

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 607 of 2009**

1. Junas Lakda S/o Bihanu Ram, aged about 20 Years, Village-Samarkana, Police Station, Kartala, District Korba (C.G.) (wrongly mentioned in order sheet Raigarh). Present address: Village Patthalgaon, Lakhjhar, District Jashpur (C.G.)
2. Sunil Kumar Lakda S/o Bihanu Ram, aged about 18 Years, R/o Village Samarkana, Police Station Kartala, District Korba (C.G.)

---- Appellants**Versus**

1. State of Chhattisgarh, through Police Station- Kapu, District Raigarh (C.G.)

---- Respondent

For Appellants	:	Shri Anish Tiwari, Advocate.
For Respondent/State	:	Shri Sudeep Agrawal, Dy. A.G.

Hon'ble Justice Shri Gautam Chourdiya**Judgment****14/07/2020**

- 1) The matter is heard through video conferencing.
- 2) This appeal is filed under Section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 30/03/2009 passed by 3rd Additional Sessions Judge (FTC), Raigarh, District Raigarh (C.G.) in Session Trial No. 32/08; whereby the appellants stand convicted and sentenced as under:-

Conviction	Sentence
U/s. 397 read with Section 34 of Indian Penal Code (in short "IPC")	R.I for 7 year each

- 3) In Session Trial No. 32/08, four accused i.e. Junas Lakda, Sunil Kumar Lakda, Prem Yadav @ Premlal Yadav and Laluram Yadav were tried for offence under Section 397/34 of IPC and Section

25/27 of Arms Act and all four accused are convicted for offence under Section 397 read with section 34 of IPC and sentenced to undergo R.I. for 7 years.

- 4) Two accused out of four accused i.e. Prem Yadav @ Premlal Yadav and Laluram Yadav filed criminal appeal No. 1160/2012 against the impugned judgment which was dismissed by the Co-ordinate Bench of this Court on 17/12/2013.
- 5) Case of the prosecution in brief is that on 07/12/2006 at around 12:00 PM to 01:00 PM at village Jamraga weekly market, Naresh Gupta, Suresh Gupta and Manoj Agrawal were running their grocery shop, where three unknown persons came and by showing country made Pistol (**Katta**) looted Rs. 10,000/- from Jagdish Agrawal, Rs. 9,000/- from Suresh Agrawal, Rs. 10,000/- from Manoj Agrawal, Rs. 10,000/- from Subhash Agrawal and Rs. 1,100/- from Santra Pandit. Thereafter, FIR was lodged by Naresh Gupta vide Ex. P-10 describing therein the stature/personality of the accused persons and the manner in which the aforesaid amount were looted by them. Naresh Gupta stated in the FIR that he would identify the accused persons on seeing them. According to the complainant Naresh Gupta and after looting the aforesaid amount the accused persons ran away towards forest after making fire in the air. Ex. P-8 wherein they admitted to have looted and total amount of Rs. 75,000/- from different persons in Jamraga weekly market by showing country made Pistol. During investigation the spot map Ex. P-9 is prepared by ASI. Identification parade as per Ex. P-1 was conducted by PW-15 Sudhir Xalxo, Naib Tehsildar and accused Junas Lakda and Premlal were identified by Naresh Gupta. During investigation memorandum statements of the accused persons were recorded vide Ex. P-3, Ex. P-4, Ex. P-6 and Ex. P-8. Spot map was prepared as per Ex. P-9. Accused were arrested vide Ex. P-12 to Ex. P-15. After due investigation charge sheet was filed against the accused appellants and co-accused for the offence punishable under Section 392/34 of IPC and Section 25 & 27 of

Arms Act.

