

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.212 of 2011**

- Shiv Kumar S/o Budhelal alias Sudhwa Satnami, aged 21 years, r/o village- Nawagaon-Hatha, P.S. Pandariya, District-KABirdham C.G.

---- Appellant**Versus**

- State Of Chhattisgarh Through Police Station Pandariya, District-Kabirdham, C.G.

---- Respondent

For the appellant	:Mr. Malay Shrivastava, Advocate
For the Respondent/State	:Mrs. Shubha Shrivastava, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****17.01.2020**

Heard.

1. The appeal is preferred against judgment dated 01.03.2011 passed by learned Sessions Judge, Kabirdham (Kawardha) C.G., in Sessions Trial No.66/2008 wherein the said Court convicted the appellant for commission of offence punishable under Sections 395 and 398 of I.P.C. and sentenced him to R.I. for 7 years and fine of Rs.5000/- with default stipulation.

2. In the present case, victim is Vijay Kumar Dhritlahre. As per version of prosecution in the intervening night of 14th and 15 of July, 2007 at about 1:00 A.M., at village Navagaon-Hatha, complainant Vijay Kumar Dhritlahre was at home along with his family member, his elder brother namely Ramkishun was sleeping in the courtyard. On hearing noise of the said Ramkishun, his wife opened the door and found that four unknown person with weapons like knife, rod etc. who have covered their faces with cloth, entering forcibly and assaulted the complainant. Other accused persons also started assaulting the other family members and thereafter they took key of almirah and robbed cash and gold and silver ornaments. After committing the crime, they fled from the spot. The matter was reported and investigated, appellant was charge-sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits as under:-

No article which is the subject matter of robbery is seized from the present appellant and he has been involved in the crime only on the basis of suspicion. In test identification, the appellant was not identified and his presence was also not established at the time of commission of offence. The trial Court has recorded finding on the basis of imagination which is not permissible under the law.

Therefore, conviction of the appellant is liable to be set aside.

4. On the other hand, learned counsel for the State submits that finding of the trial Court is based on proper marshaling of evidence, which is not liable to be interfered with sby invoking jurisdiction of appeal.
5. Ram Kishun (P.W.-1) did not deposed anything against the present appellant. He made general statement that all the persons charged have entered into his house committed assault and robbed the articles. This witness has deposed before the trial Court that he is not sure person present in the Court or the person who committed the crime is same. From his version, involvement of the appellant is not established.
6. Smt. Ruth George (P.W.-2) deposed before the trial Court that she is not aware of the fact that appellant was involved in the present case of robbery (Para-6).
7. Vijay Kumar Dhritlahre (P.W.-5) admitted that persons, who entered in his house are different from the appellant and the appellant had not entered into his house (Para-13).
8. Jitendra Kumar (P.W.-6) deposed that appellant did not enter into house and he did not identified the present appellant (Para-4).
9. Vishrama Satnami (P.W.-7) deposed before the trial Court (Para-4) that one sword was seized from the appellant Shiv

Kumar. Sword is not subject matter of robbery and witnesses have deposed before the trial Court that appellant was not present during crime. Therefore, seizure of sword is not connecting piece of evidence regarding commission of robbery. During identification appellant was not identified by anyone, which is stated by Nayab Tehsildar Jagdish Kumar Tiwari (P.W.-12).

10. From the entire evidence, involvement of appellant in crime in question is not established. In view of the above, the finding arrived at by the trial Court is not sustainable. Accordingly, the appeal is allowed.

11. The appellant is acquitted of the charge under Section 395 and 398 of I.P.C. and his conviction and sentence is hereby set aside.

12. Accordingly , the appeal is allowed.

Sd/-
(Ram Prasanna Sharma)
JUDGE