

**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Judgment Reserved on : 30.01.2019**

**Judgment Delivered on : 15/02/2019**

**CR.A. No. 130 of 2013**

1. Sonu Singh Chouhan, S/o. Chunna Singh Chouhan, Aged About 24 Years, R/o. Sanjay Nagar, Tikrapara, Raipur (C.G.)
2. Golu @ Dayaram, S/o. Rahul Yadav, Aged About 21 Years, R/o. Telibanda, Raipur (C.G.)
3. Harish Chandra, S/o. Amar Singh Nirmalkar, Aged About 19 Years, R/o. Rawanbhata, Raipur (C.G.)
4. Narottam Soni, S/o. Bhagwat Soni, Aged About 21 Years, R/o. Mathpuraina, Raipur, Chhattisgarh
5. Aghanu Nirmalkar, S/o. Bharat Nirmalkar, Aged About 19 Years, R/o. Rawanbhata, Raipur, Chhattisgarh.
6. Dayanand Nirmalkar, S/o. Bharat Nirmalkar, Aged About 20 Years, R/o. Mathpuraina, Raipur, Chhattisgarh.
7. Jitendra @ Raju Pal, S/o. Dasrath Pal, Aged About 25 Years, R/o. Mathpuraina, Raipur, Chhattisgarh

**---- Appellants**

**Versus**

State Of Chhattisgarh, Through : P.S. Gurur, Distt. Balod (C.G.)

**-----Respondent**

---

For Appellants No.1 to 6 : Mr. Goutam Khetrapal, Advocate

For Appellant No.7 : Mr. Syed Imtiaz Ali, Advocate

For Respondent/State : Mr. Arun Shukla, G.A.

---

**Hon'ble Shri Justice Rajendra Chandra Singh Samant**

**C A V JUDGMENT**

**15/02/2019**

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by the learned Additional Sessions Judge, Balod, District Durg (C.G.), in Sessions Trial No.28/2012 on 01.01.2013, convicting the appellants for the offence under Section 395 of the Indian Penal Code and sentencing them to undergo R.I. 10 years and fine of Rs.50/- and for the offence under Section 397 of the Indian Penal Code and sentencing them to undergo R.I. 7 years with default stipulations.
2. Facts of the case in brief is this that on 03.06.2012 at about 3.30 AM, past midnight, the appellants were traveling in a vehicle bearing registration No.C.G.-04-HD-2794 over took and stopped the truck of the complainant – Mohan Nishad and after assaulting and beating him, looted cash of Rs.16,000/- and one mobile phone from him. FIR (Ex.P-1) was lodged by Mohan Nishad against 5-6 unknown persons. During the investigation, the complainant was medically examined for injuries. The appellants were apprehended and interrogated and at their instances, looted property and the vehicle in which they were traveling were seized. In test identification parade conducted vide Ex.P-3 and Ex.P-4, complainant identified each of the appellants. Statement of the witnesses were recorded and on completion of

investigation charge-sheet was filed before the concerned trial Court.

3. The trial Court charged the appellants with offence under Section 395 & 397 of the Indian Penal Code. The appellants denied the charges and prayed for trial. The prosecution examined as many as 7 witnesses on its behalf. On examining the appellants under Section 313, they denied all the incriminating evidence against them and pleaded innocence and false implication. No witness was examined in defence. On completion of trial, judgment has been delivered, in which the appellants stand convicted and sentenced as mentioned aforesaid.
4. It is submitted by the learned counsel appearing on behalf of the appellants that the trial Court has passed totally erroneous judgment of conviction without there being any basis of reliable and cogent evidence in support of the charge. It is further submitted that the statement of the complainant – Mohan Nishad (P.W.-1) was unreliable, which could not have been made the basis of conviction against the appellants and the test identification parade conducted of the appellants is itself doubtful, therefore, the conviction against the appellants is bad-in-law. Hence, it is prayed that the appeal be allowed and the appellants be acquitted of the charges levelled against them. It is prayed in the alternative that in case, this Court is not inclined to allow this appeal and acquit the appellants in that case, at least sentence imposed upon the appellants, which appears to be too harsh,

may be reduced.

