

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 446 of 2010**

- Guddan @ Rupendra S/o Rajkumar, aged about 26 years, R/o Village Kunwa, Borsara, Police Station – Chakarbhata, District – Bilaspur, Chhattisgarh

---- Applicant**Versus**

- State of Chhattisgarh, through Police Station – Pendra, District – Bilaspur, Chhattisgarh

---- Respondent

For Applicant	: Shri. Ashok Kumar Swarnakar, Adv.
For State/Respondent	: Shri. Anand Verma, Dy. G.A.

Hon'ble Smt. Justice Vimla Singh Kapoor**Order on board****08.12.2020**

This revision is by accused Guddan only. It is alleged that on 16.10.2009, at about 7.00 p.m. when complainant Vinay Kumar Soni (PW-1) along with his cousin was returning to Pendra from the weekly market on motorcycle, carrying the gold and silver ornaments with them, near Banderchhua, Kalkatiya turning, three persons who had covered their faces followed them and after approaching nearer they hit their motorcycle by using their leg, as a result of which they both fell down on the side of the road. All the three accused persons are said to have been armed with a country made revolver. On the point of gun they first looted Rs.8,500/- cash, some change as also a mobile phone from Vinay Kumar Soni (PW-1) and thereafter they took Vinay Kumar Soni (PW-1) and Vivek Kumar Soni (PW-2) ten

feet off the road. At that time, one Natthu Sahu (PW-3) who happened to pass thereby was called out by PW-1 and PW-2, but the accused persons drove them away by abusing him. 40-50 grams of gold worth Rs.70,000/- to 80,000/- and about three kilograms of Silver worth Rs.3,25,000/- is said to have been looted from Vinay Kumar Soni (PW-1) and Rs.4,000/- cash, one touch mobile phone and business related documents were looted from Vivek Kumar Soni (PW-2). On the memorandum of co-accused Satya @ Satya Prakash (Ex-P/2), seizure of gold and silver ornaments along with other articles was made under Ex-P/3. On the basis of FIR lodged by PW-1, offence under Sections 394/34 IPC and Section 25/27 of the Arms Act was registered against three accused persons including the present applicant. Learned Court below also framed the charge against the accused persons showing accused Bisahu absconding.

2. Learned Magistrate vide its judgment dated 23.07.2010 passed in Criminal Case No.22/2010 acquitted the present applicant under Section 25 of the Arms Act but held him guilty under Section 394 IPC and imposed sentence for R.I. for three years with fine of Rs.200/-, plus default stipulation.

3. Learned counsel for the accused-applicant submits that there is absolutely no evidence against the present applicant and he has been named in the FIR on the disclosure made by accused Satya @ Satya Prakash only. He submits that in the present case no seizure has been made from this accused-applicant and he has already been acquitted in the case in which the motorcycle was seized from

him. He submits that none of the witness have identified the accused-applicant to be an offender in this case. In sum and substance he submits that since the entire case of the prosecution against this applicant is based on the memorandum of the co-accused and the consequent recovery, the view taken by both the Courts below cannot be allowed to be maintained.

4. Counsel for the Respondent/State supporting the judgment impugned submits that the view recorded by both the Courts below being based on the strict appreciation of the evidence of the witnesses does not need any interference by this Court.

5. Having heard counsel for the parties and perused the evidence of Vinay Kumar Soni (PW-1), Vivek Kumar Soni (PW-2), Natthu Sahu (PW-3) as also the Investigating Officer (PW-8), this Court does not find any involvement of the accused-applicant in the crime in question. Admittedly, no test identification parade has been conducted in the case and none of the witnesses have stated by giving the description of his physique and complexion that it is he who was also instrumental in looting them in a desolated place. Whatever recovery of the ornaments and other materials is stated to have been made, it is from accused Satya @ Satya Prakash, on the basis of his memorandum Ex-P/1. It is accused Satya alone who is stated to have been identified because of momentary fall of the scarf from his face. From the evidence of Vivek Kumar Soni (PW-2) also it is apparent that at the time of incident the darkness had prevailed. The solitary base for dragging the accused herein in the crime in question appears to be the disclosure statement (Ex-P/2) made by

accused Satya on the basis of which seizure of ornaments and other materials was effected under Ex-P/3. Even otherwise, none of the witnesses has adduced any evidence on the basis of which the complicity of the present applicant in the crime in question can be established. It is relevant to note here that the case in which the seizure of motorcycle was effected from the accused-applicant, he has already received a clean chit in the form of acquittal. It is a settled legal position that until and unless there is some other cogent and clinching material available in the case, merely on the basis of memorandum of co-accused and consequent seizure at his instance, one cannot be held guilty. So is the position in this case.

6. Both the Courts below appear to have mis-directed themselves by not keeping in mind the fact that apart from the disclosure statement of co-accused Satya @ Satyaprakash and the resultant seizure, there is nothing on record to prove his guilt in the case in hand. Being so, the judgment impugned is hereby set aside and the accused-applicant is acquitted of the charge levelled against him.

7. Revision is allowed.

Sd/-
(Vimla Singh Kapoor)
Judge