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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1353 of 2016

Judgment Reserved on : 14.11.2019

Judgment Delivered on : 13.2.2020

Kapil Das Mahant, son of Roopdas Mahant, aged about 20 years,
resident of Village Karma Police Chowki Pantora, Police Station
Baloda, District Janjgir-Champa, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Station House Officer, Police Station
Baloda, District Janjgir-Champa, Chhattisgarh

--- Respondent

Criminal Appeal No.1752 of 2017

Kamal Chandra, son of Late Shri Ganpat Chandra, aged about 18
years, resident of Village Sukhada, Police Station Dabhara, District
Janjgir-Champa, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Station House Officer, Police Station
Baloda, District Janjgir-Champa, Chhattisgarh

--- Respondent

Criminal Appeal No.807 of 2019

1. Sharad Goutam, son of Satyaprakash Goutam, aged about 27 years,
resident of Sarawa, Police Station Shikarpur, District Buland Shahar,
U.P.
2. Radheshyam Kashyap, son of Shivram Kashyap, aged about 33
years, resident of Village Barbhatha, Police Station Baloda, Police
Chowki Pantora, District Janjgir-Champa, Chhattisgarh

---- Appellants

versus

State of Chhattisgarh through Station House Officer, Police Station
Baloda, District Janjgir-Champa, Chhattisgarh

--- Respondent

For Respective Appellants : Shri Krishna Kumar Khatri, Shri Rishi
Rahul Soni, Shri B.K. Chakraborty,
Shri Varunendra Mishra, Advocates
For Respondent/State : Shri Anand Verma, Dy. Govt. Adv.

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. Since all the three appeals arise out of a common judgment, they are decided together.

2. The instant appeals have been preferred against the judgment dated 29.8.2016 passed by the 2nd Additional Sessions Judge, Janjgir-Champa in Sessions Trial No.52 of 2016, whereby the present Appellants have been convicted and sentenced as under:

<u>Appellant</u>	<u>Conviction</u>	<u>Sentence</u>
All the Appellants	Under Section 392/34 of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.1,000/- with default stipulation
	Under Section 397/34 of the Indian Penal Code	Rigorous Imprisonment for 7 years
	Under Section 398/34 of the Indian Penal Code	Rigorous Imprisonment for 7 years
Appellant Sharad Goutam (In Addition to his above conviction under the Indian Penal Code)	Under Section 25(1A) of the Arms Act	Rigorous Imprisonment for 3 years and fine of Rs.500/- with default stipulation
Appellant Radheshyam Kashyap (In addition to his above conviction under the Indian Penal Code)	Under Section 25(1B) of the Arms Act	Rigorous Imprisonment for 1 year and fine of Rs.500/- with default stipulation

3. Prosecution case, in brief, is that on 5.1.2016 at about 9:00 a.m., Complainant Devvrat (PW7) was returning on his motorcycle bearing registration number CG 12 AJ 5105. When he reached near Beltukri Canal, 3 unknown persons came there on a

motorcycle, overtook and prevented him. Out of the said 3 unknown persons, one showed a country-made pistol (*katta*) and other showed a knife to him and they demanded his purse and mobile phone. Due to fear, he gave his purse in which cash of Rs.500/- was kept. Thereafter, they also looted his motorcycle and mobile phone made of Micromax in which a sim of Vodafone was installed. Thereafter, they fled from there. He immediately lodged First Information Report (Ex.P15) at about 11:00 a.m. During the course of investigation, police recorded memorandum statements of Appellant Kapil vide Ex.P5, Appellant Radheshyam vide Ex.P6, Appellant Kamal vide Ex.P7 and Appellant Sharad vide Ex.P8. On the basis of their memorandum statements, looted motorcycle and cash of Rs.200/- were recovered and seized from Appellant Kamal vide Ex.P4, one Micromax mobile phone, cash of Rs.300/- and a knife of total length of 9.2 inches (consisting of its sharp flat metal piece having 5 inches length and the handle having 4.5 inches length) were recovered and seized from Appellant Radheshyam vide Ex.P3. One country-made pistol (*katta*) and 7 alive cartridges of 315 bore were recovered and seized from Appellant Sharad vide Ex.P2. One Hero Passion Pro motorcycle bearing registration number CG 13 5A 0732, which was used by the Appellants at the time of loot, was recovered and seized from Appellant Kapil vide Ex.P1. Test identification parade was conducted by Executive Magistrate Shabab Khan (PW3) vide Ex.P12 in which Complainant Devvrat (PW7) identified accused persons/Appellants Kapil, Kamal and Sharad. However, he did not identify accused/Appellant Radheshyam in the said parade. On completion of the investigation, a charge-sheet was filed. Charges were framed against the accused persons.

