

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 21-01-2020

Delivered on 12-02-2020

CRA No. 482 of 2001

1. Deepak s/o. Behadur Singh aged about 24 years, occupation Rajmishtri.
2. Pratap s/o. Samarjeet, aged about 22 years.

Both are residents of village Nagar, Police Station
Baikunthpur, Dist. Korla (CG).

---- Appellants

Versus

- The State of Chhattisgarh

---- Respondent

For Appellants : Mr. J.K. Shastri, Advocate

For respondent/State : Mr. Dinesh Tiwari, Dy. Govt. Adv.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against the judgment dated 1-5-2001 passed by the First Additional Sessions Judge, Baikunthpur (Koria) in Sessions Trial No. 66 of 2001 wherein the said Court has convicted the appellants for the commission of offence under Section 394 read with Section 398 of IPC and sentenced them to undergo RI for seven years.

2. As per version of prosecution, on 19-9-2000 at about 8.30 pm., appellants along with their three associates committed robbery of motor-cycle, hand-watch and some currency notes by causing hurt to victims namely Ashok Kumar (PW/1), Nandu (PW/3) and Rajesh (PW/8). The matter was reported and investigated. Appellants were charge-sheeted and convicted as mentioned above.

3 Learned counsel for the appellants would submit as under:

- i) First Information Report was lodged against unknown persons and test identification parade was conducted when the victims have already seen the appellants in Police Station, therefore, test identification parade is not permissible in evidence, but the trial court recorded finding on the basis of said test identification parade which is not permissible under the law.
- ii Seized articles were not identified in the present case, therefore, same is not connecting piece of evidence against the appellants.

- iii) The trial court has overlooked discrepancies in the statements of the witnesses and the trial court has not evaluated the evidence in its true perspective, therefore, finding of the trial court is liable to be set aside.

4 On the other hand, learned counsel for the respondent would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. The question for consideration of this court is whether the appellants are the persons who committed crime against the above named three victims. In the present case, date of incident is 19-9-2000 and report was lodged in Out Post of Charcha within Police Station Baikunthpur. In FIR (Ex.P/12 and P/13) name of the culprit is not mentioned and it is mentioned that they are unknown to the victims.

7. Ashok Kumar (PW/1) admitted that (para 13) that when his statement was recorded, appellants were in Police out post and his statement was recorded on the next day of the incident i.e., on 20-9-

2000. As per version of Naib Tahsildar, he conducted test identification parade on 26-9-2000, it means witnesses have occasion to see the appellants before identification, therefore, test identification has lost its significance because two persons identifying them had occasion to see earlier and they have seen them., therefore, test identification is not connecting piece of evidence. As per seizure memo (Ex.P/7) one lungi was seized from Narayan Singh, one motor cycle was seized from forest under the bridge as per discovery statement of appellant Deepak and one motor-cycle, one Chunari and Sindhoor were seized as per discovery statement of appellant Pratap (Ex.P/10). No description was given in FIR regarding motor-cycle, Chunari and Sindhoor and no identification of article was done after seizure, therefore, seizure in the present case is not connecting piece of evidence.

8. Now the point for consideration of this court is whether identification of the appellants in court is sufficient evidence against them when the witnesses had occasion to see them before test identification parade. Test identification is done to ensure whether the victims are right in identifying the culprits but in the present case when they had occasion to see the appellants in Police Station, subsequent identification in court is not satisfactory evidence. Case is not corroborated by satisfactory evidence of seizure and identification of articles.

9. Accordingly, the appeal is allowed. Conviction and sentence imposed by the trial court is hereby set aside. The appellants are acquitted of the charges framed against them. The appellants are reported to be on bail. Their bail bonds shall continue for further period of six months in view of Section 437-A of Cr.P.C.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju