

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.313 of 2011**

1. Satya @ Satyaprakash S/o Jairam Satnami aged about 22 years, R/o Near Railway Station, Jhopdapara, Sirgitti, P.S. Tarbahar, District- Bilaspur, C.G.
2. Pradeep S/o Rajendra Satnami Aged about 20 years, R/o Village, Londa, P.S. Patharia District, Bilaspur, C.G.

---- Appellants**Versus**

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

---- Respondent

For the appellants	:Ms. Preeti Jha, Advocate
For the State/respondent	:Mrs. Shubha Shrivastava, Panel Lawyer.

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

Heard.

1. Mr. Ajay Ayachi, Advocate has been engaged for arguing the case on behalf of the appellants. Despite repeated calls, he has not appeared when the case is called for final hearing, therefore, Ms. Preeti Jha, Advocate, who is present in the Court has been appointed as *Amicus Curiae* to argue the case on behalf of appellants.

2. The appeal is preferred against judgment dated 01.03.2011 passed by Sessions Judge, Kawardha, District- Kabirdham, C.G., in Sessions Trial No.66/2008 wherein the said Court convicted the appellants for commission of offence punishable under Sections 395 read with 398 of I.P.C. and sentenced him to R.I. for 7 years and fine of Rs.5000/- with default stipulation.
3. 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, appellants were charge-sheeted and convicted as mentioned above.
4. Learned counsel for the appellants submits as under:-

No article which is the subject matter of robbery is seized from the present appellants and they have been involved in the crime only on the basis of suspicion. In test identification, the appellants were not identified and their 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 appellants is liable to be set aside.

5. 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 by invoking jurisdiction of appeal.
6. To substantiate the charge, the prosecution examined as many as 14 witnesses. Both the appellants were not named in F.I.R. Ex.P/5 lodged by the complainant Vijay Kumar Dhritlahre. Though Nayab Tehsildar Jagdish Kumar Tiwari (P.W.-12) deposed before the trial Court that appellant Pradeep was identified by Vijay Kumar Dhritlahre but Vijay Kumar Dhritlahre has not deposed that Pradeep was identified by him (Para-11). As per version of this witness, he has identified only two persons namely Manjit and Yashwant. Ex.P/20 is a memo regarding identification of other co-accused Manjit, therefore, it is not proved by the complainant Vijay Kumar Dhritlahre (P.W.5) that appellant

Pradeep was identified as culprit of the incident. There is no evidence that appellant Satya @ Satyaprakash was identified by anyone. No one deposed before the trial Court that any article was seized from possession of any of the appellants.

7. Ram Kishun (P.W.-1) deposed in Para-13 that he has not seen any of the appellants before the incident and they all have covered their faces with cloth. From the evidence of this witness, it is clear that he had no occasion to see faces of the culprits. Therefore, from his evidence involvement of the appellants in crime in question is not established.
8. Smt. Ruth George (P.W.-2) deposed before the trial Court (Para-3) that culprits have covered their faces, therefore, her evidence is also not established that she had occasion to see the faces of any of the culprits.
9. Vijay Kumar Dhritlahre (P.W.-5) deposed in Para-28 that all the culprits had covered their faces with cloth.
10. Jitendra Kumar (P.W.-6) deposed in Para-6 that all the culprits have covered their faces at the time of commission of offence.
11. Looking to the evidence of all the witnesses, it is not established that they had occasion to see the face of the appellants. No one identified the present appellants. No article which is subject matter of crime is seized from any of the appellants. Therefore, there is no connecting piece of

evidence to establish the crime against the present appellants, therefore, the finding arrived at by the trial Court is not sustainable. Accordingly, the appeal is allowed.

12. The appellants are acquitted of the charge under Section 395 read with Section 398 of I.P.C., their conviction and sentence is hereby set aside and they are acquitted of the charge framed against them.

13. Accordingly , the appeal is allowed.

Sd/-
(Ram Prasanna Sharma)
JUDGE

Monika