4. In support of its case, the prosecution examined as many as 9 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the accused persons/Appellants denied the guilt and pleaded innocence. No witness has been examined in defence.
5. On completion of the trial, vide the impugned judgment, the Trial Court convicted and sentenced the Appellants as mentioned in the second paragraph of this judgment. Hence, the present appeals.
6. Learned Counsel appearing for the respective Appellants submitted that without there being any sufficient evidence on record against the Appellants, the Trial Court has wrongly convicted them. It was further submitted that according to the FIR, 3 unknown persons looted the articles from the Complainant. But, the charge-sheet has been filed against 4 accused persons. Though during the test identification parade (Ex.P12), Complainant Devvrat (PW7) identified 3 accused persons, he has categorically admitted that the accused persons were shown to him in the police station by the police officials prior to conducting of the parade. It was further submitted that the parade (Ex.P12) does not bear signature of the Complainant. Therefore, the whole test identification parade (Ex.P12) is doubtful. It was further submitted that Ritesh Kaushik (PW1) and Santosh Kumar Rajwade (PW6), witnesses of memorandums and seizures, have admitted the fact that they had put their signatures on all the documents in Police Station Pantora. From the above also, it is established that no memorandum statement was recorded and no seizure was made in their presence. It was further submitted that according to the

statement of Makundram (PW2), he had seen the looted motorcycle standing in lonely condition near a canal. Therefore, it is not acceptable that the said motorcycle was recovered and seized from the field of Village Sukhda at the instance of Appellant Kamal. It was further submitted that though one mobile phone made of Micromax was seized by police from Appellant Radheshyam, there is nothing on record to establish that the said seized mobile phone belonged to the Complainant. It was further submitted that the seized country-made pistol and the cartridges were in alive condition, but there is no report of any armorer or any ballistic expert on record to establish this fact. It was further submitted that the seized country-made pistol (*katta*) and knife were also not produced in the Court during trial. Necessary sanction for prosecution of the accused persons under the Arms Act has also not been obtained. Therefore, looking to the above, it is submitted that the prosecution has failed to prove its case beyond reasonable doubt and the accused persons/Appellants are entitled to get benefit of doubt.

7. Learned Counsel appearing for the State/Respondent supported the impugned judgment of conviction and sentence.
8. I have heard Learned Counsel appearing for the parties and perused the record with due care.
9. According to the Court statement of Complainant Devvrat (PW7), on the date of incident, at about 8:45 a.m., while he was returning from the school and when he reached near Beltukri Canal, Appellants Sharad, Kapil and Kamal came to him and prevented him. They pushed his vehicle away. Appellant Sharad was in

possession of a *katta* (country-made pistol). Appellant Kamal was in possession of a knife. They tried to assault him and asked him to give whatever was kept by him. He gave them his mobile phone made of Micromax and cash of Rs.500/-. Thereafter, they looted his motorcycle, mobile phone and cash and ran away from there. Thereafter, he lodged the FIR (Ex.P15). This witness has further deposed that during test identification parade (Ex.P12), he identified the accused persons. However, in his cross-examination, he has admitted that he did not know the accused persons/Appellants prior to taking place of the incident. He has further admitted that before conducting of the test identification parade (Ex.P12), the accused persons were shown to him in the police chowki by police officials.

10. Head Constable Santosh Pandey (PW8) has deposed that on the basis of the FIR (Ex.P15), he registered numbered FIR (Ex.P17).
11. From the statements of Complainant Devvrat (PW7) and the contents of the FIR (Ex.P15), it is clear that the FIR (Ex.P15) was recorded against 3 unknown persons and before the Court also, Complainant Devvrat (PW7) took the names of only Appellants Sharad, Kapil and Kamal. During the test identification parade also (Ex.P12), according to the case of the prosecution, Complainant Devvrat (PW7) identified the above 3 persons only. During examination before the Court, Complainant Devvrat never named Appellant Radheshyam. According to the test identification parade also, he did not identify Appellant Radheyshyam. The test identification parade was conducted by Executive Magistrate Shabab Khan (PW3). This witness has admitted the fact that in the

said parade (Ex.P12), he did not obtain signature of Complainant Devvrat (PW7). Though Devvrat (PW7) has stated about identification in the test identification parade (Ex.P12), he has admitted that before conducting of the test identification parade the accused persons were shown to him in the police station by police officials. Therefore, the whole test identification parade is doubtful.

12. Ritesh Kaushik (PW1) and Santosh Kumar Rajwade (PW6) are witnesses before whom, according to the case of the prosecution, memorandum statements of the accused persons had been recorded and seizures were made. Both these witnesses have supported the above memorandum statements and seizures. However, they have admitted the fact that they had signed all the documents in Police Station Pantora and before signing the documents they had not read those documents. But, they have stated that they had been read over those documents.
13. According to the case of the prosecution, on the basis of memorandum statement (Ex.P6) made by Appellant Radheshyam, one Micromax mobile phone bearing IMEI No.911343657151660 and IMEI No.911343657151678 was seized vide Ex.P3. In the FIR (Ex.P15), IMEI number of the looted Micromax mobile phone is not mentioned. In his Court statement also, Complainant Devvrat (PW7) has not stated anything in this regard. After seizure of the mobile phone, no identification of the said phone was got done from Devvrat (PW7). There is no document on record that the said phone was purchased in the name of Devvrat (PW7). Therefore, it is not established in any way that the looted mobile phone belonged to Complainant Devvrat (PW7).

- 14.** According to the case of the prosecution, on the basis of memorandum statement (Ex.P7), looted motorcycle Honda Shine bearing registration No.CG 12 AJ 5105 was seized from possession of Appellant Kamal vide Ex.P4. According to the seizure memo (Ex.P4), this motorcycle was already standing in an agricultural field of Village Sukhda. This motorcycle was recovered and seized at the instance of Appellant Kamal. Both seizure witnesses Ritesh Kaushik (PW1) and Santosh Kumar Rajwade (PW6) are residents of Villages Baksara and Kanki, respectively. According to the case of the prosecution itself and as per the statement of Makundram (PW2), who is a resident of Village Karma, before this seizure, this motorcycle was seen in lonely condition near the canal flowing in Village Karma. Therefore, the story of the prosecution that later on this motorcycle was recovered and seized at the instance of Appellant Kamal on 10.1.2016 is not acceptable. It seems that the motorcycle was earlier found in lonely condition near the canal flowing in Village Karma, but later on its recovery and seizure has been shown by the prosecution at the instance of Appellant Kamal.
- 15.** It is the further case of the prosecution that at the instance of Appellant Sharad, a country-made pistol (*katta*) and 7 alive cartridges of 315 bore were recovered and seized from behind the house of Puniram Kaushik situated in Village Kosmanda. These articles were found kept in *parawat*. Though Ritesh Kaushik (PW1) and Santosh Kumar Rajwade (PW6) supported the above seizure, they have only stated that the country-made pistol and the cartridges were seized from Appellant Sharad from Village Kosmanda. But, the prosecution has not specified that from which

place of Village Kosmanda this seizure was made. Both these witnesses are residents of Village Baksara and Kanki, respectively. No resident of Village Kosmanda has been made a witness by the prosecution nor has it been properly explained why this was done so. Even if for the sake of argument it is considered that the country-made pistol and the cartridges were seized from Appellant Sharad, the country-made pistol and the cartridges were in alive and running condition, there is no examination report of any armorer or any ballistic expert on record nor any such expert has been examined by the prosecution. Apart from this, as required under Section 39 of the Arms Act, no prior sanction for prosecution has been obtained from the concerned District Magistrate.

16. With regard to the recovery of knife, according to the case of the prosecution, the knife was recovered from the house of Appellant Radheshyam situated at Village Barbhata. Again the seizure witnesses are same, i.e., Ritesh Kaushik (PW1) and Santosh Kumar Rajwade (PW6), who are residents of Village Baksara and Kanki, respectively. No resident of Village Barbhata has been made a witness by the prosecution and it has not been explained also why this was done so. As stated by seizure witnesses Ritesh Kaushik (PW1) and Santosh Kumar Rajwade (PW6), they had put their signatures in the seizure memorandums in Police Station Pantora. Therefore, it is not established that the knife was seized from Village Barbhata in presence of these witnesses. Even if for the sake of argument it is considered that any knife was seized from Appellant Radheshyam, no examination report of the knife given by any expert regarding size of the knife has been placed before the Court nor the knife was produced before the Court.

Therefore, the prosecution does not get any help from recovery and seizure of the knife.

- 17.** On a minute examination of the evidence available on record, it is clear that initially the FIR (Ex.P15) was lodged against 3 unknown persons. According to the Court statement of Complainant Devvrat (PW7) also, the offence in question was committed by 3 unknown persons only. But, the police recorded the memorandum statements of 4 persons and charge-sheet was filed against 4 persons. Though in the test identification parade (Ex.P12), except Appellant Radheshyam, Complainant Devvrat (PW7) has identified all the remaining 3 Appellants. From the statement of Devvrat (PW7), it is clear that he was already shown these 3 Appellants in police station before conducting of the test identification parade. Therefore, the prosecution does not get any help from the test identification parade also. There is nothing on record to establish that the seized mobile phone was the looted mobile phone of Complainant Devvrat (PW7) and there is also nothing on record that the looted motorcycle was seized from Appellant Kamal. Virtually, the said motorcycle was already found in lonely condition near the canal flowing in Village Karma. Therefore, seizure of the motorcycle also does not help the case of the prosecution. It is also clear that the seized country-made pistol and the cartridges were in alive and running condition is not established. There is no examination report of the said pistol and the cartridges given by any armorer or ballistic expert nor any such expert has been examined by the prosecution. Apart from this, no prior sanction for prosecution has been obtained from the concerned District Magistrate under the Arms Act. Recovery of the knife is also

suspicious. Therefore, there is no material available on record to establish beyond reasonable doubt that the offence in question was committed by the present Appellants. The whole prosecution story is doubtful. The Appellants are entitled to get benefit of doubt.

18. Consequently, all the appeals are allowed. The impugned judgment of conviction and sentence is set aside. The Appellants are acquitted of the charges framed against them.
19. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE