

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 693 of 2006

1. Ulas Sidar @ Nanki, S/o Shri Hari Ram, aged about 23 years
2. Pardesi Yadav, S/o Shri Dashrath Yadav, aged about 23 years
3. Kumar Yadav, S/o Kundel Yadav, aged about 24 years

All are resident of Village- Hardi, Police Station – Malkhrauda, District Janjgir Champa (C.G.)

---- Appellants

Versus

- State of Chhattisgarh Through : Police Station – Chandrapur, District Janjgir Champa (C.G.)

---- Respondent/State

For Appellants : Shri Basant Dewangan, Advocate
For Respondent/State : Shri Vimlesh Bajpai, Government Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

01.10.2020

1. This appeal is heard through Video Conferencing.
2. This appeal is of the year 2006, however, it has not been yet admitted. The appeal is admitted for hearing and with the consent of the parties, it is heard finally.
3. This appeal arises out of the judgment of conviction and order of sentence dated 08.09.2006 passed by the Additional Sessions Judge, Sakti, District Bilaspur (C.G.) in Sessions Case No. 77/2006, the appellants namely Ulas Sidar @ Nanki (A-2), Pardesi Yadav (A-3) and Kumar Yadav (A-4) stand convicted and sentenced as under:-

<u>Conviction:</u>	<u>Sentence:</u>
Under Section 395 read with Section 34 of Indian Penal Code (hereinafter referred to as the 'IPC')	Rigorous imprisonment for ten years each and pay a fine of Rs.1,000/- each and in default of payment to further undergo additional rigorous imprisonment for three months each

4. There are five accused persons namely Ram Dutt @ Rajendra Prasad Rathore (A-1), Ulas Sidar @ Nanki (A-2), Pardesi Yadav (A-3), Kumar Yadav (A-4) and juvenile-v (A-5) who were prosecuted for the offence punishable under Section 395 and 395 read with Section 34 of IPC and Section 25 of the Arms Act before the trial Court. Out them, accused- Ram Dutt @ Rajendra Prasad Rathore (A-1), Ulas Sidar @ Nanki (A-2), Pardesi Yadav (A-3), Kumar Yadav (A-4) have been convicted and sentenced under Section 395 read with Section 34 of IPC and separate charge-sheet against accused juvenile-v (A-5), was filed before the concerned Juvenile Justice Board for separate trial.
5. Separate appeal i.e. Criminal Appeal No. 758 of 2006 has been filed by accused Ram Dutt @ Rajendra Prasad Rathore (A-1). In the said appeal, a report had been received from the Jail Superintendent, Central Jail, Bilaspur on 25.04.2014, intimating that appellant (A-1) had been released from jail on completion of his entire jail sentence. The appellant was released from jail on 15.09.2013 after completing his entire jail sentence and he was not interested to pursue the instant criminal appeal. Accordingly, on 09.05.2014 co-ordinate Bench of this Court, keeping in mind the decision of the Hon'ble Supreme Court in case of ***D.S. Lahoriya @ Rajeev Sudan @ Vinay Kr. vs. State of Rajasthan***, reported in ***2007 AIR SCW 7327***, had dismissed the appeal bearing No. Cr.A. No. 758 of 2006 as having become infructuous.
6. Case of the prosecution, in brief, is that Ex.-P/1 F.I.R. was lodged by PW-1 Govind Ram Yadav on 06.08.2005 at about 02:30 am informing the police that he was working as Manager in Petrol Pump of Narayan Prasad Agrawal which was situated at Barhaguda, Chandrapur and on the same day in between 01:45-02:15 am he was on duty in the said Petrol Pump along with salesman Suresh and was having the amount of Rs.1,74,235/- which was he kept in almirah. When Lakhan, Shathpathi, Shekhar and himself were sleeping in salesroom of the Petrol Pump, at about 01:45 am he heard some

sound and woke up, at that time all the electric lights were on, as soon as he turned, unknown accused persons entered and one accused person who had in his hand *katta* (country made pistol) hit him by leg and asked him to lie down, or else he will shoot. The said person asked about the key which was kept under pillow where Govind Ram was sleeping and they took the key. When Govind Ram Yadav heard the sound of the motorcycle going, he got up and saw that they had gone and it was about 02:15 am. Though he tried to make a phone call, but phone wire was cut by the accused persons. Then he saw locker where the cash was kept, but the same was empty. The accused persons robbed a sum of Rs.1,74,235/- from locker. Govind Ram Yadav stated that physique & description of accused persons were narrated by Mayaram Sriwas and security guard Ramkhilawan and due to fear salesman Suresh ran away from there. The accused persons were armed with *katta*, *gupti* & *khukri* and they were speaking Hindi & Chhattisgarhi language.

