

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on : 30.01.2019

Judgment Delivered on : 15/02/2019

CR.A. No. 128 of 2013

1. Sonu Singh Chouhan, S/o. Chunna Singh Chouhan, Aged About 24 Years, R/o. Sanjay Nagar, Bakra Market, Tikrapara, Raipur (C.G.)
2. Harish Chandra Nirmalkar, S/o. Amar Singh Nirmalkar, Aged About 19 Years, R/o. Behind Rawanbhata, Tikrapara, Raipur (C.G.)
3. Narottam Soni, S/o. Bhagwat Soni, Aged About 21 Years, R/o. Mathpuraina, Tikrapara, Raipur, Chhattisgarh
4. Aghanu Nirmalkar, S/o. Bharat Nirmalkar, Aged About 19 Years, R/o. Rawanbhata, Tikrapara, Raipur, Chhattisgarh.
5. Golu @ Dayaram, S/o. Rahul Yadav, Aged About 21 Years, R/o. Telibanda, P.S. - Telibandha, Raipur (C.G.)
6. Dayanand Nirmalkar, S/o. Bharat Nirmalkar, Aged About 20 Years, R/o. Mathpuraina, Tikrapara, Raipur, Chhattisgarh.

---- Appellants

Versus

State Of Chhattisgarh, Through : P.S. Gurur, Distt. Balod (C.G.)

-----Respondent

For Appellants	: Mr. Goutam Khetrapal, Advocate
For Respondent/State	: Mr. Arun Shukla, G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V JUDGMENT

15/02/2019

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by the learned Additional Sessions Judge, Balod, District Durg (C.G.), in

Sessions Trial No.30/2012 on 05.01.2013, convicting the appellants for the offence under Section 395 of the Indian Penal Code and sentencing them to undergo R.I. 10 years and fine of Rs.50/- and for the offence under Section 397 of the Indian Penal Code and sentencing them to undergo R.I. 7 years with default stipulations.

2. Facts of the case in brief is this that complainant -Jageshwarram (P.W.-1) after supplying the load of truck, in Urla area and receiving the rent of Rs.16,300/-, was on his way back to Jagdalpur in his truck bearing registration No.C.G.-17-H-1809 and had stopped on the way to take rest inside the truck. At about 4.00 AM in the morning, two persons forcibly opened the doors of the truck, assaulted him with clubs, who were accompanied by two more persons and thereafter looted cash of Rs.16,300/- from him. FIR Ex.P-1 was lodged by him against unknown culprits. The complainant was medically examined. The appellants were apprehended and seizure of articles were made on the basis of their memorandum statements. The appellants No. 1, 3, 4, 5 and 6 were identified by the complainant in test identification parade. On completion of investigation, charge-sheet was filed before the concerned trial Court.
3. The trial Court charged the appellants with offence under Section 395 & 397 of the Indian Penal Code. The appellants denied the charges and prayed for trial. The prosecution examined as many as 8 witnesses on its behalf. On examining the appellants under

Section 313, they denied all the incriminating evidence against them and pleaded innocence and false implication. No witness was examined in defence. On completion of trial, judgment has been delivered, in which the appellants stand convicted and sentenced as mentioned aforesaid.

4. It is submitted by the learned counsel appearing on behalf of the appellants that the trial Court has passed totally erroneous judgment of conviction without there being any basis of reliable and cogent evidence in support of the charge. It is further submitted that FIR (Ex.P-1) and the statement of Jageshwarram (P.W.-1) clearly suggest that it is a case of loot under Section 394 and not a case of dacoity for the reasons, that only four persons were engaged in commission of offence. It is further submitted that the evidence of prosecution is not beyond reasonable doubt, therefore, the conviction of the appellants is bad-in-law. Hence, it is prayed that the appeal be allowed and the appellants be acquitted of the charges levelled against them. It is prayed in the alternative that in case, this Court is not inclined to allow this appeal and acquit the appellants in that case, at least sentence imposed upon the appellants, which appears to be too harsh, may be reduced.
5. Counsel for the State opposes the grounds raised in appeal and the submissions made in this respect. It is submitted that the prosecution has proved its case beyond all reasonable doubts. Therefore, no case is made out for acquittal or for reduction of

the sentences. Hence, the appeal be dismissed.