5. Counsel for the State opposes the grounds raised in appeal and the submissions made in this respect. It is submitted that the prosecution has proved its case beyond all reasonable doubts. Therefore, no case is made out for acquittal or for reduction of the sentences. Hence, the appeal be dismissed.
6. I have heard the learned counsel for the parties and perused the record of the Court below.
7. The point in issue in this appeal is whether the prosecution has proved the charges against the appellants on the basis of the evidence beyond reasonable doubt?
8. Mohan Nishad (P.W.-1) has stated that on the date of incident, he was traveling in vehicle truck bearing No.AP-31-X-7677 and was passing through the spot of incident near Jagtara Temple. Between 3 to 3.30 AM past midnight, a vehicle, over took and stopped the truck. 5-6 boys armed with clubs came and damaged the truck and by pulling this witness from driving seat, assaulted him with clubs and injured him. This witness had cash of Rs.16,000/- and one mobile phone. Cash of Rs.16,000/- and the SIM of the mobile phone was looted by them. Thereafter, the appellants left the spot. He has clearly identified all the appellants, who were present in the Court as the persons, who have committed the offence. He has stated about lodging of FIR (Ex.P-1). In cross-examination, he had admitted that when he

arrived at the police station to lodge FIR, he had information that all the accused persons were arrested and then he had made statement that when he arrived on the police station he did not see the appellants present. He saw the appellants on the next day in jail during the test identification parade conducted by Tahsildar. He has denied other adverse suggestion given by defence.

9. The witness of search and seizure though have not supported the prosecution case, but the statement of Mohan Nishad (P.W.-1) is supported with other circumstantial evidence. Somit Meriya (P.W.-5) is the Executive Magistrate, who has conducted test identification parade vide Ex.P-3 and Ex.P-4 has stated that the complainant – Mohan Nishad (P.W.-1) correctly identified the appellants. In cross-examination, he has stated that 15 persons were also made to stand with the appellants in the test identification parade and the same 15 persons were repeated in test identification parade conducted with respect to these appellants in other cases for this reason, the truthfulness of test identification parade in this case is not affected in any manner. He has admitted that during the test identification parade some jail Santries were present, but it can not be said that there had been presence of police officer, therefore, the evidence of test identification parade is unrebutted, reliable and trustworthy.
10. Sub-Inspector – K.K. Kushwaha (P.W.-6) has conducted the investigation and supported recording of memorandum statement

of the appellants and the seizure of articles from them respectively, which needs no further consideration as there is express statement of the complainant Mohan Nishad (P.W.-1) is present that he was looted by these appellants.

11. Dr. G.R. Ravte (P.W.-7) examined the injured Mohan Nishad (P.W.-1) and found injuries of lacerated wound of his left parietal region, bruise with pain and swelling of left forearm, pain with swelling palm of right hand and pain and swelling in both the thighs vide his report Ex.P-2. There is no report of any grievous injury caused to the injured person. In cross-examination his statement has remained unrebutted.
12. After close scrutiny of all the relevant evidence present on record of the trial Court, it is found that the evidence of the prosecution is reliable and trustworthy and sufficient to conclude, that the appellants were the persons, who had looted the complainant – Mohan Nishad (P.W.-1). Hence, after due consideration, it is found that the conviction of the appellants for the offence under Section 395 & 397 of Indian Penal Code is supported with evidence of prosecution beyond reasonable doubt and there is no reason to interfere with in the same.
13. Considered the alternative prayer made on behalf of the appellants for reduction of sentence. As the offence committed by the appellants are serious in nature and they have criminal antecedents of similar nature of offence committed by them,

hence for this reason, there is no ground to consider and allow the prayer made, hence, for this reason I do not find any reason to reduce the sentence of imprisonment imposed upon the appellants.

14. Resultantly, the appeal has no merit and it is accordingly dismissed.

**Sd/-**  
**(Rajendra Chandra Singh Samant)**  
Judge