

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on: 12/09/2018

Judgment delivered on: 08/10/2018

CRA No. 749 of 2015

1. Gulshan Kumar S/o Gokul Prasad Yadav Aged About 19 Years R/o Village Sero, Police Station Dabhara, Civil And Revenue District - Janjgir Champa Chhattisgarh , Chhattisgarh
2. Shiv Kumar S/o Pitambar Sahu Aged About 21 Years R/o Village Sero, Police Station Dabhara, Civil And Revenue District - Janjgir Champa Chhattisgarh , District : Janjgir-Champa, Chhattisgarh
3. Suman Ratre S/o Ramlal Aged About 23 Years R/o Village Ghiwara, Police Station Dabhara, Civil And Revenue District Janjgir Champa Chhattisgarh , District : Janjgir-Champa, Chhattisgarh
4. Umesh Kumar S/o Kripa Ram Bhaskar Aged About 24 Years R/o Village Ghiwara, Police Station Dabhara, Civil And Revenue District - Janjgir Champa Chhattisgarh , District : Janjgir-Champa, Chhattisgarh
5. Kuldeep Chandra S/o Drupat Chandra Aged About 23 Years R/o Village Jhalrauda, Police Station - Baradwar, Civil And Revenue District - Janjgir Champa Chhattisgarh , District : Janjgir-Champa, Chhattisgarh

---- Appellants

Versus

- State Of Chhattisgarh S/o Acting Through Officer-In-Charge, Police Station - Nawagarh, Civil And Revenue District - Janjgir Champa Chhattisgarh , Chhattisgarh

---- Respondent

For the Appellants : Ms. Sangeeta Mishra, Advocate.

For the State/Respondent : Mr. Rahul Tamaskar, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Judgment

08/10/2018

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 20.05.2015 passed by the Second Additional Sessions Judge, Janjgir, District Janjgir-Champa (CG) in Session Trial No.239/2014, convicting the accused/appellants under Sections 395 & 341 of Indian Penal Code (for short 'IPC') and sentencing each of them to undergo RI for 10 years with fine of Rs.3000/-, SI for 1 month with fine of Rs.500/- & SI for 15 days with default stipulations, respectively.
2. The prosecution case, in brief, is this that complainant Ruknuddin PW-12 is the driver of truck bearing registration number CG 04-JC-8255. On 27.8.2014 at about 7 pm when the complainant was driving the said truck which was loaded with cement, four persons came on the motorcycle, stopped the truck and they not only assaulted him by hands and fists but also looted cash of Rs.3,800/-, driving license, voter ID card, one Samsung Mobile Phone and key of the truck. Thereafter they fled from the spot. A written complaint was presented by him in the Police Station Birra. Investigation in the matter was done by the Police Station Nawagarh and after completion of investigation, charge-sheet was filed against the appellants.
3. Appellants were charged with offence punishable under Sections

341, 394 & 395 of IPC. The appellants denied the charges framed against them and prayed for trial. On completion of prosecution evidence, the appellants were examined under Section 313 of CrPC in which they denied all the incriminating evidence appearing against them in the prosecution case, pleaded innocence and false implication. They have not examined any witness in their defence.

4. On completion of trial, the impugned judgment has been passed in which appellants stand convicted and sentenced in the manner as mentioned herein-above.
5. It is submitted by learned counsel for appellants that the appellants have been convicted without there being any material in the prosecution evidence establishing their guilt beyond reasonable doubt. According to the informant, only four persons have looted him whereas the charge-sheet has been filed against five persons which shows concoction of case against the appellants. The Test Identification Parade (TIP) has not been conducted in accordance with law. Statements of all the prosecution witnesses are not reliable as there are material contradictions and omissions in their testimonies. Hence, there is nothing trustworthy which can be relied upon to convict these appellants. Under these circumstances, the appellants had been entitled for acquittal in this case, but they have been erroneously convicted, therefore, it is prayed that the appeal be allowed and the appellants be acquitted from all the charges levelled against them.

6. Learned counsel for the State opposes the submissions made in this respect. It is submitted that prosecution has proved its case beyond reasonable doubt, therefore, there is no scope of interference in the impugned judgment. Hence, it is prayed that appeal be dismissed.
7. I have heard learned counsel for the parties and perused the record of the trial Court including the impugned judgment.
8. The question that requires determination in this appeal is as to whether on the basis of evidence available on record the prosecution has been able to establish guilt of accused/appellants beyond reasonable doubt ?
9. Complainant Ruknuddin PW-12 has stated before the Court that he knew the appellants. On the date of incident when he was driving the truck, all the appellants came on motorcycle, obstructed his movement on road then, all of them got inside the truck and assaulted him by hands and fists. Appellant Ramesh took out cash of Rs.3800/- from his pocket, mobile phone, driving license, voter card and other documents. They also took the key of vehicle and thereafter fled from the spot. He has further stated that he gave a written complaint ExP-13 in PS- Birra on the basis of which FIR Ex.P-14 was registered. He has further stated that in the test identification parade conducted at Tahsil Office, Nawagarh vide Ex.P-24, he has identified the appellants. In cross-examination, he has admitted that the appellants were not known to him prior to the date of incident. His statement regarding identification of appellant in TIP remained

unrebutted in his cross-examination.

