

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 135 of 2008

Deepak Kujur S/o. Late Jagdish Kujur, Aged about 19 years, R/o. Village Madhuban Toli, Thana Jashpur, District Jashpur (Chhattisgarh)

---- Appellant

Versus

State of Chhattisgarh, through Station House Officer, Jashpur District Jashpur (C.G.)

---- Respondent

For Appellant : Mr. N.K. Malviya, Advocate.

For Respondent : Mr. Sameer Sharma, Dy. Govt. Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment on Board

18.06.2020

As per prosecution case, on 4.2.2007 at about 8.00 PM, when complainant Ramprashad (PW-2) along with his family members were at his residence, then Ramraj Rautiya called and knocked the door of complainant thereafter his daughter opened the door then Ramraj Rautiya asked him that party members have come to arrange a meeting in the village, then the complainant come out of the house and saw that two boys were standing outside of the house holding sword and country made pistol in their hands and entered in the house of the complainant and demanded gun from him then he

replied that he has deposited the same in police station. Thereafter, the appellant looted Rs. 4,000/- from his house and threatened to kill him. It is alleged that the complainant along with villagers had called for help and the villagers offered resistance and caught hold the appellant and committed marpit with him with hands and fists in between the appellant taking the advantage of darkness had left his sword on the spot and fled from there. The information of loot was informed to police by (PW-1) thereof an entry was made in dehatinalshi (Ex.P-1) and on the basis of which FIR (Ex.P-10) registered in Police Station against the unknown person. During investigation, one empty cartridge of 315 bore, sword and country made pistol were recovered vide Ex.P-2 and Ex.P-3 and Ex.P-4 and on suspicion the appellant was arrested under arrest memo (Ex.P-17) on the next day of the incident and he was sent to hospital for treatment. After completion of investigation, charge sheet was filed against the appellants under Sections 458,392,34,394, 397,398 IPC followed by framing of charge accordingly.

2. Learned Court below vide judgment impugned dated 28.11.2007 passed in Sessions Trial No. 66/2007 acquitted the accused/appellant under Sections 392,34,394,398 IPC but has held him guilty under Sections 397,458 IPC and 25 and 27 of the Arms Act with imposition of sentence of seven years RI under Section 397 IPC, RI for 7 years with fine of Rs. 2000/- under Section 458 IPC and RI for 1 yeas with fine of Rs. 1000/- under Section 25 and 27 of the Arms Act plus default stipulations. Hence, this appeal.

3. Counsel for the accused/appellant submits that the FIR was registered against the unknown persons and the name of the appellant has not been mentioned in the FIR, neither any recovery has been made from him. He submits that the identification parade in this case has also not been done by the prosecution. He further submits that the appellant has been convicted solely on the basis of the fact that he was apprehended by the villagers on the next date of the incident. He submits that there are several contradictions and omissions found in the statements of prosecution witnesses, therefore, it is prayed that the appellant may be acquitted of the charge leveled against him.

4. On the other hand, state counsel supporting the impugned judgment has submitted that the judgment of the trial Court is strictly in accordance with law and well founded and there is no illegality or infirmity in it warranting any interference by this Court.

5. Heard counsel for the parties and perused the material available on record including the judgment impugned.

6. Considering the evidences which have come on record particularly the statement of complainant Ramprashad (PW-2) who has very specifically stated before the Court below that on the date of incident he was in his house with his family members then Ramraj Rautiya asked and knocked the door of his house thereafter his daughter opened the door then Ramraj Rautiya asked him that party members have come to arrange a meeting in the village. He deposed that he

come out of the house and saw that two boys were standing outside of his house holding sword and country made pistol in their hands. He deposed that the appellant and co-accused entered in his house and demanded money from him and looted Rs. 4000/- from his house and threatened to kill them. Thereafter, he called the villagers for help, after sometime, the villagers gathered there and caught the present appellant but the other co-accused have fled from there. He further deposed that the villagers committed marpit with the appellant and he sustained injuries in his head. He also stated at about 12.00 taking the advantage of darkness the present appellant left his sword on the spot and run away from there and on the next day, he was caught from the forest.

7. Kamleshram (PW-1) stated that one empty cartridge, sword and country made pistol were seized by the police under (Ex.P-2, Ex.P-3 and Ex.P-4) in his presence. He again deposed that when the incident had happened at that time a lamp was glowing there and he saw the face of the appellant on it as the appellant was standing very closed to him, therefore, he identified him in the court. The testimony of PW-2 is corroborated by the statement of (PW-1) and (PW-3) and both of them have categorically submitted that when they were chasing the appellants, the other villagers informed them that it was the appellant who was tried to run from the place but was caught by the villagers from the forest on the next date. Krishnaram (PW-6)- injured and eyewitness to the incident stated that on the date of incident after taking meal he was going to the house of the complainant

Kamleshram (PW-1) for getting matchbox, but on the way he was caught by the appellant and other co-accused where they caused injuries on his body. He also stated that the appellant was beaten by the villagers and at that time, he was present there and after the incident the appellant escaped from there and on the next day, he was caught by the villagers from the forest. He further deposed that during scuffle, he saw that the appellant and was identified by him in the Court. Dr. Lalit Ekka (PW-9) who examined and has not found any internal injury on the body of the appellant and submitted his report (Ex.P-12). L.R. Kuldeep (PW-12) is the Investigating officer who has made the seizure and supported the case of the prosecution.

8. As regards the identification parade, when PW-1 had identified the appellant at the time of incident and the complainant PW-2 also in his testimony has accepted the fact that he at the time of incident had identified the accused/appellant, only because the test identification parade was not conducted itself would not be so vital factor for disbelieving the case of the prosecution as the seizure of sword (Ex.P-2) and country made pistol (Ex.P-3) itself establishes the case of the prosecution.

9. Thus, from the overall facts and circumstances of the case as narrated above, it is clearly established that it is the appellant who on 04.02.2007 had looted Rs. 4000 from the complainant in the presence of other witnesses by threatening them with deadly weapons such as empty cartridge of 315 bore, sword and country made pistol which

were seized under (Ex.P-2, Ex.P-3 and Ex.P-4) therefore, the conviction of the appellant recorded by the trial Court is based upon just & proper appreciation of evidence available on record which needs no interference by this Court.

10. As regards sentence, the report received from the Superintendent, Central Jail, Ambikapur, Sarguja, dated 10.06.2020 shows that after getting the benefit of remission, the accused/appellant has already been released from the jail on 15.08.2014, therefore, no observation regarding the sentence part is required to be made by this Court.

11. In view of what has been discussed as above, the appeal being without any substance is liable to be dismissed and is hereby dismissed as such.

Sd/-

(Vimla Singh Kapoor)

JUDGE

Santosh