

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 1690 of 2019**

- Madvi Hadma, S/o Joga, aged about 28 Years, R/o Fullod Padapara, P.S. Bhairamgarh, District Dantewada, Chhattisgarh.

----Appellant**Versus**

- State of Chhattisgarh, Through Police Station Kettekalyan, District Dantewada Chhattisgarh.

---- Respondent

For Appellant	Mr. Anukul Biswas, Advocate.
For Respondent/State	Ms. Fouzia Mirza, Additional A.G.

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board by Shri Prashant Kumar Mishra J.

11/12/2019

1. Appellant is an illiterate Tribal of Dantewada District in Bastar area of the State. He has been convicted for committing an offence under Section 395 of Indian Penal Code and sentenced to undergo R.I. for life under the impugned judgment dated 06.05.2002 passed by the 3rd Additional Sessions Judge, Bastar at Jagdalpur in Sessions Trial No. 69/2002.
2. Initially the appellant had not filed any appeal against his conviction. In course of hearing of another appeal which was barred by years together, this Court directed the Member Secretary, SALSA and Secretary, High Court Legal Services Committee to take steps for preferring appeals on behalf of all such convicts who are languishing in jail but appeal against their conviction has not yet been preferred

before the High Court. In the said exercise, the present appellant informed the Secretary of concerned DLSA that his appeal has not been preferred and thus the present appeal was proposed and filed after a delay of 6343 days.

3. On the first date of hearing i.e. on 21.07.2011, we condoned the delay and summoned the record by special messenger. The appeal itself was directed to be listed for final hearing and now the appeal is heard finally within a month of filing.
4. The prosecution case, as reflected in the FIR Ex.P-2 is that dacoity took place in the house of complainant Sukhdev Singh at about 1:30 am in the intervening night of 28th & 29th March, 2001 for which the FIR was lodged at 17:30 hours on 30.03.2001 by PW-2 Sukhdev Singh informing the Police that he is the Up-Sarpanch of Gram Panchayat Metapaal and also owns a grocery shop & flour mill. On 28.03.2001, he had brought Rs.12,000/- paid by Ashok Burad of Geedam and had retired to bed with his wife and children. At about 1:30 am, somebody knocked at his door and requested him to open the door. When he requested the visitor that he should come in the morning, another person shouted to set ablaze his vehicle, on which he opened the door and was immediately encircled by three persons. They pointed piped knife (*Gupti*), knife etc. and criminally intimidated him. 6-7 persons encircled the house and the first three persons took him inside the house, took the keys of the almirah and looted Rs.40,000/-, one bank draft for Rs.1,000/- and his *Mandi* licence. The informant stated in the FIR that he and his wife can identify the culprits as they had seen three persons in the light of the tube-light inside the house.

5. Five accused persons who were sent for trial were arrested on or about 1st of August, 2001. The appellant was sent for TI parade on the same day where he was correctly identified by PW 2 Sukhdev Singh. One club and shirt were recovered from the appellant vide Ex. P-9.
6. In course of trial, the prosecution examined 9 witnesses to bring home the charges. The appellant abjured the guilt, pleaded innocence and false implication.
7. The trial Court has convicted the appellant for offence under Section 395 of IPC, while four accused persons have been acquitted.
8. Shri Anukul Biswas, learned counsel for the appellant would submit that the identification parade conducted after four months of the incident is not acceptable for basing conviction more so when the offence had taken place during mid-night. He would submit that there being no recovery of any part of the looted cash amount or the bank draft or license belonging to the complainant, there is no evidence to convict the appellant. Hence, he deserves to be acquitted.
9. Per contra, Ms. Fouzia Mirza, learned Additional A.G. for the State would submit that the identification parade was conducted on the date of arrest, therefore, it is neither delayed nor untrustworthy. She would submit that the appellant having been identified, the same is enough for basing his conviction.
10. We have heard learned counsel for the parties and perused the material available on record.
11. In the FIR itself, informant Sukhdev Singh had clearly mentioned that he had seen all the three accused persons in the light of the tube-light

and he can identify them. During cross-examination, PW-2 Sukhdev Singh was suggested that when the accused persons entered the house, he had not switched on the light. However, the witness denies the suggestion by stating that he had switched on the tube-light. He has also identified the appellant during dock identification.

12. PW-5 Dinesh Kunjam is the CEO of Janpad Panchayat. He had conducted the Test Identification Parade wherein the appellant was correctly identified by PW-2 Sukhdev Singh. This witness has proved the identification memo Ex.P-3 & Ex.P-4. PW-6 Mehattar Ram was also present during the Test Identification Parade. He has signed over the identification memo Ex.P-4. Similarly, Dr. A.D. Bara examined as PW-8 was also present during the Test Identification Parade of the appellant vide Ex.P-3.

13. Even though, the amount looted in the dacoity has not been seized from the accused but it is also required to be considered that soon after the incident, the appellant was absconding and was arrested after about four months. Therefore, once the Test Identification Parade was held quickly, on the date of his arrest itself, the same has to be believed.

14. Considering the evidence of identification of the appellant, we are inclined to hold that the appellant has rightly been convicted for committing offence under Section 395 of Indian Penal Code. His conviction is, therefore, affirmed.

15. So far as the quantum of sentence is concerned, it needs to be considered that Section 395 of Indian Penal Code carries imprisonment for life or rigorous imprisonment which may extend to ten

years and also with fine. The appellant was arrested on 01.08.2001, therefore, as of now, he has already undergone jail sentence of 18 years and four months. In our considered view, the jail sentence already suffered by the appellant is adequate and appropriate considering the entire facts and circumstances of the case. Accordingly, we sentence the appellant for the period already undergone by him.

16. In the result, the appeal is allowed in part. While maintaining the conviction of the appellant under Section 495 of IPC, his sentence is reduced to the period already undergone by him. Since, he is reported to be in jail, therefore, he is directed to be released forthwith, if not required to be detained in connection with any other offence, on his furnishing personal bond for a sum of Rs.25,000/- to the satisfaction of the trial Court for his appearance before the higher Court as and when required. The bond so furnished shall remain in force for a period of six months from today in view of provisions of Section 437-A Cr.PC.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Gautam Chourdiya
Judge