

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 59 of 2000**

1. Babalu @ Afroj S/o Mohammad Yunus aged about 24 years, R/o Parichuwa P.S. Kotma, District Sahdol.

---- Appellant**Versus**

1. State of Chhattisgarh, Through P.S. Pondi, District, Koriya.

---- Respondent

For Appellant	:	Shri Rajesh Jain with Smt. Kiran Jain, Advocates
For Respondent	:	Shri Vikas Shrivastava, P.L.

CRA No. 2230 of 2000

1. Meku @ Maikal S/o Chainu Kol, aged about 26 years, R/o Islam Ganj, P.S. Kotma, district Sahdol

---- Appellant**Versus**

1. State Of Madhya Pradesh now Chhattisgarh.

---- Respondent

For Appellant	:	Shri Rajesh Jain with Smt. Kiran Jain, Advocates
For Respondent	:	Shri Vikas Shrivastava, P.L.

Hon'ble Justice Shri Gautam Chourdiya**Judgment On Board****18/07/2019**

- 1) Since both these appeals filed under section 374 of Code of Criminal Procedure, 1973 arise out of the common judgment of conviction and order of sentence dated 09/05/2000 passed by Additional Sessions Judge, Manendragarh, District Koriya (M.P.) now (C.G.) in Session Trial No. 436/96, they are heard together and are being disposed of by this common judgment.
- 2) By the judgment impugned appellant Babalu @ Afroj in Criminal Appeal No. 59/2000 and Meku @ Maikal in Criminal Appeal No.

2230/2000 stand convicted and sentenced as under:-

Conviction	Sentences
U/s. 450 of I.P.C.	R.I. for 7 years & fine of Rs. 1,000/- in default of payment, additional six months S.I.
U/s. 395/397 of I.P.C.	R.I. for 10 years & fine of Rs. 5,000/- in default of payment, additional 1 year S.I.
(Both the sentences were directed to run concurrently)	

- 3) Case of the prosecution in brief is that on the date of incident that is on 23/05/1996 around 04 to 4:20 AM the appellants alongwith other accused, total seven in numbers, reached the house of complainant Gopal Prasad Agrawal, Superintending Engineer, G.M. Office Podi. On door ringing the call bell, the complainant inquired as to who is there, the person standing outside replied that brothers of the complainant have come. When the complainant opened the door, he was 4 to 5 persons standing their carrying Sword, Gadasa. While the complainant was closing the door, the accused appellant Meku @ Maikal assaulted him with Sword like weapon on his neck and having pushed the door entered the house forcefully. Hearing the noise, wife of the complainant name Swati Agrawal and his sister Mamta woke up. The accused persons snatched away the golden chain from the neck of Swati and after obtaining key of the Almirah from Mamta looted the golden and silver ornaments, cash of Rs. 4,000/- and other articles and thereafter ran away from their. The complainant was immediately taken to Hospital for treatment. On the report of the complaint, F.I.R. was registered. During investigation, Spot Map was prepared by the Police, statements of the witnesses were recorded, certain articles from the place of occurrence were seized. During investigation identification of the accused persons was conducted by PW-10 R.N. Singh Executive Magistrate, wherein complainant PW-01 Gopal Prasad Agrawal identified three accused Meku @ Maikal @ Ajay, Sukhai @ Sukhram and Babalu @ Afroj. Identification with regard to the looted articles was also conducted by the Executive Magistrate. As per Ex. P-7

memorandum of accused Meku @ Maikal looted golden articles was seized as per Ex. P-9. As per Ex. P-8 of memorandum of Sukhai @ Sukhiram silver coin and other articles was seized vide Ex. P-10. As per Ex. P-11 one Chopper was seized from accused Sukhai @ Sukhiram. As per Ex. P-12 one cordless Phone was seized from accused Meku @ Maikal. As per Ex. P-14 memorandum of Babalu @ Afroj was recorded and pursuant to which blood strain Gadasa, Rs. 100/-, one bed sheet and one iron rod were seized vide Ex. P-15. As per Ex. P-16 one torch and bunch of keys were also seized from Babalu @ Afroj. As per Ex. P-22 i.e. report of Serologist, blood was found on the wearing apparels of the complaints. After completion of investigation, Charge Sheet was filed against the accused persons under section 395 and 397 of I.P.C. The Trial Court framed charges against the accused persons under section 450, 395 and 397 of I.P.C. which was denied by the accused persons and they pleaded innocence and false implication.

