

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 573 of 2012**

1. Jalo Bhoi, S/o Maldhar Bhoi, Aged About 20 Years, R/o Matiya District- Kalahandi (Orrisa)
2. Sudarshan Manguri, S/o San Pila Manguri, Aged About 50 Years, R/o Village- Sukmabhatha, District- Balangir (Orrisa)
3. Tulsi Rana, S/o Karna Rana, Aged About 42 Years, R/o Village- Sukmabhatha, District- Balangir (Orrisa)
4. Hemant Chandan, S/o Shivram Chandan, Aged About 25 Years, R/o Village- Sukmabhatha, District- Balangir (Orrisa)
5. Eati Chandan, S/o Shivram Chandan, Aged About 20 Years, R/o Village- Sukmabhatha, District- Balangir (Orrisa)

---- Appellants**Versus**

State of Chhattisgarh, through the District Magistrate, Mahasamund,
District- Mahasamund (C.G.)

---- Respondent

For Appellants : Mr. Sunil Sahu, Advocate.

For State/respondent : Mrs. M. Asha, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****03/01/2019**

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 25.06.2012 passed by Second Additional Sessions Judge, Mahasamund (C.G.) in Session Trial No. 71/2010, wherein the said court convicted all the five appellants for commission of offence under Sections 450, 395 & 397 of IPC, 1860 and sentenced to undergo R.I. for 5 years and fine of Rs. 1000/-, R.I. for 5 years and fine of Rs. 1000/- & R.I. for 7 years and fine of Rs. 1000/- respectively each with further default stipulations.

2. As per version of the prosecution, complainant- Manoj Agrawal resides with family at compound of Laxmi Rice Mill along with his brother Deepak Agrawal. On 31.07.2010 at about 9:30 p.m., they were sleeping after bolt the door where four unknown persons entered into room and caused grievous injuries to him and thereafter, removed cash and jewelery from his house. Matter was reported and investigated and after completion of trial, the trial court convicted as mentioned above.
3. Learned counsel for the appellants submits as under:-
 - (i) Identification parade was not properly conducted, therefore, the appellants cannot be convicted on the basis of faulty parade.
 - (ii) Seized articles were not properly identified and not proved to be property of the complainant- Manoj Agrawal, therefore, the evidence available on record is not sufficient to hold guilt the appellants.
 - (iii) As per statement of the witnesses, four persons have committed the offence, but the trial court convicted five persons which is not in the fitness of factual aspect of the matter.
 - (iv) Independent witnesses have not supported version of the prosecution, therefore, case of the prosecution is doubtful.
 - (v) The trial court has not evaluated omission and contradiction in the evidence of the prosecution witnesses in

its true perspective, therefore, the finding arrived at by the trial court is liable to be set aside.

4. Learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.
5. Manoj Agrawal (PW-7) & Sangeeta Agrawal (PW-12) are eyewitnesses account to the incident. As per version of these witnesses, appellant No. 1-Jalo Bhoi, appellant No. 3- Tulsi Rana, appellant No. 4- Hemant Chandan & appellant No. 5- Eati Chandan entered into their house at night on the date of incident and appellant No. 1- Jalo Bhoi was having one iron rod who assaulted both the witnesses and thereafter, they removed ornaments and currency notes to the tune of Rs. 4000/- from almirah of the house.
6. Version of these witnesses is supported by version of Deepak Agrawal (PW-8), Kailash Chandra Agrawal (PW-10), Shweta Agrawal (PW-11) & Dinesh Kumar Agrawal (PW-17). From evidence of Deepak Agrawal (PW-8), it is established that all the five appellants were found sitting in a truck and when police caught them, they were having ornaments in their possession. Kailash Chandra Agrawal (PW-10) deposed on the same line.
7. R.K. Verma (PW-15) posted at District Jail, Mahasamund and D.D. Mahant, Executive Magistrate (PW-16) conducted identification parade of the appellants as per Ex.-P/5. As per

version of these witnesses, out of 18 persons included in the identification parade at District Jail, Mahasamund, complainant and eyewitness account to the incident, namely Manoj Agrawal and Sangeeta Agrawal identified all the five appellants as offender of the crime in question. Again, identification of property was also conducted as per Ex.-P/6 and these witnesses have identified the seized articles to be their articles.

8. It is a case where property was seized just after the incident i.e. on 03.08.2010 two days later of the incident. All the appellants have no explanation for their possession of the property. Their version in their statement recorded under Section 313 of Cr.P.C. before the trial court is mere denial which is meritless. In absence of explanation supported with identification parade of the appellants, the trial court opined that the charges of house trespass in order to commit dacoity is punishable with imprisonment for life, are established which is punishable under Section 450 & 395 of IPC, 1860.
9. Dr. L.L. Dhankar (PW-13) examined Manoj Agrawal (PW-10) on 01.08.2010 (Ex.-P/13) and noticed following injuries:-
 - (i) Contusion over right leg 5" x 3".
 - (ii) Contusion over left leg 3" x 2".
 - (iii) Contusion over right shoulder 4" x 1 ½".
 - (iv) Contusion over right scapulae 4" x 1 ½".

10. As per version of this witness, X-ray of Manoj Agrawal was conducted and fracture on fibula bone of right leg was found which was grievous in nature.
11. Dr. Seema Binkar (PW-19) examined Sangeta Agrawal (PW-12) at Community Health Centre, Bagbahra on 02.08.2010 (Ex.-P/26) and noticed following injuries:-
 - (i) Redness and swelling with contusion over right thigh 7'x5'.
 - (ii) Redness and swelling over right hand 3'x3'.
12. Version of both the medical experts were subjected to searching cross-examination, but they remained unshaken. There is no other expert opinion contrary to the opinion of these medical expert, therefore, it is established that complainant- Manoj Agrawal sustained grievous injuries during offence of dacoity. Causing grievous hurt at the time of committing robbery is punishable under Section 397 of IPC and looking to the entire evidence, the trial court opined that the offence under Section 397 of IPC is also established.
13. The trial court has elaborately discussed the entire evidence and after reassessing the evidence, this Court has no reason to say that the appellants have been falsely implicated. There is no reason to disbelieve evidence of eyewitnesses namely Manoj Agrawal & Sangeeta Agrawal. Again, there is no reason to disbelieve evidence of D.D. Mahant, Executive Magistrate (PW-16) and other witnesses who conducted identification parade and identification of property seized from the

appellants. This Court has no reason to record contrary finding. Conviction of the appellants is hereby affirmed.

Heard on the point of sentence

14. The sentence awarded by the trial court cannot be termed as harsh, disproportionate or unreasonable looking to the gravity of offence and the same is not liable to be interfered with. The sentence part is also not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.
15. It is reported that the appellants have suffered full jail sentence and have been released from jail after getting benefit of remission, therefore, no further order of arrest etc. is required.

Sd/-
(Ram Prasanna Sharma)
Judge