is no such statement of admission of any of the witnesses, that in what manner and on what basis they made the identification. Hence, after due consideration on all the evidence on the point of the TIP, it appears that this evidence does not inspire confidence of this Court, hence, this evidence should not have been made the basis of conviction against the appellants.
15. It is a case in which the article of loot has not been recovered and seized from the possession of any of the appellants or other accused persons. Doctor N.P. Mishra (PW-10) has proved the injuries caused to the injured witnesses. Bhojram Chandra (PW-12) is a witness of seizure of the articles from the spot. A.S.I. R.G. Dewangan (PW-13), Constable R. Madanlal Maravi (PW-14), Sub-

Inspector Swayambar Singh (PW-15) have assisted in the investigation. Inspector K.S. Rathiya (PW-16) has assisted in the investigation and has conducted the proceedings of TIP of the apprehended accused persons. Pradeep Kumar Pandey (PW-17) is Reader to District Magistrate Janjgir-Champa, who has stated regarding sanction for prosecution under the provisions of the Arms Act. Constable Ramkumar Singh (PW-18) is the person who assisted in the medical examination of the injured persons in this case. Jalharu Chandra (PW-19) is a seizure witness who has not supported the prosecution case, even then he was not declared hostile by the prosecutor. Head Constable Shivrath Tandan (PW-20) has done the formal arrest of appellant No.3. Patwari, Deraharam (PW-21) has prepared the spot map, Ex.-P/45. Mukku Sarathi (PW-22) and Bhumilal (PW-23) are the witnesses of TIP and this TIP was also conducted in the presence of Shridhar Kumar (PW-24). Bodhram Kurre (PW-25) is another seizure witness, who has not supported the prosecution case. Another witness Vijay (PW-26) is also a hostile witness. Investigator, Ram Awadhesh Singh (PW-27) is the person who lodged the FIR (Ex.-P/1) and done some part of the investigation.

16. After considering each and every evidence present on record of the trial Court, it appears that the conviction of the appellants is based only on the evidence of the TIP, regarding which finding has been given hereinabove, that the evidence of the TIP given by the witnesses does not inspire confidence of the Court. Hence, according to the principle in this respect that when more than one

view can be formed with respect to commission of the offence by the persons tried for it, in that case, the view that is favourable to the accused persons has to be followed in the interest of justice, hence, for these reasons, I conclude, that it is a case in which the prosecution has failed to prove the case against the appellants beyond reasonable doubt. As a result, the conviction against the appellants appears to be bad in law, which needs interference.

17. Consequently, the appeal filed by the appellants is allowed. Conviction of the appellant are set aside. They are acquitted of the charges under Section 395 and 395/397 of the IPC. They be set at liberty forthwith, if not required in any other case.
18. The appeal stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge