

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Proceeding Through Video Conferencing

CRA No. 1175 of 2003

- Raju @ Surendra, S/o Sukhram, aged about 30 years, R/o Bhagwanpur Khurd, Village Ajirma, Thana Jai Nagar, District Surguja, C.G.

----Appellant

Versus

- State of Chhattisgarh, Through Police Station Jainagar, District Surguja, C.G.

---- Respondent

For Appellant	Shri B.K. Chakraborty, Advocate.
For Respondent/State	Shri Rahul Jha, Government Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board

19.10.2020

1. In this appeal filed under Section 374(2) Cr.P.C., the appellant has challenged the legality, validity and propriety of the judgment of conviction and order of sentence dated 24.09.2003, passed by the 1st Additional Sessions Judge, Surajpur, District Surguja, C.G. in Sessions Trial No.433/02, whereby and whereunder the appellant stands convicted and sentenced as under:-

Conviction	Sentence
Under Section 379 of Indian Penal Code	Imprisonment for ten months and fine of Rs.400/-, in

	default of payment of fine amount to undergo rigorous imprisonment for one month
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2. Case of the prosecution, in brief, is that on the date of incident i.e. 5th June, 2002 at about 7:00 pm at village Koldiha, *Dehati Nalishi* Ex.P-1 was lodged by the complainant- Dev Bhakt informing the police that he was working as a Secretary at Gram Panchayat and on the same day i.e. 5th June, 2002 at about 2:00 pm after attending the official meeting, he went to the bank and withdrew a sum of Rs.12,250/-. Thereafter, while he was returning to his home, on the way accused/appellant Raju @ Surendra and co-accused- Heeraman met him. Then, all three persons sat on motorcycle and went towards village Ajirma and when they reached near Kalighat, they ate *mutton* and consumed liquor. After that, they again moved towards village Koldiha and on the mid-way, they again consumed liquor. From there, they reached the place near nursery where they stopped motorcycle and both the accused started quarreling with complainant- Dev Bhakt and after threatening him of life, assaulted upon him by stone and committed *marpeet* with him, as a result of which complainant sustained injuries on his body and became unconscious. Thereafter, accused/appellant Raju @ Surendra and co-accused Heeram looted the amount of Rs.12,250/- from his possession and fled from there. Then, injured person was

sent for medical examination on 05.06.2002 who was examined by PW-7 Dr. B.P. Chandra vide Ex.P-15. The injuries sustained by the injured/complainant are as under:-

1. One lacerated wound over right fronto-temporal region of scalp with diffuse swelling size 2.5 cm x 0.5 cm x 0.5 cm.
2. One lacerated wound just above right ear in temporal region size 2 cm x 1 cm x 1 cm.

Patient was unconscious. Smell of alcohol was coming from mouth. Pulse 82 per minute. Blood pressure was 116/80 ml. Both pupils equal size, were reacting to light. Advised for X-ray of skull.

As per Doctor, both injuries were caused by hard and blunt object and caused within 24 hours prior to the examination. The nature of the injuries can be given after the X-ray examination.

3. On 8th June, 2002 (after two days of the incident), FIR Ex.P-14 was lodged by the complainant- Dev Bhakt against the accused/appellant Raju @ Surendra and co-accused Heeraman Prajapati under Crime No.10/02 in police station Jainagar, Surguja, C.G.
4. During investigation, memorandum statement of co-accused Heeraman was recorded vide Ex.P-4 consequent to which stone was seized from him vide Ex.P-8. Memorandum statement of accused/appellant Raju @ Surendra was

recorded vide Ex.P-5 consequent to which Rs.12,250/- and stone were seized from him vide Ex.P-9. From the place of occurrence, police seized the plain soil and blood stained soil vide Ex.P-6. Spot map Ex.P-12 was prepared by PW-6 B.P. Dwivedi, Station In-charge. Accused persons were arrested on 09.06.2002 vide Ex.P-13. After recording statements of the witnesses, charge sheet was filed against the accused persons under Sections 307, 394 read with 34 and 397 of IPC.

5. The trial Court framed charges under Sections 394, 307 read with 34 and 397 of IPC against the accused persons which were denied by them and they prayed for trial. The prosecution examined 8 witnesses in support of its case i.e. PW-1 Dev Bhakt/complainant, PW-2 Ashok Singh, PW-3 Tarak Chand Mandal, PW-4 Komal Singh Netam, PW-5 M.S. Chauhan, PW-6 B.P. Dwivedi, PW-7 Dr. B.P. Chandra and PW-8 Martin Lakda. Statements of accused persons were recorded under Section 313 Cr.P.C. in which they denied the incriminating circumstances appearing against them in the prosecution case, pleaded innocence and false implication. However, no defence witness was examined by them.
6. The trial Court after hearing counsel for the parties and considering the material available on record, acquitted the co-accused- Heeraman of the said offence and convicted and sentenced the accused/appellant as mentioned above.

