

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 14-02-2020

Delivered on 08-05-2020

CRA No. 1148 of 2017

- Khilendra @ Khilanand @ Labhly Verma S/o Shri Manohar Verma, Aged About 18 Years R/o Siltara Police Station Dharsiva, District- Raipur, Chhattisgarh.

---- Appellant

Versus

- State of Chhattisgarh Through Police Station Dharsiva, District- Raipur, Chhattisgarh.

---- Respondent

CRA No. 1604 of 2017

- Nandlal Sahu S/o Raju Sahu Aged About 19 Years R/o Rahut Pakariya, Police Station- Shivrinarayan, District Janjgir-Champa, Chhattisgarh. At Present Address- House Of Golu Verma, Bhatapara, Siltara, Police Station- Dharsinwa, District Raipur, Chhattisgarh.

---- Appellant

Versus

- State of Chhattisgarh Through Station House Officer, Police Station Dharsinwa, District Raipur, Chhattisgarh.

---- Respondent

&

CRA No. 489 of 2018

- Kedar @ Sitaram Vishwakarma son of Dasaru Vishwarakarma, aged about 20 years (Labour Worker) resident of village Siltara Durga Chowk, Bhatapaera, Siltara, Police Station Dharsiwa, civil and Revenue District Raipur (CG).

---- Appellant

Versus

- State of Chhattisgarh Through Station House Officer, Police Station Dharsinwa, District Raipur, Chhattisgarh.

---- Respondent

For Appellant in CRA No.1148 of 2017	:	Mrs. Nirupama Bajpai, Advocate
For appellant in CRA No. 489 of 2018.	:	Mr. S.P. Verma, Advocate
For appellant in CRA No. 1604of 2017	:	Mr. Kamlesh Kumar Pandey, Adv
For respondent/State	:	Mr. Afroj Khan, PL.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. As the aforesaid three appeals arise out of common judgment dated 15-6-2017, they are heard analogously and are being disposed of by this common judgment.
2. All the three appeals are preferred against the judgment of conviction and order of sentence dated 15-6-2017 passed by the First Additional Sessions Judge, Raipur (CG) in Sessions Trial No. 40 of 2017 wherein the said Court has convicted the appellants for commission of offence under Section 397 and 324 read with Section 34 of IPC thrice and sentenced them to undergo rigorous imprisonment for seven years and to pay fine of Rs.500/- each and RI for one year and fine of Rs.100/- each on three counts with default stipulation. All the sentences are directed to run concurrently.
3. As per version of prosecution, complainant Tirath Verma, Somdutt and Sourav were coming from Siltara to Mandhar while

walking on foot, they were stopped by all the three appellants namely Nandlal Sahu, Kedar @ Sitaram and Khilendra @ Khilanand @ Labhly Verma and they demanded money. Thereafter, Nandlal Sahu assaulted by way of knife on the private part of the complainant Tirath Verma, Somdutt was assaulted on chest and Saurav Gupta was assaulted on thigh and Rs.150/-, one Samsung mobile and Aadhar card were robbed. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced them as aforementioned.

3. Learned counsel for the appellants submits as under:

- i) The trial court acquitted the appellants for charge under Section 25 (1)(b) of the Arms Act, 1959, therefore, it is not proved that weapon was used for commission of offence which is essential requirement for establishing charge under Section 397 of IPC.
- ii No test identification parade was conducted and the appellants were shown at Police Station, therefore, case of the prosecution is doubtful.

- lii) The trial court has not evaluated the entire evidence in its true perspective, therefore, finding of the trial court is liable to be set aside.

Reliance has been placed in **Indira Devi and others vs. State of Himachal Pradesh**, reported in **2016(3) CGLJ 344 (SC)**, **Jagdish Murav vs. State of UP and others**, reported in **2007 (1) ANJ (SC) (NOC) 7**, **Thimmareddy and others vs. State of Karnataka**, reported in **2014 (suppl) Cr.L.R (SC) 720**, **Ramcharan vs. State of CG**, reported in **2007(3) CGLJ 138 (DB)**, **Govind @ Ramdulari Vs. State of MP (Now CG)**, reported in **2012(4) CGLJ 79 (DB)**, **Sampat Singh vs. State of MP (Now CG)** reported in **LAWS (MPH) 2018 7 243** and **Bhim Mohd. vs. State of MP(now CG)**, reported in **2000(1) BLJ 36**.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshalling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6 The question for consideration of this court is whether the appellants committed robbery against the complainant and they used deadly weapon at the time of commission of offence where they assaulted the victims by sharp object.

