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HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on: 14/03/2019

Judgment delivered on: 17/05/2019

CRA No. 721 of 2018

- Sandesh Rokde, S/o Annaji Rokde, Aged About 46 Years, R/o-Chakki Khapa, Nearby Bhoshla Military School, Police Station-Koradi, District- Nagpur (Maharashtra).

---- Appellant

Versus

- State of Chhattisgarh Through- Station House Officer, Police of Police Station- City Kotwali, Dhamtari, District- Dhamtari, Chhattisgarh.

---- Respondent

CRA No. 772 of 2018

1. Prakash Chandan Solanke @ Rakesh, S/o Chandan Solanke, Aged About 44 Years, R/o Railway Station Rahul Nagar, Police Station Satara, District Aurangabad(Maharashtra).
2. Anil @ Anya, S/o Yuvraj Piple, Aged About 39 Years, R/o Ashok Nagar, Ward No. 6, Behind I. T. I. College, P. S. Shrirampur, District Ahmadnagar, Maharashtra.

---- Appellants

Versus

- State of Chhattisgarh Through Station House Officer, Police Station City Kotwali, Dhamtari, District Dhamtari, Chhattisgarh.

---- Respondent

&

CRA No. 986 of 2018

- Biru Chouhan, S/o Mangla Chouhan, Aged About 40 Years, R/o Village-Palinda, P. S. Raksha, District Jhanki, Uttar Pradesh.

---- Appellant**Versus**

- State of Chhattisgarh Through The Police-Station-Dhamtari, District-Dhamtari Chhattisgarh.

---- Respondent

For the Appellants : Mr. Shailesh Ahuja, Advocate in CRA
No.986/2018.

Mr. Awadh Tripathi, Advocate in CRA
No.772/2018.

Mr. Anil Gulati, Advocate in CRA
No.721/2018.

For the State/Respondent : Mr. Arun Shukla, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**CAV Judgment****17/05/2019**

1. These appeals have been preferred against the judgment of conviction and order of sentence dated 25.4.2018 passed by the learned Additional Sessions Judge, Dhamtari, District-Dhamtari, Chhattisgarh in Sessions Trial No.17/2017 convicting and sentencing appellants as under:-

Cr. A. No.721/2018

Conviction	Sentence
U/s 411 of IPC	RI for 3 years with fine of Rs.1,000/-in default of payment of fine further R.I. for the period

		of 6 months.
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Cr. A. No.772/2018

Conviction		Sentence
U/s 395 of IPC		RI for 7-7 years with fine of Rs.1,000/-1,000/-in default of payment of fine further R.I. for the period of 6-6 months.

Cr. A.No.986/2018

Conviction		Sentence
U/s 395 of IPC		RI for 7 years with fine of Rs.1,000/-in default of payment of fine further R.I. for the period of 6 months.
U/s 411 of IPC		RI for 3 years with fine of Rs.1,000/-in default of payment of fine further R.I. for the period of 6 months. (In all appeals fine amount has been deposited before the court below)

2. The prosecution case, in brief, is this that on 4.6.2016 at about 2:20 - 2:50 a.m. past midnight, 6 to 7 unknown culprits committed house trespass into the house of complainant Dr. S.K. Saha, threatened complainant and his wife on the point of weapon made of iron and committed loot of cash and other articles worth Rs.6,90,000/- from their possession. FIR Ex.P-4

was lodged in police-station-City Kotwali, Dhamtari and accordingly the offence was registered. During investigation, appellant Prakash Chandan Solanke was apprehended and interrogated, who made a statement on memorandum admitting his guilt, that cash amount, jewelery of gold, silver looted from the complainant were kept in possession of appellant Santosh Rokde. Accordingly, seizure of articles were made from appellant Santosh Rokde. After completion of investigation, charge-sheet has been filed.

3. Appellants Prakash Chandan Solanke, Anil @ Anya Piple and Biru Chouhan were charged with the offence under Section 412 of IPC. They abjured their guilt and sought trial. The prosecution in order to prove its case examined as many as 30 witnesses. Statements of appellants were also recorded under Section 313 of CrPC, in which they denied all the incriminating evidence available against them and pleaded innocence and false implication. No witness was examined in defence.
4. After completion of trial, the trial court by the impugned judgment convicted and sentenced the appellants in the manner as mentioned herein-above.
5. It is submitted by counsel for appellant Sandesh Rokde in CRA No.721/2018 that conviction of appellants being not supported by evidence of cogent and clinching nature is bad in law. Learned counsel submits that appellant has been

falsely implicated in this case. This appellant had only an acquaintance with co-accused Prakash Chandan Solanke, taking benefit of which co-accused had entrusted him property, which he believed that the same belonged to the co-accused. There was no intention of this appellant to receive any stolen property. Therefore, the appellant is entitled for acquittal. In the alternative, it is submitted that if this Court is not inclined to allow this appeal then, in the given facts and circumstances of the case, the sentence imposed upon the appellants may be reduced as it is too harsh. As the appellant has already undergone 5 months 14 days, therefore, he may be punished with sentence already undergone.

6. On behalf of appellants in CRA No.772 of 2018, it is submitted that entire case of prosecution rests on the evidence of identification witnesses, Dr. Saroj Kumar Saha PW-3, Maneesha Saha PW-4 & P.R. Salame PW-16, but their evidence made before the Court is not reliable and trustworthy. Dr. S.K. Saha PW-3 has already been discredited by the prosecution on the same point. There is admission made by the witnesses that the accused persons were shown to them before Test Identification Parade(TIP) was conducted, therefore, identification of accused persons is not reliable evidence. The independent witnesses of recovery and seizure have not supported the prosecution, therefore, no case for conviction against the appellants is made out. Hence, their

conviction is bad in law and therefore it is prayed that these appellants be acquitted.

7. On behalf of appellant in CRA No.986 of 2018, it is submitted that witnesses namely Dr. S.K. Saha PW-3 & Manisha Saha PW-4, who had supported the prosecution are not reliable in any manner. The case against the appellant was based on their identification only and TIP conducted in this case is full of doubt. FIR had no description of the culprits and TIP was conducted in presence of police officials. There are admissions made by the witnesses of search and seizure that they have put their signatures in the police station, which indicates that the papers were prepared by the police later on. Relying on the judgments of Supreme Court in J. Ramsunder Mehto Vs. State of Bihar reported in (2009) 16 SCC 191, it is prayed that the appellant be acquitted of charge.
8. Learned counsel for the State has opposed the grounds raised in these appeals as also the arguments advanced by the counsel for the appellants. It is submitted that prosecution had been able to prove its case beyond reasonable doubt by leading cogent and clinching evidence. The evidence of TIP is fully reliable and there is no room of doubt, therefore, none of the appeals deserve to be allowed and all are liable to be dismissed.

9. I have heard learned counsel for the parties and perused the record of the trial Court including the impugned judgment.
10. The question that requires determination in this appeal is whether on the basis of evidence available on record the prosecution has been able to establish guilt of accused/ appellants beyond reasonable doubt?
11. Complainant S.K. Saha PW-3 was looted on the date of incident and he has given description of looted property i.e. cash and jewelery, which is not disputed, therefore, there is no need to consider evidence of this witness on this point. The only issue raised by the appellants in Cr.A. No.772 of 2018 and 986 of 2018 is with respect to identification of the appellants by the witnesses concerned, therefore, the main question and issue in these appeals is this whether the prosecution has proved identification of appellants in CRA No.721/2018, 772/2018 & 986/2018 beyond reasonable doubt.
12. Dr. S.K. Saha PW-3 has stated that on the date and time of the incident 6 to 7 persons came to his house and after giving threats to him, they robbed him. He has clearly stated that all the culprits had torches held by mouth and in the torch light he had seen them and identified 3 of them. After the incident he had lodged FIR ExP-4. Regarding the identification parade

vide ExP-8 he did not make any statement, therefore, with the permission of Court prosecution had asked leading questions, to which he answered that he and his wife both went for the identification parade, but both have separately participated in the said parade. The identification parade was held vide Ex.P-11 by Executive Magistrate in which he had identified Prakash Chandan Solanke @ Rakesh. He had also identified appellant Biru Chouhan vide Ex.P-9. In cross-examination, he has admitted that after about a month he came to know from the newspaper that one of the culprits has been apprehended. On the another date of TIP, he and his wife went to the place where they were called. He was sitting in a separate room and then said that he was in the room where Executive Magistrate was present. The total number of persons who were brought were about 7 to 8 for identification. He has denied the adverse suggestions given in defence. His statement creates no confusion. He has though varied the numbers of the person for the identification, but this is also not a material contradiction to this statement that he identified the appellants in torch light. His statement that no such environment was created to identify the culprits in torch light is not a ground to infer that it is contradictory statement. He has denied that the culprits were shown to him before him TIP.

13. Manisha Saha PW-4 has stated on the incident at about the TIP vide Ex.P-9, 10, 11 & 12. In cross-examination, she has

admitted that in the identification parade of ornaments there were different kinds of ornaments but not the ornaments which belonged to her. Further, no admission was made by her that any of the culprits was shown to her before they were shown in TIP. C.L. Sahu PW-10 is the independent witness of the TIP procedure, who is a hostile witness and he has been discredited by the prosecution.

14. P.R. Salame PW-16 is the Executive Magistrate, who conducted TIP vide Ex.P-9, 10, 11 and 12. He has stated that all the procedures were followed in a proper manner and after identification of accused persons by the witnesses, the same has been recorded in the memo of TIP. In cross-examination, he has also made the statement that Manisha Saha PW-4 made correct identification of jewelry in TIP vide Ex.P-12. In cross-examination, he remained firm. There are some admissions made by him in cross-examination that the same persons were made to stand in each TIP, this does not mean that the TIP conducted in this manner has some fault or is a reason to disbelieve evidence of TIP. The admission that no situation was created in each of TIP is also immaterial and there is no such statement or admissions made by him that any of the culprits who had been identified were earlier shown to the witnesses of identification. Purosottam Sahu PW-17 is also a witness of ExP-11 TIP he has supported the prosecution and remained firm in his cross-examination.

Similar is the statement of Dhaniram PW-18 who supports the TIP conducted vide ExP-11.

15. ExP-9 is memo of TIP of appellant Biru Chouhan; ExP-10 is memo of TIP of co-accused Anil Piple; ExP-11 is memo of TIP of Prakash Chandan @ Rakesh. Dhaniram PW-18 & Vibharani Saha PW-12 are the witnesses of TIP of the seized jewelery.

16. After scrutinizing evidence of witnesses supporting TIP, I am of this view that there is no such admission made by any of the witnesses who have identified the culprits, so as to held that they have made a false statement of identification of the appellants in question, therefore, the ground raised in appeal that the evidence of TIP of the appellants is not reliable is without any substance, therefore, this ground in appeal is rejected.

17. S.I. Ramesh Sahu PW-22 has investigated the case. He has stated that he apprehended appellant Anil @ Anya, who gave a statement on memorandum admitting guilt that the cash amount which he received in his share has been spent by him and ornaments of his share are with co-accused Prakash Solanke.

18. Daksh Kumar Sahu PW-8 has stated that he apprehended appellant Biru Chouhan, who made a statement vide memorandum Ex.P-13 that the cash of his share in loot has

been spent by him. The main accused Prakash Solanke was also apprehended and interrogated by him. He stated that he had received some jewelery in his share out of which he produced one silver anklet and one iron rod which was seized vide Ex.P-14. In cross-examination this witness remained firm.

19. Head Constable Rakesh Mishra PW-11 has stated that appellant Prakash Solanke was interrogated by him, who admitted guilt and stated that the cash amount was distributed between all of them, jewelery of silver had been kept by him and he had entrusted rest of the gold jewelery to appellant Sandesh for selling them out, after keeping some of gold articles. Vide memorandum statement ExP-18 he has also produced some of the jewelery kept by him which were seized vide Ex.P-19. In cross-examination, his statement has remained un rebutted.

20. Rakesh Mishra PW-11 has further stated stated that appellant Sandeshi Rokde was apprehended from Nagpur and he gave a statement on memorandum vide ExP-22 based on which jewelery of various description were seized from his possession vide Ex.P-20. This statement has also remained un rebutted in his cross-examination and all the adverse suggestions given by defence have been denied by him. This appellant has offered no explanation or made any claim over the property seized from his possession.

21. Sujai Mandal PW-23 has very clearly supported recording of memorandum of appellant Biru vide ExP-13 and also recovery of the silver anklet & iron rod from him vide ExP-14. Although he is a Constable, but there is no such rule that any person being a police official should be disbelieved.
22. Naresh Shau PW-6 has also supported the proceedings of ExP-13 & 14, therefore, the memorandum seizure from appellant Biru Chouhan has been proved in this case.
23. Head Constable Rakesh PW-11 has supported Ramesh Sahu PW-20 regarding proceeding of ExP-19. Seizure of articles made from Prakash Solanke and also seizure of articles from Sandesh Rokde vide ExP-20, which were made by ASI Ramesh Sahu PW-20. Manohar PW-30 has supported the statement of S.I. Ramesh Sahu PW-22 regarding the proceeding of ExP-24 & 25 made from appellant Anil @ Anya Piple.
24. Only for the reason that the witness of search and seizure were not independent persons, it cannot be said that the witnesses are making false statement before the Court. No such question was put to any of the prosecution witness who supported prosecution case that he has some interest in false implication of appellants or he has some kind of personal enmity with them. In **Baldev Vs. State of Haryana** reported in **(2016) Cr.L.J. 154** it was held that it is well settled that

credibility of witness has to be tested on the touchstone of truthfulness and trustworthiness. It was also held that it is not a law that police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. The presumption that every person acts honestly applies as much in favour of a Police Official as any other person. It was earlier held in ***Aherraaja vs. State of Swarashtra*** reported in ***AIR 1956 SC 217 & Tahir vs. State of Delhi*** reported in ***(1996) 3 SCC 338*** that in case where the evidence of police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction, therefore, I do not find any reason to find fault with the finding of conviction against the appellants in the impugned judgment.

25. After considering the entire facts and circumstances of this case, I do not find any reason to reduce the sentence imposed upon the appellants in this case.

26. In the result, all the appeals are dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nisha