- 6) The Trial Court framed charges under Sections 397/34 of IPC and Section 25 & 27 of Arms Act against the accused persons. The accused persons abjured their guilt and prayed for trial.
- 7) The prosecution in support of its case examined as many as 15 witnesses namely PW-01 Saiyad Akbar (Chief Guard), PW-02 Aziz Khan, PW-03 Karam Singh, PW-04 Shrawan Kumar, PW-05 Suresh Kumar. PW-06 Manoj Kumar Agrawal, PW-07 Mohd. Noore Nazar, PW-08 Jagdish Prasad, PW-09 Subhash Chandra Agrawal, PW-10 Naresh Gupta, PW-11 C.M. Malakar (A.S.I.), PW-12 Chintamani Tripathi (A.S.I.), PW-13 R.P. Dwivedi (A.S.I.), PW-14 A.S Kosle (Inspector) and PW-15 Sudhir Xalxo (Naib Tehsildar). The statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implications. No witness was examined by them in their defence.
- 8) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused/appellants and other co-accused as mentioned above in para 2 of this judgment.
- 9) Learned counsel for the appellants submits that accused appellants were falsely implicated in this case, no any witness identified the accused person, therefore, no offence is made out against the accused appellants and on same set of offence the appellants were acquitted from the charges under section 25 & 27 of Arms Act and therefore, learned Trial Court wrongly convicted accused appellants and they deserve to be acquitted.
- 10) On the other hand learned counsel for the respondent/State submits that PW-15 Sudhir Xalxo conducted identification parade as per Ex. P-1 and accused Junas Lakda and Premlal Yadav were identified by PW-10 Naresh Gupta, and PW-09 Subhash

Chandra Agrawal also identified the accused persons in the Court. The identification parade is also proved by PW-01 Saiyad Akbar. There is no reason to disbelieve the eye witnesses of the incident. He supports the impugned judgment and submits that the Trial Court considering the overall evidence available on record has rightly convicted and sentenced the appellants by the impugned judgment which calls for no interference by this Court.

- 11) Heard counsel for the parties and perused the material available on record.
- 12) PW-10 Naresh Gupta, brother of PW-05 Suresh Kumar, lodged FIR Ex. P-10 and stated in his deposition that when they were in weekly market Jamruga, the accused persons present in Court reached the shop of Suresh Gupta and other traders and looted Rs. 9,000/- - Rs. 10,000/- from his brother Suresh and also looted amount from other persons Subhash Chandra Agrawal, Manoj Agrawal, Jagdish. The accused persons were having country made Pistol in hand and after looting amount they fled from the place of occurrence. PW-10 Naresh Gupta identified the accused Junas and Premlal vide Ex. P-1 and in para 4 he stated that he saw all 3 accused who looted the amount. PW-09 Subhash Chandra Agrawal also stated the same fact and amount was looted from him. PW-08 Jagdish Prasad also stated that accused person entered his shop and looted amount from him by showing country made Pistol. PW-06 Manoj also identified the four accused i.e. Junas Lakda, Sunil Kumar Lakda, Prem Yadav @ Premlal Yadav and Laluram Yadav in the Court and stated that they looted amount from Manoj Agrawal also by showing country made Pistol. PW-05 Suresh Kumar also proved this fact that loot was made by the accused persons by showing country made Pistol and giving threatening to them. Looking to the entire evidence of the PW-05 Suresh Kumar, PW-06 Manoj Kumar Agrawal, PW-08 Jagdish Prasad, PW-09 Subhash Chandra Agrawal and PW-10 Naresh Gupta and the fact that there is nothing on record to show that these witnesses were having any

enmity with the accused persons, there is no reason to disbelieve the evidence of the aforesaid witnesses. They have consistently stated that the present appellants alongwith other co-accused looted amount by showing country made Pistol on 07/12/2006 in the weekly market Jamraga. Soon after the incident after FIR was lodged by PW-10 Naresh Gupta against unknown person because he was not aware names of the accused persons but the physical features of the accused persons were duly described and he claimed to identity the accused persons on seeing them. As per Ex. P-1, the accused persons namely Junas Lakda and Premlal Yadav was duly identified by PW-10 Naresh Kumar. The said identification has also been proved by PW-15 Sudhir Xalxo and PW-01 Saiyad Akbar this apart the witnesses have also identified the accused persons in the Court. In this case the looted amount could not be recovered from the accused persons as they spend away the amount looted by them as has been stated by them in their memorandum Ex. P-3, Ex. P-4, Ex. P-6 and Ex. P-8.

- 13) Looking to the aforesaid oral and documentary evidence available on record and the fact that the Criminal Appeal No. 1160/2012 preferred by co accused has already been dismissed by Co-ordinate Bench of this Court, this Court finds no substance in the present appeal and the same is liable to be dismissed.
- 14) In the result, the appeal being without any substance is liable to be dismissed and is, accordingly dismissed. Both accused have completed their jail sentence as per Jail Report dated 29/06/2020 of Jail Superintendent, Central Jail Bilaspur and Junas Lakda was released on 17/11/2011 and Sunil Lakda on 27/10/2011. Therefore, there is no need to pass any order regarding their surrender, arrest etc. by this Court.

**-Sd/-
(Gautam Chourdiya)
Judge**