7. Learned counsel for the appellant submits that the appellant has been falsely implicated in this case. He also submits that in this case no any witness has seen the incident. There are material contradictions and omissions in the statements of the complainant and other witnesses. No cogent evidence is available on record against the appellant. He further submits that complainant has lodged the FIR after the delay of two days on 08.09.2002 and explanation given by the complainant regarding delay in lodging the FIR is not acceptable. Therefore, the impugned judgment of conviction and order of sentence deserves to be set aside and the appellant be acquitted of the aforesaid charges.
8. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction and sentence of the accused/appellant are strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
9. Heard learned counsel for the parties and perused the material available on record.
10. PW-1 Dev Bhakt has stated in his deposition that on the date of incident i.e. 05.06.2002 at about 7:00 pm, after attending the official meeting of Gram Panchayat, he was returning to his home, on the way accused/appellant Raju @ Surendra and Heeraman Prajapati met him and asked him to go with them. Then, he (complainant) and accused persons

sat on motorcycle and went to purchase *mutton* and liquor. Thereafter, they went to the home of their relative where they ate *mutton* and consumed liquor. At about 7:30 pm, they proceeded for village Ajirma and when they reached near Kalighat, appellant Raju @ Surendra stopped motorcycle and complainant got down from motorcycle, at that time he was in drunken condition and appellant- Raju @ Surendra left him and moved away from there. He also stated in para 9 of his deposition that he was having Rs.12,250/- but he has no knowledge as to who looted his money. He also stated that he has no knowledge whether Joseph took him from the pit and admitted in hospital but he admitted his signature on the *Dehati Nalishi* Ex.P-1.

11. PW-2 Ashok Singh, Sarpanch, admitted in para 4 of his deposition that PW-3 Tarak Mandal told him that someone assaulted upon complainant- Dev Bhakt and threw him into the pit. Hearing this, he went to the spot and saw the complainant in injured condition and found injury near right temporal head of complainant, blood was oozing from there and complainant was in unconscious condition. Thereafter, he (this witness), Joseph and complainant's brother took the complainant- Dev Bhakt to Government Hospital, Ambikapur for treatment. He also stated that soil and blood stains were present on the clothes of the complainant. He proved this fact that from the place of occurrence police had seized the plain soil and blood stained soil vide Ex.P-6. He stated that in his

presence police arrested the accused/appellant and he admitted his signature on the arrest memo Ex.P-10.

12. PW-3 Tarak Chand Mandal and PW-4 Komal Singh Netam have turned hostile and not supported the prosecution case.

13. PW-5 M.S. Chauhan is the Sub-Inspector. He stated in his deposition that as per the information given by the complainant he lodged the *Dehati Nalishi* Ex.P-1 and on the basis of *Dehati Nalishi* Ex.P-1, he registered the numbered FIR Ex.P-14. He is the witness of seizure memos vide Exs. P-6 and P-13 and also recorded the statements of the witnesses.

14. PW-6 B.P. Dwivedi is the Station In-charge. He stated in his deposition that after the incident he went to the spot and prepared spot map Ex.P-12, recorded the memorandum statements of accused Heeraman & Raju @ Surendra vide Ex.P-4 and P-5, from the spot seized plain and blood stained soil vide Ex.P-6, seized the motorcycle of appellant Raju @ Surendra vide Ex.P-7, seized the stone from accused Heeraman vide Ex.P-8 and Rs.12,250/- from appellant Raju @ Surendra vide Ex.P-9 and arrested the accused persons vide Exs. P-10 and P-11 respectively and duly proved the same.

15. PW-7 Dr. B.P. Chandra medically examined the complainant vide Ex.P-15 and gave his report as mentioned in the preceding paragraphs. He has duly proved the said report.

16. PW-8 Martin Lakda has not stated anything about the incident.

17. Thus, in the totality of facts and circumstances of the case, considering the evidence of PW-5 M.S. Chauhan & PW-6 B.P. Dwivedi, Station In-charge, duly corroborated by the medical evidence in the form of MLC Ex.P-15, named FIR Ex.P-14, it stands proved beyond all reasonable doubt that it is the accused/appellant who looted complainant's money i.e. Rs.12,250/-. Though, the complainant has admitted in para 16 of his deposition that the accused persons are his friends, they did not commit any *marpeet* with him not looted his money, however, from the possession of the accused/appellant, the looted amount of Rs.12,250/- was seized and the seizure memo has been duly proved by the Investigating Officer PW-6 B.P. Dwivedi. Further, no explanation was given by the accused/appellant regarding seizure of money from him and he has not claimed anywhere in his statement that the said amount belongs to him.

18. It is a well settled principle of law that statements of police officers cannot be discarded or looked with suspicion merely because they are involved in the investigation. If their statements are found free from the suspicion of falsity and have a ring of truth, they can safely be relied upon. In this case, the defence has not alleged that the investigating officer was in any way inimical to the accused or was having any ill-will against him.

19. So far as delay of about two days in lodging the FIR is concerned, the incident took place on 05.06.2002 at about 7:00 pm and the complainant was admitted in hospital on 06.06.2002 at 9:50 am in unconscious condition. The aforesaid fact has not been disputed by the defence. In the FIR, the reason assigned for delay is that after the incident the complainant was admitted in hospital. In the totality of facts and circumstances of the case, the fact that at the time of incident, the complainant was in drunken condition, had suffered lacerated wounds over fronto-temporal regions and was unconscious, delay of two days in lodging the FIR cannot be said to be fatal to the prosecution case and, therefore, the argument advanced on this point is rejected.

20. On the basis of aforesaid discussion, this Court is of the opinion that conviction of the appellant under Sections 379 of IPC awarded by the trial Court is just and proper warranting no interference by this Court.

21. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed. From the record, it is seen that the appellant has been sentenced to the period already undergone i.e. 10 months by the trial Court and he has also deposited the fine amount.

Sd/-
Gautam Chourdiya
Judge