

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on 26.07.2019

Order pronounced on 12.12.2019

CRA No. 2814 of 1998

1. Mahesh Ram S/o Ratan Dewangan, aged about 30 years, R/o Dhawalpur,
2. Namme Singh, S/o Prabhu Ram, aged about 35 years, R/o Mohada,
3. Farid Khan, S/o Raseed Khan, aged about 22 years, R/o Seekaser,
4. Kamal Baghel, S/o Dhaneshwar Baghel, aged about 23 years, R/o Civil Lines,
5. Abdul Kareem, S/o Gafoor Bhai, aged about 32 years, R/o Nawagarh, Police Station Manipur, District Raipur, MP (Now CG)

---- Appellants

Versus

The State Of M.P. (Now CG)

---- Respondent

CRA No. 2867 of 1998

1. Iqbal, S/o Abdul Khasis, aged about 30 years, R/o Nayagarh,
2. Chain Singh, S/o Bharose Nai, aged about 30 years, R/o Dhawalpur, Thana Manipur, District Raipur, MP (Now CG) **(dead)**

---- Appellant/s

Versus

State of M.P. through S.O. Manipur, District Raipur, (Now CG)

---- Respondent

For Appellants	: Mrs. Indira Tripathi, Advocate
For Respondent	: Mr. Himanshu Sharma, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V Order

Since these two appeals arise out of the same judgment dated 20.11.1998 passed in Sessions Trial No.9/1995 convicting and sentencing the accused/appellants as mentioned below, they are being disposed of by this common judgment.

Mahesh Ram, Namme Singh, Farid Khan, Chain Singh	U/s 395 read with 120-B IPC	RI for 10 years with fine of Rs.1000, plus default stipulation
Kamal Baghel, Iqbal	U/s. 395 read with 120-B read with 114 IPC	RI for 10 years with fine or Rs.1000/-, plus default stipulation
Abdul Kareem	U/s. 392 read with Section 120-B read with 114 IPC	RI for 10 years with fine or Rs.1000/-, plus default stipulation

2. Charge against accused Iqbal, Kamal and Abdul Karim is under Sections 120-B/392 and 395/114 IPC for hatching criminal conspiracy and committing robbery of Rs.1,10,000/- from the complainant Ramdas (PW-1). Likewise, against accused Chain Singh, Namme Singh, Farid and Mahesh charge under Section 395/120-B IPC was framed.

3. Case of the prosecution in brief is that the complainant (PW-1) – a goldsmith by occupation was insisted by accused Abdul Karim and Iqbal to buy a piece of diamond for which the initial amount of Rs.1,00,000/- was already paid by them. After arranging the amount, the complainant came to Khamripara and stayed in the house of accused Iqbal where he met accused Abdul Karim. It is alleged that accused Abdul Karim left the house at 4 AM and thereafter the complainant (PW-1) along with accused Kamal and Iqbal hired bicycles and proceeded further through the forest and on the way they came across four persons who indulged in manhandling with him and his companions, snatched the amount kept by them and also threatened them to get away from there. It is further alleged that when the complainant expressed his desire to lodge the report, accused Iqbal and Kamal asked him not to do so. Meanwhile, he met one Heeralal (PW-15) and disclosed to him about being robbed of an amount of Rs.1,10,000/-. Suspecting some foul play Heeralal (PW-15) asked the complainant to accompany him to police station and lodge the report. Acting on the advice of Heeralal, the complainant went to the police station along with him where the report Ex.P-1 was lodged. After investigation, *challan* was filed against the accused persons and the afore-stated charges came to be framed.

4. Learned Court below by judgment under challenge in these appeals held the accused/appellants guilty and imposed the sentences upon them as described in the first paragraph of this judgment. Hence these appeals.