7. F.I.R. (Ex.-P/1) was registered under Section 392 read with Section 34 IPC against four unknown persons in Police Station, Chandrapur under Crime No. 63/2005. During investigation, bills dated 03.08.2005, 04.08.2005 & 05.08.2005 of certain amounts of petrol pump were seized vide Ex.-P/3 and one brown coloured Hero Honda motorcycle was seized vide Ex.-P/4 from Govind Ram Yadav (PW-1). *Nazrinaksha* (Ex.-P/31) was prepared vide Ex.-P/31 by PW-14 Smt. Sadhna Singh, City Inspector on 06.08.2005. Another *nazrinaksha* (Ex.-P/27) was prepared by Patwari Shivratan (PW-12) on 28.09.2005.
8. The present appellants (A-2 to A-4) and co-accused Ram Dutt @ Rajendra Prasad Rathore (A-1) were arrested on 13.09.2005 and their memorandums were recorded on the same day vide Ex.-P/11, Ex.-P/12, Ex.-P/13 & Ex.-P/14. Based on memorandum of A-1, cash amount of Rs.5,300/-, one Samsung mobile-set amounting to Rs.2,300/-, silver coloured Hero Honda

(Passion Plus) motorcycle and one air-gun (pistol) were seized from co-accused Ram Dutt (A-1) vide Ex.-P/15. Cash amount of Rs.7,850/-, one Reliance LG mobile-set amounting to Rs.2,300/-, one flick-knife and purse in which there was a diary with bills were seized from Ulas Sidar @ Nanki (A-2) vide Ex.-P/16. Cash amount of Rs.500/- and green handle screwdriver (*Pechcus*) were seized from Kumar Yadav (A-4) vide Ex.-P/17. Cash amount of Rs.7,200/-, LG mobile-set amount to Rs.2,300/-, one knife (*Katari*) and Hero Honda motorcycle were seized from Pardesi Yadav (A-3) vide Ex.-P/18. Later on, another memorandum (Ex.-P/23) of co-accused Ram Dutt (A-1) was recorded on 15.09.2005, based on it remaining looted amount of Rs.1,000/- was seized vide Ex.-P/26 and another memorandum (Ex.-P/24) of appellant Ulas Sidar @ Nanki (A-2) was recorded on 15.09.2005, based on it remaining looted amount of Rs.4,000/- was seized vide Ex.-P/25. The property seized from the accused persons were kept in safe custody and details thereof were mentioned in register of seizure property were also seized vide Ex.-P/29AC, Ex.-P/29BC, Ex.-P/29CC, Ex.-P/29DC, Ex.-P/29EC & Ex.-P/29FC. The accused persons (A-1 to A-4) were sent for medical examination vide Ex.-P/37 to Ex.-P/44 by PW-14 Sadhna Singh.

9. Test Identification Parade (TIP) was also conducted by Naib Tehsildar on 13.09.2005 in Tehsil Office, Sakti, in which, the present appellants/accused namely Ulas Sidar @ Nanki (A-2), Pardesi Yadav (A-3) & Kumar Yadav (A-4) and co-accused namely Ram Dutt @ Rajendra Prasad Rathore(A-1) & Juvenile-v were identified by Suresh Kumar (PW-2) and Ramkhilawan Singh (PW-16) vide Ex.-P/5. Accused namely Juvenile-v, Ulas Sidar @ Nanki (A-2) & Kumar Yadav (A-4) were identified by Maya Ram (PW-3), but PW-3 did not identify Ram Dutt (A-1) and Pardesi Yadav (A-3) in TIP.