The fact that the appellants were not known to this witness is further confirmed not only from the written complaint (Ex.P-13) lodged by him, but also FIR (Ex.P-14) as both these documents do not contain name of any of the appellants. Initially the offence was registered under Section 394 of IPC and subsequently it has been converted into Section 395 of IPC, which requires presence of five persons or more to commit the offence of dacoity.

10. Executive Magistrate S.S. Balke PW-13 has stated that he conducted the TIP in which the complainant had correctly identified the appellants. Memo of TIP is Ex.P-24. In cross-examination, he has denied that the police personnel were present at the time of conduction of TIP. He has clarified that some persons of similar physical description were mixed with appellants at the time of test identification parade. TIP ExP-24 shows identification of only four persons i.e. appellants No.1 to 4. Hence, it can be held that complainant Ruknuddin PW-12 had identified appellants No.1 to 4 in the TIP.

On close scrutiny of the evidence, complainant Ruknuddin PW-12 and S.S. Balke PW-13, it is apparent that no fault can be found in the TIP proceedings so as to hold it illegal or unbelievable. Hence, the finding of the Court below in this regard on the basis of these evidence appears to be proper and legal.

11. S.I Jitendra Singh Rajput PW-8 has lodged FIR Ex.P-16 in PS-Birra.

Inspector Vishram Singh Maravi PW-9, who subsequently registered FIR Ex.P-16 in PS-Nawagarh, has investigated this case. This witness has stated about recording of memorandum statement of appellant Gulshan vide ExP-1, appellant Shiv Kumar Sahu vide Ex.P-2, appellant Suman Ratre vide ExP-3, appellant Umesh vide Ex.P-4, appellant Kuldeep Chandra vide Ex.P5. On the basis of disclosure statement of appellant No.1, one motorcycle, papers, one mobile phone and SIM card were seized vide seizure memo of ExP-5. Similarly, on the basis of disclosure statement of appellant Shiv Kumar Sahu, one motorcycle and cash of Rs.100/- was seized from vide seizure memo of Ex.P-6. Similarly, cash of Rs.50/- was seized vide Ex.P-7 on the basis of disclosure statement of appellant No.3. Likewise, cash Rs.120/- was seized from appellant No.4 vide Ex.P-8 and cash of Rs.50/- was seized from appellant No.5 vide seizure memo of Ex.P-10.

12. Subhash Das PW-1 was examined as witness of memorandum and seizure under Ex.P-1 to Ex.P-8, he has not supported the prosecution case. Gopal Singh PW-2 was examined in support of memorandum Ex.P-9 and P-10, he has not supported the prosecution case. Similarly, Ramvilas Mehar PW-3 and Ramshiv Kashyap PW-4 have also been examined as witnesses of memorandum & seizure but they have not supported the case of prosecution and declared hostile.

13. The articles that have been seized from the appellants do not seem to have any connection with the articles looted from the complainant,

as the cash amount is not identifiable, no motorcycle were looted from the complainant and the mobile phone that has been seized has not been identified as the mobile phone of complainant. Hence, it cannot be said that property recovered and seized at the instance of appellants were the property of loot and dacoity. Hence, this evidence brought by the prosecution is of no consequence and irrelevant with respect to the proof of charge against the appellants.

14. Now the question that remains is only that whether appellant No.5 was also the person who looted the complainant and that the complainant has identified him as the person who looted him. There is no whisper in the statement of complainant (PW-12) about the presence of fifth person on the spot, therefore, it cannot be said that appellant No.5 was also involved in the crime in question and being so, the prosecution has not been able to establish the offence under Section 395 of the IPC, the appellants. However, in the given facts and circumstances of the case, appellants No.1 to 4 cannot escape their conviction under Section 394 of IPC

15. After close scrutiny of all the evidence present on record of the trial Court, it has been found that prosecution has failed to prove that it had been a case of dacoity punishable under Section 395 of IPC against because there is nothing on record showing involvement of appellant No.5. Hence, the conviction of appellants under Section 395 of IPC is bad in law which needs to be interfered with. As the prosecution has utterly failed to show involvement of appellant No.5 in the incident, therefore, he is entitled to be acquitted of all the

charges. This being the position, the appellants No.1 to 4 are also entitled to be acquitted of the charge under Section 395 of IPC, however, they cannot escape their conviction under Sections 341 & 394 of IPC.

16. For the foregoing discussions, the appeal is allowed in part. Conviction and sentences of appellant No.5 under Sections 341 & 395 of IPC are hereby set aside and he is acquitted of those charges. He is in jail since 2.9.2014, therefore, he be set at liberty forthwith, if not required to be detained in connection with any other offence. Conviction and sentence of appellants No.1 to 4 under Section 341 of IPC are hereby maintained. Conviction of appellants No.1 to 4 under Section 395 of IPC is set aside and instead they are convicted under Section 394 of IPC. Appellants No.1 to 4 are reported to be in jail since 30.8.2014, hence, period of sentence already suffered by them appeared to be sufficient punishment for the offence which they have committed i.e. under Section 394 of IPC. Accordingly, appellants No.1 to 4 are sentenced to the period of detention already undergone by them.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nisha