5. Counsel for the accused/appellants submit that the exercise undertaken by the Court below in holding the accused/ appellants guilty as mentioned above is not based on due appreciation of the evidence of the witnesses and therefore, the judgment impugned is liable to be set aside. She submits that not even a single incriminating article has been seized from the possession of the appellants nor any independent witness including the complainant has stated anything which is trustworthy and inspires full confidence of the Court. According to the counsel for the accused/appellants, though the statements of the witnesses suffer from innumerable contradictions and omissions, they have been ignored by the Court below while passing the judgment impugned. Another argument advanced by the counsel for the accused/appellants is that though the FIR does not mention the names of accused Mahesh, Namme, Farid and Abdul Karim, they must have been put to test identification parade for being identified by complainant (PW-1) but unfortunately no test identification parade has been conducted in this case. It is further submitted that the entire case of the prosecution is based on memorandum and seizure but even the witnesses examined by the prosecution to this effect being PW-4, PW-8, PW-10 and PW-13 have not supported its case, which has been given a complete go bye by the Court below.

6. State counsel however supports the judgment impugned and submits that the Court below has been fully justified in arriving at the conclusion of holding the accused/appellants guilty as above and the same fully rests on the strict adherence of the evidence adduced by the prosecution. No illegality or irregularity is noticeable to this Court in the judgment impugned warranting any interference therewith in these appeals.

7. Heard counsel for the parties at length and considered the evidence on record.

8. At the outset it may be mentioned here that accused/ appellant Chain Singh died during the pendency of appeal which is clear from the communication received from the concerned police station dated 08.04.2019 along with the death certificate dated 05.06.2012 showing that he died on 12.05.2012.

9. Ajit Kumar (PW-7) has stated that on the date of incident accused Kamal and Iqbal had hired bicycles from his shop and to substantiate the same he has produced the shop register Ex.P-9 and Ex.P-10. This version of PW-7 establishes the say of the complainant (PW-1) that accused/appellants had come by hiring the bicycles. As regards factum of the complainant being looted by the accused/appellants and subjected to manhandling, it is substantiated by Neelamgiri Goswami (PW-8) – the witness to seizure of three clubs made under Ex.P-11, Ex.P-12 and Ex. P-13. The scarf used by the complainant for wrapping the currency notes and the bicycles used in the commission of crime were also seized under Ex.P-14. According to PW-8, he was also told by Heeralal (PW-15) and complainant (PW-1) about the incident of loot of Rs.1,10,000/- from the possession of PW-1, while he was sitting in the hotel. From the evidence of Neelamgiri Goswami (PW-8) it is apparent that on the date of incident when he was sitting in a hotel along with Arti Singh (PW-3), he came to know that only four persons were involved in the manhandling but later on he came to know through complainant (PW-1) that two other persons namely Kamal and Iqbal were also instrumental in the same. This link is well enough for proving the meeting of minds amongst the accused/appellants to hatch a conspiracy for committing dacoity. PW-8 and PW-13 are the witnesses to seizure effected from accused Nammie Singh vide Ex.P-20 and Ex.P-21. Seizure of bicycles made under Ex.P-22 has been proved by Shah Mohammad (PW-14) and that of scarf belonging to

complainant made under Ex.P-2 has been proved by Heeralal (PW-15). Though PW-4 has stated that no seizure of bicycles was made in his presence yet he admits his signature on the seizure memo Ex.P-5. Medical reports Ex.P-15, Ex.P-16 and Ex.P-17 given by Dr. Sunil Singh (PW-9) opining injuries on their body caused by hard and blunt object makes it clear that the complainant (PW-1) and the accused Kamal and Iqbal suffered injuries with club as has been opined in Ex.P-18. It has also come in the evidence that four accused namely Mahesh, Namme, Farid and Chain Singh first opened an assault on the complainant and then turned to accused Kamal and Iqbal goes to show that they knew accused Kamal and Iqbal and their main target was complainant (PW-1).

10. In aforesaid view of the matter, there is sufficient evidence as regards the involvement of the accused/appellants in the crime in question where complainant (PW-1) on the pretext of buying a piece of diamond was robbed of Rs.1,10,000 and was also subjected to beating. So also the Court below has strictly adhered to the evidence adduced by the prosecution while forming the opinion of convicting and sentencing the accused/appellants as mentioned above. This Court does not see any reason to disturb a well written judgment which is under challenge in these appeals and being so it is hereby maintained as a whole.

11. Accordingly, the appeals being without any substance are liable to be dismissed and they are dismissed as such. Since the accused/appellants are reported to be on bail, they are directed to be sent to jail forth-with by cancelling their bail bonds, to make them complete their sentence.

Sd/-

(Vimla Singh Kapoor)

Judge