7. Complainant Tirath Verma (PW/1) is eye-witness account to the incident. As per version of this witness, he, Somdutt and Sourav were returning from Siltara to Mandhar and in square all the three appellants were standing and they assaulted Somdutta and when he intervened they also assaulted him by knife. Version of this witness is supported by version of Somdutt (PW/2). These witnesses have sufficient time to see the faces of the appellants, therefore, it is not a case where identification of the appellants is required as per law. Again, FIR is not substantive piece of evidence and version of both eye-witnesses before the trial court is substantive piece of evidence. There is nothing on record that the appellants have been roped in false charge and there is nothing to disbelieve the evidence of both eye witnesses. Version of both eye-witnesses is supported by version of Dr. Vijay

Kumar Ekka (PW/8) who examined Tirath Verma (PW/1) on 30-10-2016 at Community Health Centre, Dharsiwa and noticed one cut injury over the private part region (scrotal region) in the size of 3x 1x 1 cm and bloodstains present. As per version of this witness, injury was caused by hard and sharp object and it was caused within 24 hours of the examination as per Ex.P/21. This witness has deposed that he examined Saurav Gupta on the same day and noticed the following injuries.

- I) Stab injury over left thigh at posture lateral aspect in the size of 1x 0.5 x 1 cm.
- ii) Scratches over left elbow in the size of 6 x 7 cm approximately.

As per version of this witness, injuries were caused within 24 hours of the examination and it was caused by hard and blunt object as per Ex,P/22. He further deposed that he also examined Somdutt Verma on the same day and found one tiny abrasion over left side chest in the size of 0.5 x 0.5 cm. As per version of this witness, injury was caused within 24 hours of the examination and it was caused by hard and blunt object as per Ex,P/23. Version of this witness is unrebutted during cross examination and there is nothing on record

contrary to the opinion of this expert and no other expert is examined in the present case, therefore, version of this witness is liable to be acted upon

8. From the entire evidence, it is clear that deadly weapon knife used against the victim Tirath Verma. Again, from the evidence of eye-witnesses, it is clear that they have been robbed after sustaining injuries by knife and other article.

9. Learned counsel for the appellants would submit that Tirath Verma (PW/1) deposed (para 9) that he did not narrate the names of the appellants at the time of FIR, therefore, his version is not dependable. In view of this court, FIR is not substantive piece of evidence.

10. Statements of witnesses recorded by the trial court are substantive piece of evidence. The case is not based on the statement of Tirath Verma (PW/1) who is one of the eye-witness account to the incident. Somdutta (PW/2) is other eye-witness account to the incident who has also supported the version of prosecution and he made statement regarding presence of all the three appellants during commission of crime of robbery and assaulting, therefore, case of the prosecution cannot be thrown out on any discrepancy found in the statement of Tirath Verma (PW/1). There is nothing which adversely goes to the root of the case. There is nothing to disbelieve the version of both eyewitnesses. The trial court recorded finding of conviction on

the basis of relevant material placed on record. Finding of the trial court is not based on extraneous or irrelevant material and same cannot be termed as perverse, therefore, there is nothing on record to take a contrary view what is recorded by the trial court. The act of the appellants falls within mischief of Sections 397 and 324 read with Section 34 of IPC for which the trial court convicted them. In view of this court, argument advanced on behalf of the appellants is not sustainable. The case laws cited on behalf of the appellants are clearly distinguishable from the facts of the present case. Conviction of the appellants for the said offence is hereby affirmed. The trial court awarded sentence of seven years for offence under Section 397 of IPC which is minimum prescribed and less than minimum cannot be awarded. Sentence part is also not liable to be interfered with.

11) Accordingly, all the three appeals being devoid of merit are liable to be and are hereby dismissed. As the appellants are reported to be in jail, therefore, no further order for their arrest etc., is required.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju