

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 191 of 2002

1. Madhaw S/o Sudama Yadav, aged about 29 years, R/o Gopalganj Sagar, (M.P.)
2. Tinku @ Avinish S/o S.D. Tiwari, aged about 30 years, R/o Near Tiharika Talkies, Korba, District Korba (C.G.)

---- Appellants

Versus

- The State of Chhattisgarh Through P.S. Bemetara, District Durg (C.G.)

---- Respondent

And

Criminal Appeal No. 1187 of 2003

- Laxminarayan S/o Onkar Prasad, aged about 33 years, R/o Police Line, Sagar, (M.P.)

---- Appellant

Versus

- The State of Chhattisgarh Through P.S. Bemetara, District Durg (C.G.)

---- Respondent

For Appellants	: Shri Rajesh Jain, Advocate
For Respondent/State	: Shri Ashish Gupta, Panel Lawyer

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

07.11.2019

1. As both appeals (Cr.A. No. 191 of 2002 and Cr.A. No. 1187 of 2003) arise out of the common judgment of conviction and order of sentence dated 31.01.2002 passed by the Third Additional Sessions Judge (FTC), Bemetara, District Durg (C.G.) in Sessions Trial No. 151/1994, they are being disposed of by this common judgment. By the impugned judgment, the appellants stand convicted and sentenced as under:-

<u>Conviction:</u>	<u>Sentence:</u>
Under Section 395 of the Indian Penal Code (hereinafter referred to as the 'IPC')	Rigorous imprisonment for seven years
Under Section 367 of IPC	Rigorous imprisonment for five years
Both sentences to run concurrently	

2. There are six accused persons namely Tinku @ Avinish (A-1), Laxminaryan (A-2), Chandrasen (A-3), Arvind (A-4), Madhaw (A-5) and Mohd Haseeb (A-6) who were prosecuted for the offences punishable under Sections 395, 397 & 412 of IPC and Section 27 of the Arms Act before the trial Court. Out of them, three accused persons i.e. Chandrasen (A-3), Arvind (A-4) and Mohd. Hasib (A-6) have been acquitted of the above charges, whereas, while acquitting the present three appellants/accused persons i.e. Tinku @ Avinish (A-1), Laxminaryan (A-2) and Madhaw (A-5) of the charges under Sections 397 & 412 of IPC and Section 27 of the Arms Act, they have been convicted and sentenced under Sections 395 & 367 of IPC as mentioned above.

3. Brief facts of case of the prosecution are that complainant Dwarika Prasad is resident of Jabalpur (M.P.). On 27.11.1992 at about 09:30 pm, complainant Dwarika Prasad (PW-1) was going along with his driver Ghanshyam (PW-2) from Jabalpur to Raipur for participating in the auction proceedings by his vehicle Maruti-800 which was being driven by Ghanshyam and the complainant was sitting in the back seat. When they reached before 20 Km of Bemetara at about 03:00 am, six accused persons who were wearing police uniform stopped the car and demanded the papers of car and were telling that there was arms in the car. Thereafter, the accused persons took PW-1 and PW-2 by assaulting towards their Jeep and made them sit in the Jeep and out of them (accused persons), one accused drove the car of complainant. The allegations are that the accused persons took PW-1 & PW-2 by assaulting with the back side of revolver towards jungle and on account of this, PW-1 and PW-2 sustained injuries on their heads. The further allegations are that in jungle, the accused persons removed the clothes of PW-1 and PW-2, tied the hands of Ghanshyam and left both of them in jungle. The accused persons looted Rs.1,05,000 which was kept in Maruti car in a briefcase; blanket; snatched Rs.7,000/-8,000/-, wrist watch & golden ring from Dwarika Prasad (PW-1); wrist watch of Ghanshyam (PW-2) was also snatched and thereafter the accused

persons fled from the place of occurrence by their Jeep including the car of PW-1 & its papers. Thereafter, Dwarika Prasad (PW-1) and Ghanshyam (PW-2) came on the road side from jungle and were waiting for help. Then, one Truck driver came there and looking to the condition of both PW-1 and PW-2, the driver of the truck left both PW-1 & PW-2 to nearby police station at Bordla, where Dwarika Prasad (PW-1) lodged the FIR (Ex.-P/2) at about 07:30 am against the six unknown persons who committed dacoity with them (PW-1 and PW-2). PW-1 and PW-2 were sent for their medical examination. After lodging the FIR at Bordla police station, *dehatinalishi* was sent to Bemetara police station because in its jurisdiction the offence had occurred and as per Ex.-P/11, the crime was registered.