6. I have heard the learned counsel for the parties and perused the record of the Court below.
7. The point in issue in this appeal is whether the prosecution has proved the charges against the appellants on the basis of the evidence beyond reasonable doubt?
8. Jageshwarram (P.W.-1) has stated that on the date of incident, he was on his way back to Jagdalpur in his truck and had stopped the truck near village- Karrajhar for taking rest inside the truck. At about 4.00 AM, in the morning five persons came near his truck and got the doors of the truck forcibly opened, he was pulled out of the truck and was assaulted, beaten and injured, then mobile phone and cash of Rs.16,300/- in his possession was looted by them. He has stated that culprits were five persons and the persons present in the Court were the same persons. Thereafter, he went to Charama Police Station, where he was informed to lodge report at Police Station – Gurur. Thereafter, he went to police Station – Gurur and lodged the FIR (Ex.P-1). He has stated, that test identification parade was conducted vide Ex.P-5 and Ex.P-6 in jail, in presence of Executive Magistrate and he had identified the appellants correctly. In cross-examination, he has stated that culprits were five persons and he can not explain why in the FIR lodged it mentions only four persons. He had denied that he had seen the appellants in police station. He has

admitted that when he arrived at Balod jail, the appellants were inside the jail. On the basis of this statement, it can not be held that the witness had earlier seen the appellants. Further he has clearly stated that between the date of incident and test identification parade, he did not see the appellants and he has denied all further adverse suggestion given to him in defence.

9. Sub-Inspector, Lallan Singh (P.W.-5) has stated that on 12.01.2012 at about 8.30 AM, complainant- Jageshwarram came to the police station and lodged FIR (Ex.P-1) and on that basis he has conducted part of investigation. In cross-examination, his statement has remained unrebutted and there is no otherwise statement made by him in cross-examination. Sub-Inspector, K.K. Kushwaha (P.W.-6) has conducted the investigation with respect to the recording of memorandum statement and seizure of articles from the appellants, which is sole statement made by him and not supported by independent witness.
10. Dr. Nurendra Sahu (P.W.-7) has medically examined the complainant Jageshwarram (P.W.-1) for the injuries and found one incised wound on the left side of his head, which was simple in nature caused by some heavy and blunt object vide his report Ex.P-2. In cross-examination, the statement made by the Dr. Nurendra Sahu (P.W.-7) has remained un-rebutted.
11. Sonit Meriya (P.W.-8) is the Executive Magistrate, who has stated that he conducted the test identification parade in which the

appellants were made to stand with 15 other persons from which the complainant – Jageshwarram (P.W.-1) made correct identification, which has been recorded vide Ex.P-5 & Ex.P-6. In cross-examination his statement has remained unrebutted.

12. It is a prosecution against six appellants, whereas, the FIR (Ex.P-1) states that there were four persons present, however, in the statement made before the Court, complainant – Jageshwarram (P.W.-1) has improved by stating that there were in total five persons. Sub-Inspector, Lallan Singh (P.W.-5) has also admitted in his cross-examination that FIR was lodged against four persons, therefore, the offence under Section 394 of the Indian Penal Code was registered. However, in the test identification parade, Jageshwarram (P.W.-1) has identified the accused appellant No. 1, 3, 4, 5 and 6 as the persons present at the time of incident, which shows presence of five persons and clearly there is no identification of appellant/accused No.2 – Harischandra, therefore, on this basis appellant/accused No.-2, could not have been convicted. But regarding absence of one of the five others, it can not be made out as to who was that accused person. In the cross-examination made by defence, Jageshwarram (P.W.-1) was not questioned regarding absence of one another of five accused persons, who were identified, therefore, even in case of this improvement in the Court statement, there is nothing to make out, who were the another person not present on the spot of incident. Therefore, on the

basis of the evidence of Jageshwarram (P.W.-1) supported by witness of test identification parade, it is clearly made out that apart from appellant No.-2, rest of the appellants were engaged in commission of offence of assaulting and looting the complainant.

13. Hence, after close scrutiny of all the relevant evidence present on record of the trial Court, this appeal is partly allowed in favour of the appellant No.2, who is acquitted of all the charges against him, whereas, the conviction against rest of the appellants is maintained as it is and there is no reason to interfere with in the same. The appellant No.2 is reported to be in jail, he be set at liberty forthwith if not required to be detained in any other case.
14. Considered the alternative prayer made on behalf of the appellants for reduction of sentence. As the offence committed by the appellants are serious in nature and they have criminal antecedents of similar nature of offence committed by them, therefore, there is no ground to consider and allow the prayer made, hence, for this reason I do not find any reason to reduce the sentence of imprisonment imposed upon the appellants.
15. Resultantly, the appeal in respect of the appellants No.1 and 3 to 6 has no merit and it is accordingly dismissed.

Sd/-
(Rajendra Chandra Singh Samant)
Judge