

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.194 of 2011

1. Sukhdeo @ Sukhraj, aged about 28 years, S/o Devsharan, Occupation Agriculture,
2. Srikishun, aged about 20 years, S/o Fulsai, Occupation Agriculture,
3. Rajkumar, S/o Sambal Gond, aged about 19 years, Occupation Agriculture

All R/o Village Goverdhanpur, P.S. Trikunda, District Surguja, Chhattisgarh

---- Appellants

versus

State of Chhattisgarh through P.S. Trikunda, District Surguja, Chhattisgarh

--- Respondent

For Appellants	:	Shri D.N. Prajapati, Advocate
For Respondent	:	Smt. Smriti Shrivastava, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

25.7.2019

1. The instant appeal has been preferred against the judgment dated 29.1.2011 passed by the Additional Sessions Judge (FTC), Pratappur, District Surguja in Sessions Trial No.46 of 2010, whereby the Appellants have been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 394 of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.1,000/- each with default stipulation

2. Case of the prosecution, in brief, is that Complainant Ramlochan Kushwaha (PW4) was going on his motorcycle after closing shop.

At about 6 p.m., four persons stopped and assaulted him on the way. Allegedly, 6-7 more persons were also present there. It is alleged that after beating the Complainant, all the persons looted cash of Rs.25,000/-, one key of the godown, one Nokia mobile phone and some registers from the Complainant. First Information Report (Ex.P30) was lodged by the Complainant. It was mentioned in the FIR that at the time of incident, the assailants were talking with each other and in that talk they were taking names of Appellant No.1 Sukhdeo and one Rambali. During the course of investigation, test identification parade was conducted by Tahsildar James Kindo (PW10) vide Ex.P35. During the said parade, the Complainant identified all the three Appellants. On the basis of memorandum statements of the Appellants, cash of Rs.1500/- was seized from Appellant No.1, Sukhdeo vide Ex.P6, cash of Rs.1500/- was seized from Appellant No.2, Srikishun vide Ex.P16. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against 9 accused persons including the Appellants. Charges were framed against all the accused persons for offence punishable under Sections 395 and 397 of the Indian Penal Code.

3. In support of its case, the prosecution examined as many as 11 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the accused persons denied the guilt. No witness has been examined in their defence.
4. After trial, vide the impugned judgment, the Trial Court acquitted accused persons Mahender, Bipta Singh, Ramlochan, Sunil Singh,

Rajaram, Baldeo of all the charges framed against them. The Trial Court also acquitted the Appellants/accused of the charges under Sections 395 and 397 of the Indian Penal Code, but convicted them for offence punishable under Section 394 of the Indian Penal Code and sentenced them as mentioned in the first paragraph of this judgment. Hence, this appeal.

5. Learned Counsel appearing for the Appellants submits that the impugned judgment passed by the Trial Court is bad in law and against the evidence available on record. The findings recorded by the Trial Court are perverse. It is further submitted that the Trial Court has convicted the Appellants merely on the ground that the Appellants were identified by the Complainant, but from the evidence on record, it is clear that at the time of identification, police officials were also present there. Thus, the test identification parade is not in accordance with law. It is further submitted that from the admission made by the Complainant, it is also clear that at the time of test identification parade, the persons who were called in addition to the Appellants were belonging to Village Goverdhanpur. Thus, it is clear that the Complainant was already acquainted with the persons belonging to Village Goverdhanpur and, therefore also, the test identification parade does not bear any importance.
6. Learned Counsel appearing for the State supports the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.

8. In his Court statement, Complainant Ramlochan (PW4) has stated that at the time of incident, he was going to his house. On the way, four persons met him and started beating him. As a result of which, he fell down, but even thereafter, they continued to beat him. Some more persons were hidden nearby and they also came there. Thereafter, thinking that the Complainant has died, all the persons went away. As stated by Ramlochan (PW4), the assailants broke his motorcycle and looted his cash of Rs.23,500/-, one mobile phone, some registers and one key of his shop.
9. Ramkewal (PW6) and Rambahadur (PW9) have also stated that after the incident, Complainant Ramlochan (PW4) had come to them and told about the incident. The statement of these three witnesses regarding the incident has not been rebutted during their cross-examination. Thus, it is clear that the incident had taken place with the Complainant.
10. From the statement of Complainant Ramlochan (PW4), it is also clear that he was not acquainted with the assailants prior to the incident. As per the prosecution story, this witness has identified all the three Appellants/accused during the test identification parade. In his statement recorded before the Trial Court, this witness, in paragraph 5 of his examination-in-chief itself, has stated that the test identification parade was conducted in the ground of the police station and at that time police personnel of the police station and the villagers were also present there and other persons who were mixed with the Appellants were of the village itself. In paragraph 14 also, this witness has admitted that 50-60 persons of the village were mixed with the Appellants and he was acquainted

with all of them prior to the test identification parade.

11. James Kindo (PW10), who conducted the test identification parade, has also stated during his cross-examination that the test identification parade was conducted in front of the gate of the police station. At that time, police personnel were also present there. He has also admitted the fact that the test identification parade was recorded by police officials and he had only put his signature on the test identification parade memo (Ex.P35). This witness has also admitted the fact that on what basis the Complainant identified the assailants is not mentioned in the test identification parade memo (Ex.P35). From the above admission made by Complainant Ramlochan (PW4) and James Kindo (PW10), it is clear that the test identification parade was conducted in front of the gate of the police station, i.e., within the campus of the police station. At that time, police personnel were present there. Test identification parade memo (Ex.P35) was prepared by police officials, which was only signed by James Kindo (PW10). From the statement of both these witnesses, it is also clear that 50-60 persons, who were mixed with the Appellants, were also belonging to the village of the Complainant and, therefore also, the test identification parade does not bear any importance. Thus, only on the basis of the test identification parade, the conviction imposed upon the Appellants cannot be sustained. The Appellants are entitled to get benefit of doubt.

12. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellants are acquitted of the charge framed against them. If any amount of fine has been

deposited by them, the same shall be refunded to them and the seized property shall be disposed of in accordance with law.

- 13.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge