

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 241 of 2009**

State of Chhattisgarh, through Police Station Incharge, City Kotwali,
Bilaspur (C.G.)

---- Appellant

Versus

1. Raj Kumar, S/o Chholan Satnami, aged about 25 years, R/o Village- Lavar, P.S. Masturi, District- Bilaspur (C.G.)
2. Gokul Yadav, S/o Gopal, aged about 25 years, R/o Village- Birkona, P.S. Koni, District- Bilaspur (C.G.)
3. Lala Rajak, S/o Keshav, aged about 22 years, R/o Dayalband, Next to Jagmal Chowk, P.S. City Kotwali, District- Bilaspur (C.G.)
4. Mohammad Alam, S/o Mohammad Shahbood, aged about 36 years, R/o Village- Bankhobi, P.S. Gurail, District- Baishali Bihar.
Then residing at Chhattisgarh, Mohalla, District- Raipur (C.G.)
5. Raju Yadav, S/o Teras Yadav, aged about 22 years, R/o Village- Thathari, P.S. Buaradwar, Tahsil Jaijipur, District- Bilaspur (C.G.)

---- Respondents

For State/Appellant : Mr. A.N. Bhakta, Dy. A.G.

For respondents : Mr. Rahil Kochar, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

08/05/2019

1. This acquittal appeal is preferred under Section 378 (3) of the Code of Criminal Procedure, 1973 against judgment dated 08.04.2002 passed by Fourth Additional Sessions Judge, Bilaspur (C.G.) in Session Trial No. 460/2001, wherein the said court acquitted all the five respondents for commission of offence under Sections 395, 450 of IPC, 1860 and Section 3/25 of the Arms Act, 1959.

2. All the five respondents were charge-sheeted for committing dacoity on 20.08.2001 at about 10:15 p.m. in house of one Raj Kumar Agrawal situated at Katiyapara, Ward No. 28, Bilapur (C.G.). It is alleged that the subject matter of dacoity is golden & silver ornaments and some currency notes valued to Rs. 93,000/-. No one is named in the FIR because all the five respondents were unknown to Raj Kumar Agrawal and his family members that is why FIR (Ex.P/1) is lodged against five unknown persons. Case of the prosecution is based on identification parade of respondents, seizure of ornaments and identification of ornaments.
3. Prakash Chandra Kori (PW-12) who is Nayab Tahsildar/ Executive Magistrate conducted identification parade and also conducted identification of ornaments. As per version of this witness, test identification parade was conducted in his Tahsil Office (Para 4). The witness of identification namely Raj Kumar Agrawal (PW-1), Laxmi Devi Agrawal (PW-2), Jagdish Prasad Agrawal (PW-3), Uma Devi (PW-6) and Sunil Agrawal (PW-8) are the persons who participated in test identification parade.
4. From evidence of these witnesses, it appears that the identification parade was conducted at Lal Bahadur Shastri School, Bilaspur. Version of these witnesses is contrary to the version of Prakash Chandra Kori/Executive Magistrate (PW-12) who deposed before the trial court that he conducted identification parade at Tahsil Office. Though, this witness

further deposed that identification was conducted at Lal Bahadur Shastri School, Bilaspur, but it is not clear from the evidence of these witnesses as to where the culprits were kept and whether they were kept in secrecy. The prosecution is under obligation to establish that there was no occasion for Raj Kumar Agrawal and his family members to see the respondents before their identification parade. Looking to the contrary version of this witness and family members of complainant, the trial court opined that the identification of the respondents is not proved satisfactorily. It is settled law that if evidence is under cloud, the benefit goes to respondent/accused.

5. As per document Ex.P/2 which is document of identification of ornaments seized in the present case, the same was conducted at Tahsil Office Bilaspur. Raj Kumar Agrawal did not depose that he identified the articles at Tahsil Office Bilaspur. As per version of this witness, he identified the articles at Lal Bahadur Shastri School, Bilaspur. Version of this witness is contrary to the document Ex.P/2.
6. Looking to statement of this witness and the document, the trial court opined that the identification at Tahsil Office is not established, therefore, the same cannot be used against the present respondents. In absence of direct evidence, connecting piece of evidence was identification of respondents and identification of articles seized in the present case, but both identifications have not been established

beyond shadow of doubt that is why the trial court opined that the charge of house-trespass and dacoity is not established against the present respondents. As it is not established that the respondents are culprit in the present case, seizure of arms is also not established from them, therefore, the charge under Section 3/25 of the Arms Act, 1959 is also not established.

7. The trial court has elaborately discussed the entire evidence and after reassessing the same, this Court has no reason to record contrary finding and it is not a case where any interference with judgment of acquittal is called for by this Court.
8. Accordingly, this acquittal appeal is liable to be and is hereby dismissed.

Sd/-
(Ram Prasanna Sharma)
Judge