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HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on : 30.01.2019

Judgment Delivered on : 15/02/2019

CR.A. No. 145 of 2014

Golu @ Dayaram, S/o. Rahul Yadav, Aged About 21 Years, R/o. Telibandha, Raipur, P.S. - Telibandha, Civil and Revenue District Raipur (C.G.)

---- Appellant

Versus

State Of Chhattisgarh, Through : District Magistrate, Balod, Distt. Balod (C.G.)

-----Respondent

AND

CR.A. No. 354 of 2017

1. Sonu Singh Chouhan, S/o. Chunna Singh Chouhan, Aged About 24 Years, R/o. Sanjay Nagar, Tikrapara, Raipur, Dist. Raipur (C.G.)
2. Harish Chandra Nirmalkar, S/o. Amar Singh Nirmalkar, Aged About 19 Years, R/o. Rawanbhata, Tikrapara, Raipur, District - Raipur (C.G.)
3. Narottam Soni, S/o. Bhagwat Soni, Aged About 21 Years, R/o. Mathpuraina, Raipur, Dist. Raipur, Chhattisgarh
4. Aghanu Nirmalkar, S/o. Bharat Nirmalkar, Aged About 19 Years, R/o. Rawanbhata, Tikrapara, Raipur, Dist. Raipur, Chhattisgarh.
5. Dayanand Nirmalkar, S/o. Bharat Nirmalkar, Aged About 20 Years, R/o. Mathpuraina, Raipur, Dist. Raipur, Chhattisgarh.

---- Appellants

Versus

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

-----Respondent

For Appellants :

(In Cr.A. No.354/2017) : Mr. Goutam Khetrapal, Advocate

(In Cr.A. No.145/2014) : Mr. Vivek Tripathi, 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. Both these appeals are heard and decided together by this common order as they have been preferred against the judgment of conviction and order of sentence, passed by the learned 2nd Additional Sessions Judge, Balod, District Balod (C.G.), in Sessions Trial No.15/2013 on 21.01.2014, convicting the appellants for the offence under Section 395 of the Indian Penal Code and sentencing them to undergo R.I. 7 years and fine of Rs.100/- and for the offence under Section 397 of the Indian Penal Code and sentencing them to undergo R.I. 7 years and fine of Rs.100/- with default stipulations.
2. Facts of the case in brief is this that complainant Minal Biswas (P.W.-7) was on his way to Dantewada from Raipur in truck bearing No.C.G.-18-H-0692 along with another truck bearing No.C.G.-18-H-0693 driven by Vishwajeet with helper Suresh having in possession advance transport fare of Rs.24,000/-. Between 2.30 to 3.00 AM in the morning, after midnight, there was some breakdown in truck No.C.G.-18-H-0693 for which, he

and others stopped and repairing were being carried out then about 3.50 AM in the morning, 5-6 persons came armed with clubs and demanded cash, when Vishwajit refused to give money, he was assaulted and injured and cash of Rs.24,000/- from his possession were looted from him. FIR (Ex.P-40) was lodged by Minal Biswas (P.W.-7) against 5-6 unknown persons. During the investigation, the appellants were apprehended and interrogated and at their instances, seizure of articles were made vide respective seizure memos. All the appellants in both the appeals were identified by the complainant Minal Biswas (P.W.-7) and another witness Vishwajit vide Ex.P-37 and Ex.P-38. Investigation was completed and charge-sheet was filed before the concerned trial Court.

3. The trial Court charged the appellants with offence under Section 395 read with Section 397 of the Indian Penal Code. The appellants denied the charges and prayed for trial. The prosecution examined as many as 8 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 evidence of complainant (P.W.-7) is not reliable and the prosecution has not taken care to examine the another witness of this case Vishwajit. The evidence of test identification parade in this case is totally unbelievable and unworthy of any credit, therefore, the conviction against the appellants is not in accordance with the law. Hence, it is prayed that both the appeals 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 these appeals 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, both the appeals 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. Minal Biswas (P.W.-7) has stated that he was driving a truck carrying load of rice along with another truck following him. One of the vehicles had a breakdown, because of which they had to stop at Charama Ghati and they were taking rest. He has stated that at that time, the appellants came on the spot and after pulling him away assaulted and then looted Rs.28,000/- from his possession and then fled away from the spot in another vehicle. He has stated about lodging of FIR (Ex.P-40) in Gurur Police Station. He has stated that he identified the appellants in jail vide Ex.P-37 and Ex.P-38. In cross-examination, his statement has remained unrebutted. He has stated that at the time of lodging report, the appellants were not apprehended. When he was called to police Station – Gurur, he was informed that the appellants were in police Station Ranchirai. He has also admitted that he saw the appellants in police station – Ranchirai. He has denied that the amount of loot was of Rs.24,000/- and not of Rs.28,000/- as he has stated before the Court and has also denied the other adverse suggestions given to him.
9. Domeswar Sinha (P.W.-8) is helper of the same truck has stated about the incident of loot committed by the appellants and has also stated about identifying them in spot and identifying them in dock of the Court. In cross-examination, his statement has remained unrebutted. He is not a witness of test identification parade. The dock identification made by him can not be regarded as doubtful, as there is reason to hold, that he was present on the

spot and had seen the culprits at the time of commission of offence, therefore, his evidence comes in support of statement given by Minal Biswas (P.W.-7).

10. Dr. Tushar Kant Markam (P.W.-3) has examined the injured Minal Biswas (P.W.-7) and found simple injuries present on his body vide his report Ex.P-35, which is remained unrebutted and his evidence is corroborating to the statement of Minal Biswas (P.W.-7) that he was assaulted and injured.
11. Sonit Meria (P.W.-4) has stated that he conducted test identification parade in which the appellants were made to stand with 15 other persons and then the complainant made identification vide Ex.P-37 and Ex.P-38 correctly. In cross-examination his statement has remained unrebutted. Although he has admitted that same 15 persons were mixed with appellants for identifying the appellants/accused persons in different cases against them by itself the evidence of identification of the appellants in this case can not be regarded as doubtful or falsify.
12. Sub-Inspector, K.K. Kushwaha (P.W.-6) has conducted investigation, in which he has interrogated the appellants and the seizure was made from their possession. Sarju (P.W.-5) is the seizure witness, who has partly supported the prosecution case.
13. After close scrutiny of all the evidence present in the record of the trial Court, it is appears that although the admission made by Minal Biswas (P.W.-7) in cross-examination that he has seen the

appellants earlier to the identification parade in the police station does not harm the prosecution version for the reason that the appellants were identified by another witness Domeswar Sinha (P.W.-8), who although not a witness of test identification parade was himself present on the spot and had seen the appellants committing the offence, hence his statement lends support to the test identification parade in favour of the prosecution. 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.

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

Sd/-
(Rajendra Chandra Singh Samant)
Judge