

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved for Judgment on :28/02/2019****Judgment delivered on : 08/03/2019****CRA No. 576 of 2015**

- Satish Singh S/o Rama Shankar, Aged About 23 Years, Occupation- Private Service, R/o Lalganj, P.S. Lalganj, District Mirzapur, U.P., Uttar Pradesh

---- Appellant**Versus**

- State of Chhattisgarh Through Station House Officer, P.S. Ambikapur, District Surguja, Chhattisgarh, Chhattisgarh

---- Respondent

For Appellant : Shri Shakti Raj Sinha, Advocate.

For Respondent/State: Shri Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**CAV Judgment****08/03/2019**

1. This appeal has been preferred against judgment dated 25-04-2015 passed in Sessions Trial No.12/2014 by the Second Additional Sessions Judge, Surguja, Ambikapur, C.G. convicting the appellant under Section 392, 307(3 times) of the IPC & Sections 25 & 27 of Arms Act and sentencing him with R.I. for 10 years, R.I. for 10-10 years, R.I. for 4 & 4 years along with fine Rs.500/-, Rs.500/- - Rs.500/- (total Rs.1500/-) and Rs.500/- & Rs.500/- (total Rs.1000/-) respectively with default stipulations and direction that all the jail sentences shall run concurrently.
2. The case of the prosecution, in brief, is this, that on 09-10-2013 at about 08:15 P.M. complainant Megha Gupta (PW-4) was walking on the street to her home when the appellant along with deceased

Gourav Seth came on a motorcycle and snatched the gold chain worn by Megha Gupta (PW-4) and then he made his escape. Megha Gupta (PW-4) and others raised alarm, hearing which Vishal Gupta (PW-2) and Ratan Prasad Gupta (PW-3) tried to chase and stop the motorcycle of the appellant, who fell down because of traffic. Then the appellant while running away from the spot he took out a firearm and shot at Vishal @ Mikku Gupta (PW-2) causing injury on his right forearm and when Ratan Prasad Gupta (PW-3) tried to catch hold of him, the fire was also opened on him by the appellant who got shot on his leg, then, the appellant also fired shot on Dhananjay Bariyar (PW-8). Members of public caught hold of the appellant on the spot. FIR (Ex.-P/4) was lodged on the spot on the information given by Vishal Gupta (PW-2) and the appellant was arrested on the spot. Memorandum statement Ex.-P/1 was recorded and at the instance of the appellant a country-made firearm and cartridges recovered and seized from spot vide Ex.-P/2. The statement of witnesses were recorded. The injured victims were sent for medical examination and treatment. The seized firearm was sent for examination by armorer. After completion of the investigation charge sheet was filed.

3. The appellant was charged with offence under Sections 120 read with 392 of the IPC and Sections 25 of Arms Act, to which the appellant denied and prayed for trial.
4. On completion of the prosecution evidence, the appellant was examined under Section 313 of the Cr.P.C., in which he denied all the incriminating evidence against him, pleaded innocence and false

implication. No witness was examined in defence.

5. On completion of the trial, the impugned judgment has been passed in which the appellant has been convicted and sentenced as aforementioned.
6. It is submitted by learned counsel for the appellant that there is question of the identity of the appellant, as no test identification parade was conducted in the investigation. After seeing the appellant on the spot, the appellant has been directly identified in the dock of the Court. Vishal Gupta (PW-2) is one of the victims who is not reliable witness. Another witness of the spot Ratan Prasad Gupta (PW-3) has not clearly supported the prosecution case, because of which he was declared hostile. It has been admitted by Vishal Gupta (PW-2) in his cross-examination that he had seen the appellant in the police station and he has also seen his photo published in the newspaper and thereafter he has identified him before the Court, which makes the identification of the appellant doubtful. It is also submitted that according to the investigation, the gold chain was seized from the possession of Megha Gupta (PW-4) which shows that no question of loot had occurred. Further, it is submitted that according to the statement made by Doctor Roselin R. Ekka (PW-5) in the case of bullet injury the size of entry wound and exit wound was the same, which is not possible in a bullet injury, where the exit wound is always larger than the entry wound. Hence, for these reasons, conviction of the appellant is bad in law. In alternative, it is prayed that if this Court is not convinced to acquit the appellant from the charges against him, then the sentence of

imprisonment imposed upon him may be reduced to period already undergone by him in jail.

7. Per contra, learned counsel for the State opposes the grounds raised in the appeal and the submission made by learned counsel for the appellant in this respect. It is submitted that the prosecution has proved its case beyond reasonable doubt. The statement of witnesses Vishal Gupta (PW-2) and Megha Gupta (PW-4) is clear and reliable and Kailash (PW-6) Gupta has given statement regarding identifying the appellant as the person who was present on the spot and who had looted and fired country-made firearm causing injuries to the victims. Apart from that, there is evidence of seizure of firearm and cartridges from the appellant which is clearly in support. Therefore, no case is made out for acquittal in this case.
8. Heard learned counsel for the parties and perused the record of the trial Court.
9. Megha Gupta (PW-4) has stated that on the date of incident when she was walking in the street along with others, two boys came on a motorcycle. The person sitting behind the motorcycle snatched the chain and locket worn by her. She has identified the appellant as the person who had done the snatching. She has stated that while attempting to flee from the spot the appellant and other fell down. The appellant was caught and the other person has died. In cross-examination she has admitted that she saw the appellant present in the police station where she has identified him as the person who had looted the chain. She has also admitted that she has herself deposited the gold chain in the police station. The question was put

to her by the Court as to how she came into possession of the chain which was looted, to which she replied that the chain had fell down, which was collected and given to her sister-in-law Arti Gupta, who had given the same to her. Issue of seizure of chain is not important, the statement made by the witness that she was wearing the gold chain and which was snatched by the appellant and removed from her possession is more important for consideration in this case. The question raised on the point of identification shall be considered later.

10. Vishal Gupta (PW-2) is another key witness. He has stated that at the date and time of the incident he saw a person riding on the motorcycle fell down and also heard the alarm raised by the persons asking to catch the motorcyclist. He has stated, that when he was reaching the spot he suffered one shot on his right hand and one shot on his right leg, then he saw that the appellant was the person who was firing shots. He has stated about lodging the FIR Ex.-P/4 on the spot. In cross-examination he has admitted that when he got the shot injury he saw that it was the appellant who was firing the shots. He has also admitted that no identification was conducted in the case, but he was informed about the name of the appellant by the policemen. He has stated that he was shot at from the distance of 2 to 3 feet and he has seen the person shooting him. He has also admitted that he had seen the appellant in the police station and had seen his photograph published in the newspaper, after that he is identifying the appellant before the Court. There is no other statement or admission made by him in his cross-examination

so as to suggest that he had been shot at by any other person and he had suffered the injury on account of any other reason. Therefore, his statement that he suffered bullet injury has remained unrebutted.

11. Sonu Gupta (PW-1) has stated that he had arrived on the spot later on and saw Vishal Gupta (PW-2) in injured condition who was taken to the hospital. He has not supported the prosecution in other investigation procedures.
12. Ratan Prasad Gupta (PW-3) has also not identified the appellant and has not supported the prosecution case.
13. Kailash Gupta (PW-6) has stated that he witnessed the incident and the appellant was the person who snatched the chain of his wife Megha Gupta (PW-4) and was attempting to flee by firing the shots on Vishal Gupta (PW-2) and Ratan Prasad Gupta (PW-3) and then he was caught hold by the police personnel. In cross-examination he has been confronted by his previous statement Ex.-D/1 according to which, this witness is not an eye-witness.
14. Dhananjay Bariyar (PW-8) is a member of Home Guards who has stated that on the date and time of the incident he was present on duty on the spot. When he saw the appellant running towards him who was firing shots, then he tried to stop and catch hold of the appellant, the appellant fired two shots on him, but he was not hurt. Thereafter, he chased the appellant. Then the appellant tried to hit him by throwing the pistol on him. In cross-examination his statement about seeing the appellant firing shots and that he chased the appellant has remained unrebutted.

15. Adhik Gupta (PW-9) is not an eye-witness. He has not supported the proceeding of memorandum and seizure.
16. Sub-Inspector Manish Sharma (PW-12) has stated that on the date and time of the incident he received the information that some public are assaulting and beating two boys, he reached the spot and then lodged the FIR (Ex.-P/4) intimated by Vishal Gupta (PW-2). On the basis of the same information a numbered FIR (Ex.-P/14) was lodged in the police station, then he recorded the memorandum statement of the appellant vide Ex.-P/1 and at his instance 5 live cartridges and 2 blank cartridges were seized by him along with one country-made firearm vide Ex.-P/2. Thereafter, he had done all the investigation procedures. In cross-examination he has stated that he saw Vishal Gupta (PW-2) and Ratan Prasad Gupta (PW-3) both in injured condition. There is no other admission made by him in cross-examination so as to suggest that this witness is making false statement regarding the proceeding taken up by him on the spot.
17. Head Constable Sunil Kumar (PW-7) has examined the seized pistol, magazine, 5 numbers of live cartridges and 2 numbers of empty cartridges vide Ex.-P/12, according to which, the pistol was in working condition and the cartridges were live capable of being fired. In cross-examination he has though admitted that he has not examined whether the live cartridges could have been loaded in the pistol or not and that he had observed that 2 cartridges were fired from the same pistol or not. This admission made by him is not sufficient to lead to any adverse inference. Although the report given by him, Ex.-P/12, is not complete for the reason that he has not

mentioned the bore of the pistol and bore of the live and blank cartridges, however the facts remains that the has examined the pistol which was found in working condition and the cartridges, which may have been on that pistol or not, were also capable of being fired, which is sufficient evidence to corroborate and connect with the incident.

18. Doctor Roselin R. Ekka (PW-5) examined the injured Ratan Prasad Gupta (PW-3) and found one lacerated wound on the thumb of right foot vide Ex.-P/7. She also examined Vishal Gupta (PW-2) and found one injury on his right forearm which was round in shape of size 1 x 1 cm. and another injury in shape of 1 x 1 cm. on the lateral aspect which was exit wound. She also found circular injury on his right thigh of size 1 x 1 cm. and one exit wound of size 1 x 1 cm. on the lateral aspect vide report Ex.-P/9. She has not opined whether what may have caused these injuries. In cross-examination she has admitted that she has not found any presence of carbon or gun-powder in any of the injuries examined by her and she also did not see clothes of the victims having gun shot tear.
19. Doctor Roselin Ekka (PW-5) is not a ballistic expert. She is a medical expert and she has reported on the injuries found in the body of Ratan Prasad Gupta (PW-3) and Vishal Gupta (PW-2). As there is statement of Vishal Gupta (PW-2) that he received the injury from the shot fired by the firearm, therefore, finding of injury having entry and exit wound is clearly suggestive and corroborative to the statement made by Vishal Gupta (PW-2) and there is no need to be misguided by other statement and admission made by the witness

in her cross-examination.

20. After closely scrutinizing all the evidence present in the record of the trial Court, I am of this view that it is a peculiar case in which there is evidence that this appellant was the person who snatched the chain from Megha Gupta (PW-4) and was attempting to make his escape when he was chased and caught by the members of crowd. There is evidence that while making this attempt he pulled out a country-made firearm and shot with it which has resulted in the injury caused to Vishal Gupta (PW-2).
21. Now the question of the identification is taken up. There had been no occasion of isolation of the appellant from the time of incident till he was caught hold on the spot, therefore, the witnesses had all the opportunity to see the appellant from the time of commission of offence till the time he was caught hold by the crowd. It is not a case where the witnesses had only one visual of the appellant and there remained scope of doubt whether the identification made by them was correct or not. In such a case where the culprit is seen committing crime and then was caught and handed over to the police, holding of test identification parade would be merely a formality. Therefore, non-holding of test identification parade in this case cannot be regarded as fatal. It has been held in the matter of **Dastagir Sab and another Vs. State of Karnataka**, reported in (2004) 3 SCC 106, by Hon'ble the Supreme Court that where the witnesses have occasion to see the culprit more than once, the non-holding of TIP would not be fatal to the prosecution. There is no such rule that dock identification has to be disbelieved.

22. Similarly, the other reference of seeing the appellant in the police station and seeing his photograph in newspaper are also of no consequence as there is no reason to doubt that the person who committed the offences could have other than the appellant himself. Hence, after due consideration on each and every material present in the record of the trial Court, I do not find any substance in this appeal.
23. Considering on the nature of offence committed and seeing that the appellant had come on the spot to commit this offence with preparedness carrying firearm with him and that he was seen making use of that firearm by the witnesses, it is not a case where any leniency should be shown by way of reduction of sentence imposed upon him. Therefore, in view of this finding, the prayer for reduction of sentence of imprisonment imposed upon the appellant cannot be allowed.
24. Consequently, the appeal filed by the appellant is dismissed.

Sd/-
(Rajendra Chandra Singh Samant)
Judge