

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on 03.02.2020

Judgment pronounced on 04.03.2020

CRA No. 2251 of 1999

Uttam Kumar @ Tillu, S/o Benjamin Kumar Lee, aged about 33 years, R/o Sargawan, P.S. Ambikapur, District Sarguja M.P. (Now CG) --- **Appellant**

Versus

State of M.P. through P.S. Manindragarh District: Korla M.P. (Now CG) --- **Respondent**

WITH

CRA No. 2198 of 1999

Sultan Khan S/o Shri Mumtaz Khan, aged about 45 years, R/o Village Bheem Jori, Police Station Malajkhand Balaghat, District Balaghat, M.P., (Now CG) --- **Appellant**

Versus

State of Madhya Pradesh through Police Station Manendragarh District: Korla. MP (Now CG) --- **Respondent**

For Appellant/s	: Mr. Shakti Raj Sinha, Advocate
For State/Respondent	: Ms. Ishwari Ghritlahre, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

Since the aforementioned two appeals arise out of the judgment dated 09.08.1999 passed in Session Trial No. 217/95, they are being disposed of by this common judgment.

2. Facts necessary for disposal of these two appeals in brief are that Rajendra Kumar Ahirwar (PW-7) had made an agreement from Rajendra Prasad Choudhary (PW-3) for purchasing the Jeep bearing registration No. MP-19/1931 and after making part payment of Rs. 15000/-, he had taken possession thereof. After taking possession of the said Jeep on 24.07.1994, when he had gone to Shahdol along-with its driver for carrying passengers, three unknown persons boarded the said Jeep and on being asked they told PW-7 that they wanted to hire it for going to Rajnagar to take their family members back. On being agreed by PW-7

and PW-8 they got the tank of the said Jeep filled and proceeded towards the destination. They reached Rajnagar at about 11 in the mid night. When PW-7 and PW-8 asked him as to where his family members were, they requested them to go to his maternal village and while proceeding therefor they made them stop the Jeep, took them to an isolated place and after tying them up with a nilone rope to a tree, they decamped with the said Jeep. It is alleged that after about two months, the Jeep bearing registration No. MP-27/2360 was seized from the accused/appellants herein on 13.09.1994 along-with the registration papers of the said Jeep. To put it more specifically, the seizure of the Jeep was made from accused Uttam Kumar whereas the registration papers were seized from Sultan. It is relevant to mention here that PW-8 was working as driver with PW-3 and PW-7 as well. PW-1 and PW-2 are said to be the witnesses to seizure of the said Jeep. RC book seized by the prosecution mentions the name of Manju Shrivastava of Sarguja as the owner of the Jeep. It is further alleged that after taking PW-7 and PW-8 inside the forest, they took away cash of Rs. 3000/- and silver amulet and also subjected them to beating with the help of clubs causing injuries to their hand, leg and knee. After a short while, (PW-7) and (PW-8) somehow got them freed and reported the matter to the Police apart from undergoing medical treatment. Offences under Sections 394 and 120-B IPC were registered against the accused/appellants and after investigation, charge-sheet was filed under the same sections followed by framing of charge accordingly.

3. Learned Court below by the judgment under challenge in these two appeals acquitted both the accused/appellants of the charges under Sections 397, 395 and 120-B IPC but held both of them guilty under Section 412 IPC imposing the sentence of RI for five years with fine of Rs. 500/-. Hence, these appeals.

4. Learned Counsel for the accused/appellants submits that the findings recorded by the Court below convicting and sentencing the

accused appellants as described above are not in consonance with the evidence of the witnesses and therefore liable to be set aside. He submits that when the dacoity itself has not been proved by the prosecution, the offence under Section 412 IPC can also not be made to stand. According to the counsel for the accused/appellants, even all the important witnesses in particular the seizure witnesses have not supported the case of the prosecution and chosen to turn hostile, and therefore also conviction of the accused/appellants under Section 412 IPC cannot be allowed to stand.

5. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that though the seizure witnesses have turned hostile yet Rakesh Shrivastava (PW-9) who seized the said Jeep has fully supported the case of the prosecution, the Court below does not appear to have fallen in error while passing the judgment impugned holding the accused/appellants guilty under Section 412 IPC. In these circumstances, according to the State counsel, the judgment impugned does not require any interference in these appeals.

6. Heard Counsel for the parties and pursued the material available on record.

7. Since none of the independent prosecution witnesses has proved the commission of dacoity by accused/appellants, the Court below has rightly absolved them of the charges u/s 395, 120-B and 397 IPC made against them. Even the previous owner of the Jeep in question namely Manju Shrivastava (PW-4) and her husband Nagesh Shrivastava (PW-5) have categorically stated that they did not know the accused/appellants. Sangam Lal (PW-6) another important witness examined on behalf of the prosecution has also not supported the case of the prosecution and has set his police statement (Ex. P-5) at denial. Rajendra Kumar (PW-7) the owner of the Jeep and Nishar Ahmed (PW-8), the driver thereof have also

not supported the case of prosecution and have categorically stated that the persons present in the Court were not the ones who were involved in commission of decoity on the date of incident. The seizure witnesses namely Malla and Yugal Kishore, PW-1 and PW-2, respectively have not at all supported the case of the prosecution. They have categorically stated that neither any jeep nor any documents pertaining thereto have been seized in their presence by the prosecution. They have also denied the things mentioned in their police statements Ex P-3 & P-4. They have denied that neither from them nor from any one of them any seizure has been made under Ex. P-1 and P-2 and their signatures/thumb impressions were obtained by the police on certain papers. The provision under which the accused/appellants have been convicted relates to the possession of property subjected to theft or decoity, but in this case the prosecution has utterly failed to establish that the accused/appellants were having any such knowledge. Even the chasis number mentioned in the RC book and the one inscribed in the chasis of jeep so seized were found to be different, which renders the case of the prosecution doubtful. Evidence of PW-9 who made the seizure of the Jeep and the registration papers thereof did not inspire confidence of this Court and therefore cannot be given weightage thereto. As has already been said, the prosecution has not been able to make out a case u/s 395, 397 and 120-B IPC against the accused/appellants, therefore, the offence u/s 412 IPC can also not be made out against them because the important witnesses including the seizure ones have not landed any support to the case of the prosecution.

8. Thus, in view of what has been discussed above, this Court is of the considered opinion that the prosecution has utterly failed to prove its case beyond all reasonable doubts and so also the Court below has committed an error while placing reliance on the sole untrustworthy testimony of police inspector (PW-9) because the only defence witness has disclosed in his Court statement that he made him sit in the police

Station, demanded Rs. 10,000/- from him and threatened him of falsely implicating in the case of jeep theft. Being so, the conviction of the accused/appellants u/s 412 IPC and the resultant sentence imposed on them is without any basis and therefore the same is hereby struck down, and they are acquitted of the charge levelled against them.

09. Appeals are thus allowed in terms of the observations made above.

Sd/-

(Vimla Singh Kapoor)
Judge

Jyotishi/Jyoti