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HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on: 14/03/2019****Judgment delivered on: 24/04/2019****CRA No. 265 of 2016**

- Ranjeet Singh, S/o Jagtar Singh, Aged About 22 Years, Caste-Punjabi, R/o Abhishek Vihar Colony, Phase-2, House No. 145, Police Station-Civil Line, Revenue & Civil District-Bilaspur, Chhattisgarh.

---- Appellant**Versus**

- State of Chhattisgarh Through Police Station Bhatapara Gramin, District Baloda Bazar Bhatapara, Chhattisgarh.

---- Respondent

For the Appellant : Mr. Praveen Das, Advocate.

For the State/Respondent : Mr. Himanshu Kumar Sharma, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**CAV Judgment****24/04/2019**

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 16.2.2016, passed by the Additional Sessions Judge, Bhatapara, District-Baloda Bazar-Bhatapara, Chhattisgarh, in Sessions Trial No.H05/2014, convicting the accused/appellant under Sections 394 & 397 of Indian Penal Code (for short 'IPC') and sentencing him to undergo RI for 7 years & fine of Rs.1,000/- & RI for 7 years & fine of Rs.1,000/- with default clauses.

2. The prosecution case, in brief, is this that on 30.12.2013 complainant Laxman Dhruv was performing his duty as night-guard. At about 1.30 a.m. in the midnight, two persons came in a car bearing registration No.CG-12-R-8084 and one of them came to the complainant and asked to help him in unloading five gunny bags of paddy, which were loaded in truck CG No.04JB0212, and to keep it in the standing car. When complainant and his companion Sushil Sen opposed, unknown assailants assaulted Sushil Sen with a knife and caused injuries on his face, hand & thigh and thereafter forcibly unloaded 5 gunny bags of paddy each weighing 40 kg of paddy worth Rs.2,000/- and kept in the car. Mobile sets of truck driver Rajesh Kumar Singh and Sushil Sen were also looted by said unknown persons and thereafter they fled from the spot. FIR ExP-1 was lodged in the police-station on the basis of which offence under Section 394 of IPC was registered. Injured Sushil Sen was medically examined and provided treatment. During investigation, at the instance of appellant, car bearing Registration No.CG-12R-8084, one Samsung mobile phone and 5 gunny bags each containing 40 kg of paddy were seized from his possession. At the instance of absconding accused, one Nokia mobile phone and one knife was seized from his possession. On completion of investigation, the charge sheet has been filed before the concerned Court.
3. Charges under Sections 394 r/w Section 397 of IPC and Section 3 (2) (v) of the Act of 1989 were framed against the appellant, he denied the same and sought for trial. Appellant was examined under

Section 313 of CrPC in which he denied all the incriminating evidence appearing against him, pleaded innocence and false implication. No witness was examined by appellant in his defence. Appellant stands convicted and sentenced in the impugned judgment.

4. It is submitted by counsel for appellant that the appellant has been erroneously convicted by the Court below without there being evidence showing involvement of appellant in the offence in question beyond reasonable doubt. Firstly, FIR Ex.P-1 was lodged against unknown persons. When the appellant and absconding accused were apprehended in this case they were not subjected to any test identification parade, which was very much necessary in this case as accused persons were unknown to the complainant and injured persons. The dock identification made by Laxman PW-1 and Sushil Sen PW-2 is not a reliable evidence. Sukhmel Singh PW-3, Jhaneshwar Verma PW-11 & Derharam PW-12 have falsified the statement of other witnesses by stating that they do not recognize the appellant and absconding accused as the persons engaged in the commission of offence. The witnesses of search and seizure have also not supported the prosecution case. Therefore, it is submitted that it is a case of no evidence and 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 case, the sentence imposed upon the appellant may be reduced, as it is too harsh.

5. Learned counsel for the State has opposed the grounds raised in this appeal as also the arguments advanced by counsel for the appellant. It is submitted that Laxman PW-1 and Sushil Sen PW-2 both have clearly supported the prosecution case and identified the appellant and absconding accused before the Court. For the reason that no TIP has been conducted in this case, the dock identification made cannot be thrown out because evidence of TIP is only an investigative procedure and not a substantive piece of evidence. The substantive evidence is the statement of witness who have duly identified the culprits in the Court and therefore these witnesses are reliable. Further, the recovery that has been made at the instance of the appellant has also been proved by the Investigation Officer in his evidence and merely because independent witnesses has not supported this procedure, it does not mean that the entire prosecution story has to be disbelieved. Hence, no case is made out for acquittal or reduction of sentence.
6. I have heard learned counsel for the parties and perused the record of the trial Court including the impugned judgment.
7. PW-1 Laxman is the Guard who on the date of incident was present on the spot i.e. Alesur Paddy Collection Centre. He has stated that the appellant and absconding accused came in a car, entered into the collection centre, assaulted the person and then by force looted 5 gunny bags containing paddy. Absconding accused had assaulted injured Sushil Sen PW-2. Thereafter, the appellant and absconding accused fled from the spot in a car. Though this witness has been

unable to remember the exact date of incident, but he has admitted that he has lodged FIR against unknown persons. He has further stated that he had informed about the number of car while lodging report. He could not name the person who had assaulted Sushil Sen PW-2 because he did not know his name at that time. These admissions do not have any adverse effect on the statement given by him in examination-in-chief and there is no such admission made by him in cross-examination so as to dispute the identification of appellant in any manner.

8. Sushil Sen PW-2 has stated that on the date and time of incident he was also present on the spot. He saw the appellants in paddy collection centre and they were using abusive language. When he objected to it, he was assaulted by a knife by both the accused persons, because of which he suffered injuries on his thigh, head, hand and back. They also forcibly snatched his mobile and 5 gunny bags of paddy, kept the same in their car and thereafter fled from the spot. In cross-examination, his statement has remained unrebutted. He has stated that on the date of incident, 4 trucks had arrived in the Paddy Collection Centre. He denied all the adverse suggestions given to him. Nothing incriminating could be elicited in the cross-examination of this witness so as to dispute identity of appellant and absconding accused by this witness.
9. Sukhmer Singh PW-3 has though stated about the incident of loot of gunny bags but he has denied to have identified appellant and absconding accused. He has been declared hostile.

10. Jhaneshwar Verma PW-11 & Derharam PW-12 did not support the prosecution on the point of identification of appellant and absconding accused and therefore they have also been declared hostile by the prosecution.

11. Dr. A.K. Gupta PW-4 examined injured Sushil Sen on 30.12.2013 and found one incised wound of size ½” on the right side of head, one incised wound of size 1½” deep below left eye and similar wounds on right side and in the palm of left hand. He opined that the injuries noticed on the person of injured were caused by some hard and sharp object. Injury below eye was grievous in nature whereas other injuries were simple in nature. His report is ExP-5. In the cross-examination, there is no contradiction in the statement regarding injuries suffered by injured Sushil Sen.

12. P.L. Notiyal PW-10 is the investigation Officer, who has stated about lodging of FIR ExP-1 by Laxman PW-1, based on which offence was registered against unknown persons. He has stated about the conducting of investigation. He has stated that appellant Ranjeet Singh was apprehended and interrogated, who made disclosure statement of Ex.P-8, based on which car bearing registration No.CG12-R-8084 was seized vide Ex.P-10. One Samsung mobile phone was seized vide ExP-11, whereas five gunny bags each containing 40 kg of paddy were seized vide ExP-12 at his instance. He has also stated that appellant Ranjeet Singh made disclosure statement (ExP-9) of Nokia mobile phone and knife and the same were recovered at his instance vide Ex.P-13. In cross-examination,

statement of this witness remained unrebutted. Some admissions in his cross-examination that he has not mentioned IMEI number of the mobile phones seized and that similar knife is available in the market does not contradict his statement in examination-in-chief regarding the recoveries made at the instance of the appellant. There is no such admission that the procedure of memorandum and seizure had any defect in it. Further, no question was put to this witness to show that he had any personal interest to falsely implicate this appellant.

13. Permanand Patle PW-8 and Yogesh Kurre PW-9 have though denied that the procedure of memorandum and seizure from appellant and absconding accused was conducted in their presence, but they have admitted their signature on the memorandum and seizure memos. There is no specific explanation as to why they have put their signatures on these memorandum and seizure memos. In the cross-examination, both these witnesses have admitted that they have put their signature on asking of the police official. They do not depose that they were pressurized or forced in any manner to put their signatures on these papers. Furthermore, they have been declared hostile and mere discredited by the prosecution, therefore, their statements do not affect in any manner the testimony of Investigation Officer PW-10.

14. There is no need of examining evidence of other witnesses in this case as the scrutiny has been made of the evidence of all the relevant witnesses herein above.

15. So far as the necessity of TIP, as argued by counsel for the appellant,

is concerned, the Hon'ble Supreme Court has held in ***Kanta Prasad vs Delhi Administration*** reported in **AIR 1958 SC 350**, that failure to hold such a parade would not make inadmissible the evidence of identification in court. Similarly, in *State of Maharashtra vs. B. Suresh* (2000) 1 SCC 475 it was held that merely because TIP was not arranged by the investigation agency, the clear, cogent and trustworthy evidence cannot be discarded on this ground. In the case at hand, Laxman PW-1 & Sushil Sen PW-2 have made clear statement that they have identified the appellant on the spot and these witnesses remained unshaken in their cross-examination. Therefore, failure to conduct TIP cannot be regarded as fatal to the prosecution in this case.

16. In a number of cases it has been held, that it is not a rule that police witness should always be disbelieved for the reason that a police witness has conducted investigation and had some interest. An accused can be convicted on the basis of testimony of a police witness alone if it is found that there is no personal enmity or grievance of the Police Officer with the accused person to falsely implicate him in that case, his evidence can be believed and made basis for conviction.

17. In *Baldev Vs. State of Haryana* (2016) 1 C.J.L.J 163 and *Tahir Vs State of Delhi* (1996) 3 SCC 338. This principle has been reiterated, therefore, in this case, although there is no corroboration to statement of P.L. Notiyal PW-10, but his statement appears to be reliable. Therefore, findings of the Court below that it is the appellant

who assaulted and injured victim Sushil Sen PW-2 and looted paddy from the Paddy Collection Centre as also mobile phones of persons present there, is a finding based on proper appreciation of evidence available on record and the same does not call for any interference.

18. As regards the sentence, considering the fact that appellant has been sentenced with RI for 7 years, which is the minimum sentence prescribed under Section 397 of IPC, therefore, there is no scope of reduction of sentence.

19. Accordingly, the appeal is dismissed. The conviction and sentence in the impugned judgment is maintained as it is.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nisha