- 4) The Trial Court after hearing counsel for the respective parties and considering the material available on record by the impugned judgment while acquitting accused Samnu @ Semsu, Shyamu, Gudda @ Santosh and Bhushan @ Babua of the charges leveled against them, convicted and sentenced the accused appellant has also one Sukhai @ Sukhiram as mentioned above.
- 5) Criminal Appeal No. 1726/2000 filed by accused Sukhai @ Sukhiram was dismissed by this Court vide order dated 31/07/2014 as learned counsel for the said accused did not press the criminal appeal on the ground that the appellant has already served out the sentence and released on remission on 29/06/2005.
- 6) Learned counsel for the appellants submits that articles seized from accused/appellants were not produced before the Trial Court and the complainant has not identified the seized articles. The documents regarding identification of the seized articles is

not exhibited before the Trial Court. As such the recovery and seizure of the articles at the instance of the accused/appellants has not been proved by the prosecution. Further identification of the accused/appellants by the complainant is also doubtful because the incident took place in the night and accused/appellant were not known to the complainant and as such it was difficult for the complainant to identify them. The identification of the looted articles is also doubtful as the complainant did not disclose any particular mark on the seized articles for identifying the same such articles are commonly available in the market. In these circumstances the prosecution has not proved its case beyond reasonable doubt against accused/appellants and therefore they are entitled to be acquitted by giving benefit of doubt.

- 7) On the other hand learned counsel for the respondent State supports the impugned judgment.
- 8) Heard counsel for the parties and perused the material available on record.
- 9) So far as involvement of the accused/appellants in the crime in question concerned, eye witnesses to the incident namely Gopal Prasad Agrawal PW-01, Swati Agrawal PW-14 and Mamta Agrawal PW-15 have categorically stated as to the manner in which the incident occurred when the accused/appellants forcibly entered their house armed with deadly weapons, caused grievous injuries to the complainant and looted golden and silver ornaments as well as cash of Rs. 4,000/-. The evidence of the aforesaid witnesses remained uncontroverted in cross-examination and nothing could be elicited by the defence from them which could render their evidence untrustworthy or doubtful. Thus, complicity of the accused/appellants in the crime in question stands proved beyond all reasonable doubt on the basis of evidence of the eye witnesses.
- 10) As regards identification of the accused as per Ex. P-1 the Identification Parade conducted by R.N. Singh, Executive

Magistrate and proved by both Gopal Prasad Agrawal and Executive Magistrate. Gopal Prasad Agrawal PW-01 specifically denied this fact that the accused/appellants were shown to him by R.N. Singh prior to Identification Parade. As per the statement of Gopal Prasad Agrawal he never met and never saw accused prior to Identification Parade. Therefore, there is no reason to disbelieve statements of Gopal Prasad Agrawal PW-01 and R.N. Singh PW-10, Executive Magistrate who has conducted Identification Parade as per Ex. P-1. No any substantial fact has come out in cross examination to disbelieve both the witnesses.

- 11) So far as identification of the looted articles is concerned, during investigation as per memorandum Ex. P-5 of Sukhai @ Sukhiram, Ex. P-6 & Ex. P-7 of Meku @ Maikal @ Ajay, as per Memorandum Ex. P-9, Ex. P-10, Ex. P-11 and Ex. P-12 property seized. As per Ex. P-2 the ornaments seized from accused were also identified by the PW-01 Gopal Prasad Agrawal. As per statement of PW-12 S.L. Markam, Executive Magistrate also conducted Test Identification Parade for seized items from all accused as per Ex. P-2 and other ornaments were also mixed with the seized articles and Gopal Prasad Agrawal identified the ornaments which were looted on the date of incident. Thus, from the above, identification of the accused/appellants as well as identification of the looted articles has duly been proved by the prosecution on the basis of oral and documentary evidence adduced by it.
- 12) It is not disputed by the counsel for both the parties that there is no enmity between the appellants and complainant, after incident prompt F.I.R. Ex. P-4 was lodged against the unknown persons which was registered by R.S.P. Singh. From the perusal of the entire record it is seen that there is nothing to suggest that there was any enmity or ill-will between the accused and the complainant party and as such the question of false implication of the accused/appellants in crime in question does not arise.

- 13) On the basis of the aforesaid discussions, keeping in view the un rebutted evidence of the eye witnesses, the evidence of identification of the looted articles from possession of the accused/appellants this Court is of the opinion that the Trial Court has not committed any illegality or perversity in convicting and sentencing the appellants under sections 450 and 395/397 of I.P.C.
- 14) In the result, both the appeals being without any substance are liable to be and accordingly dismissed.
- 15) The accused/appellants are reported to be on bail, therefore, their bail bonds stand cancelled. They are directed to surrender before the concerned Trial Court forthwith or else they be taken into custody to serve out remaining part of their sentence.
- 16) Let a copy of this judgment be forwarded to the concerned Trial Court at once.

-Sd/-
(Gautam Chourdiya)
Judge

Chandrakant