4. After registering the FIR (Ex.-P/11), the investigation commenced. During investigation, information was received from police station Sultaanpur, District Raisen (M.P.) that some accused persons after committing dacoity at District Vidisha were arrested by the police. On this information, police personnel of Bemetara went there and found that the accused persons produced before the Court were arrested with looted Maruti car, briefcase, blanket, golden ring, case amount, police-dress, Jeep and other papers including revolver with cartridge. On 26.01.1993, one HMT watch looted from Ghanshyam (PW-2) was seized vide Ex.-P/6 from the possession of Tinku @ Avnish (A-1). On memorandum statement (Ex.-P/12) of accused Laxminarayan (A-2) recorded on 09.01.1993, blue coloured Maruti car hidden by him in Ashok Garage was seized vide Ex.-P/13. On memorandum statement (Ex.-P/16) of accused Madhaw (A-5) recorded on 14.01.1993, one golden ring and briefcase were seized from the possession of accused Madhaw vide Ex.-P/15.

5. The accused persons namely Tinku (A-1) and Madhaw (A-5) were put to identification in different Test Identification Parades (TIP). The TIP of Madhaw (A-5) was conducted on 20.03.1993 at Bhopal Jail vide Ex.-P/3 and A-5 was duly identified by Dwarika Prasad (PW-1) and Ghanshyam (PW-3) in TIP. The TIP of Tinku @ Avnish (A-1) was conducted on 15.02.1993 at Bemetara Jail vide Ex.-P/1

and A-1 was duly identified by Dwarika Prasad (PW-1) and Ghanshyam (PW-2) in TIP.

6. After completion of usual investigation, the charge-sheet was filed against six accused persons i.e. Tinku @ Avanish (A-1), Laxminaryan (A-2), Chandrasen (A-3), Arvind (A-4), Madhaw (A-5) and Mohd Haseeb (A-6) under Sections 395, 397, 365 & 412 of IPC and Section 27 of the Arms Act and while framing the charge, the Additional Sessions Judge, Bemetara framed the charges under Sections 395 read with Section 397, 367 & 412 IPC and Section 27 of the Arms Act against all the accused persons.

7. So as to hold the accused persons guilty, the prosecution examined 13 witnesses in all. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. No defence witness has been examined by the accused persons.

8. The trial Court after hearing the counsel for the parties in the matter and considering the material available on record, by the impugned judgment acquitted the accused Chandrasen (A-3), Arvind (A-4) and Modh Hasib (A-6) from the charges under Sections 395 read with Section 397, 367 & 412 IPC and Section 27 of the Arms Act and while acquitting the present appellants i.e. Tinku @ Avnish (A-1), Laxminaryan (A-2) and Madhaw (A-5) of the charge under Sections 397 & 412 IPC and Section 27 of the Arms Act, convicted and sentenced them (A-1, A-2 & A-5) as mentioned in para-1 of this judgment, hence both these appeals.

9. Learned counsel for the appellants submits that the present appellants (A-1, and A-5) were not identified by complainant Dwarika Prasad (PW-1) and his driver Ghanshyam (PW-2) in dock-identification before the trial Court and only on the basis of Ex.-P/1 and Ex.-P/3 (TIPs) held in Bemetara Jail and Bhopal Jail in presence of police, A-1 and A-5 were identified by PW-1 and PW-2. Further, he submits that on memorandum statement of accused Laxminarayan (A-2), blue coloured Maruti car which was kept in Ashok Garage was seized vide Ex.-P/13,

therefore, the conviction of A-1, A-2 and A-5 was not possible. He further submits that no any article belonging to the complainant (PW-1) and Ghanshyam (PW-2) was seized from the possession of the present appellants.

10. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the trial Court considering all the relevant aspects of the matter has rightly convicted and sentenced the appellants, which needs no interference by this Court.

11. Heard counsel for the respective parties and perused the material on record.

12. It is not disputed that articles mentioned in para-5 of deposition of PW1 Dwarika Prasad i.e. briefcase as Article A & B, bag as Article C, bank-draft as Article D, service-book of car as Article E and calculator as Article F and blanket as Article B were of PW-1, but golden ring seized from the accused was not of PW-1. No any document was filed and proved by the prosecution as to which of the articles was seized from which of the accused. Therefore, it cannot be conclusively said that the articles produced before the Court as mentioned in para-5 of the deposition of PW-1 were seized from the present accused persons/appellants.

13. As per Ex.-P/6, one HMT wrist-watch was seized from accused- Tinku (A-1), but that watch does not belong to Dwarika Prasad (PW-1) and Ghanshyam (PW-2). As per FIR, it was mentioned, the wrist-watch looted by the accused persons was a Titan-watch. Therefore, seizure of watch from the accused Tinku was not of the complainant. As per Ex.-P/15, one golden ring was seized from accused- Madhaw (A-5), but it has also been admitted by the complainant that the golden ring seized from the possession of A-5 was not belonging to him (complainant). On memorandum statement (Ex.-P/12) of accused Laxminarayan, blue coloured Maruti Car was seized from Ashok garage, Sagar vide Ex.-P/13 which belongs to complainant Dwarika Prasad, but no any document was produced and proved before the trial Court that the said car belongs to the complainant. Therefore, there is no any specific evidence adduced by the prosecution that all the seized articles belong to the complainant Dwarika Prasad (PW-1) and his driver Ghanshyam (PW-

2).

14. As per Ex.-P/1 TIP of accused Tinku @ Avinish (A-1) conducted on 15.02.1993 in Bemetara Jail in presence of police officer and as per Ex.-P/3 TIP of accused Madhaw (A-5) conducted on 20.03.1993 in Bhopal Jail in presence of police officer, accused Tinku and Madhaw were duly identified by PW-1 Dwarika Prasad and Ghanshyam (PW-2), but in dock identification, Dwarika Prasad (PW-1) was unable to identify accused Madhaw (A-5) and in dock identification, Ghansyham (PW-2) was also unable to identify accused Tinku and Madhaw (A-1 & A-5), which creates doubt about their involvement in crime in question.

15. Ghanshyam (PW-2) stated in court evidence in para-2 that his HMT watch was looted by accused person. As per Ex.-P/6, on HMT watch was seized from the possession of accused Tinku (A-1), but the said watch was not put to identification by PW-2 and PW-1 Dwarika Prasad. In FIR (Ex.-P/2), it was mentioned that the watch was of Titans company, therefore, it also creates doubt against accused Tinku (A-1).

16. Further, on memorandum statement (Ex.-P/16) of accused Madhaw (A-5), one golden ring which was kept in briefcase was seized from the possessions of A-5 by Sub-Inspector S.N. Pandey (PW-13) vide Ex.-P/15. PW-12 Ghanshyam, who is Chowkidar in Irrigation Department, is the witness of memorandum (Ex.-16) and seizure (Ex.-P/15). PW-12 stated in para-1 that he was not known to accused Madhaw (A-1) and he stated in para-3 that in his presence, no seizure of ring was made and only one Tiwari *saheb* told him (PW-12) to put his signature, therefore, he (PW-12) signed the document of Ex.-P/15. PW-12 further stated in para-4 that the signature on memorandum (Ex.-P/16) was not made by him. Therefore, it is clear that PW-12 has not supported the prosecution case regarding seizure of golden ring (Ex.-P/15) & memorandum (Ex.-P/16). The golden ring was seized vide Ex.P/15 was not put for identification from PW-1 Dwarika Prasad. But, that golden ring was shown to PW-1 in the court and he denied the same.

17. On memorandum statement (Ex.-P/12) of accused Laxminarayan (A-2), blue

coloured Maruti Car (Ex.-P/13) was seized from Ashok Garage, Sagar. PW-8 Ashok Kumar is the person in whose garage accused Laxminaryan (A-2) had kept the Maruti Car by saying him (PW-8) that the said car is of his (A-2) uncle. No any document/paper has been produced by the complainant (PW-1) before the court that the said car belonged to him, nor any document was obtained from the R.T.O. during investigation by the police to establish that the said car looted by the accused persons belongs to the complainant. Therefore, the prosecution has failed to prove that the said car seized on basis of memorandum of accused Laxminaryan (A-2) was of Dawrika Prasad (PW-1), nor the car was identified by PW-1.

18. It has also come in evidence of PW-1 Dwarika Prasad in paras 1 & 2 that at the time of dacoity, the accused persons assaulted Dwarika Prasad (PW-1) and Ghanshyam (PW-2) by revolver on their heads and both PW-1 and PW-2 sustained injuries on their heads as a result of which blood was oozing from their heads. But, no MLC report was produced before the court, nor any Doctor has been examined before the Court to prove that both PW-1 and PW-2 sustained injuries on their heads. Therefore, the prosecution has failed to prove that PW-1 and PW-2 sustained any injury in the said incident.

19. In the above facts and circumstances of the case, I am unable to sustain the conviction of the appellants on the above set of evidence. The prosecution has utterly failed to prove the guilt of the appellants beyond all reasonable doubts. Neither identification of the appellants/accused persons was established nor it was established that the wrist watch was seized from the possession of accused Tinku (A-1); or that the golden ring was seized from the possession of accused Madhaw (A-5) on his discovery statement (Ex.-P/16) or that the seizure of car from the Ashok Garage was made on accused Laxminarayan's discovery statement (Ex.-P/13). Therefore, I am of the view that in the facts and circumstances of the case, the appellants are entitled to get benefit of doubt and their appeals deserve to be allowed.

20. For the foregoing reasons and discussions, the appeals are allowed. The

conviction and sentence awarded to the appellants (A-1, A-2 & A-5) under Sections 395 & 367 of IPC are set aside. The appellants are acquitted of the said charges framed against them by extending them benefit of doubt.

21. It is also stated that the accused/appellants (A-1 & A-5) are on bail since 17.04.2002 and the accused/appellant (A-2) is on bail since 05.05.2004, therefore, their bail bonds shall continue for a period of six months from today in view of the provisions of Section 437-A of Cr.P.C.

Sd/-
(Gautam Chourdiya)
Judge