10. After recording the case diary statements of the witnesses, the charge-sheet was filed against the appellants/accused persons (A-1 to A-4) under Section 395 of IPC and Section 25 of the Arms Act and while framing the charges,

the trial Judge framed the charges against the accused persons under Sections 395 and 395 read with Section 34 of IPC and Section 25 of the Arms Act which were denied by them and they prayed for trial.

- 11.** The prosecution has examined as many as 17 witnesses namely Govind Ram Yadav (PW-1), Ganga Ram @ Suresh Kumar (PW-2), Maya Ram Sriwas (PW-3), Praveen Kumar Agrawal (PW-4), Satyanarayan Rathore (PW-5), Tika Ram Jaiswal (PW-6), Madan Lal Maravi (PW-7) Nand Kumar Yadav (PW-8), Gajendra (PW-9), Harishankar (PW-10), Navratan Das Vaishnav (PW-11), Shivratan (PW-12), Anand Kumar Sahu (PW-13), Smt. Sadhna Singh (PW-14), Ajay Kumar Uraon (PW-15), Ramkhilawan Singh (PW-16) and Vinod Kumar Dakhanwar (PW-17). Statements of the appellants/accused persons were also recorded under Section 313 of the Criminal Code of Procedure, in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. No defence witness has been examined by the accused persons in their support.
- 12.** The trial Court after hearing counsel for the parties and considering the material available on record, by the impugned judgment convicted and sentenced the present accused/appellants (A-2 to A-4) as mentioned in para- 3 of this judgment, hence this appeal.
- 13.** Learned counsel for the appellants submits that the prosecution has failed to prove the guilt of the present appellants in crime in question. He further submits that the appellants are the innocent persons and they have not committed any loot or dacoity and they have been falsely implicated in this case.
- 14.** On the other hand, counsel for the respondent/State supports the judgment impugned. It has been argued by the State Counsel that the conviction of the appellants is in accordance with law and there is no infirmity in the same.
- 15.** I have heard the counsel for the respective parties and perused the evidence

on record.

16. PW-1 Govind Ram Yadav who is the Manager in Petrol Pump of Narayan Prasad Agrawal namely Hindustan Petroleum has stated in his deposition that on 06.08.2005 cash amount of Rs.1,74,235/- was kept in almirah. Salesman Gangaram and Security Guard Ramkhilwan were also on duty with him (PW-1), at about 01:45 am, he heard some noise and woke up and saw that one person came in showroom (petrol pump), hit him (PW-1) by his leg, other person came and made him lie upside down, aimed the gun at him and asked about the key. He (PW-1) told them (accused persons), he has no key and watchman Maya Ram would have the key. The accused person took Maya Ram to the room, Maya Ram also said that he has no key. PW-1 further stated that the key was kept under the pillow where he was sleeping and the accused took the key and they went. PW-1 also stated that after 5-10 minutes, he heard sound of motorcycle and the accused persons had gone, when he saw the almirah, the amount of Rs.1,74,235/- which kept in almirah was missing. PW-1 also stated that the accused persons evacuated the air of his motorcycle which was parked in Petrol Pump and they also broke the headlight of the motorcycle. PW-1 stated that after the incident, he along with staff of Petrol Pump went to Police Station and lodged the report by giving description of physique of the accused persons. PW-1 could not identify the accused persons while they were committing dacoity as his face was pressed against the floor by the accused persons, but he got the features of the accused persons from other witnesses who saw the looters and lodged the F.I.R. (Ex.-P/1) which was duly proved by him. PW-1 has also proved bills dated 03.08.2005, 04.08.2005 & 05.08.2005 of certain amounts of petrol pump which were seized vide Ex.-P/3 and the seizure of one brown coloured Hero Honda motorcycle vide Ex.-P/4 from him. In cross-examination, he (PW-1) remained firm and nothing could be elicited from him by the defence to render his evidence untrustworthy or doubtful.

- 17.** PW-2 Ganga Ram @ Suresh Kumar, who was working in the Petrol Pump of Narayan Prasad Agrawal, has stated that on the date of incident at about 01:45 am, one yellow coloured Hero Honda came in which he filled petrol amounting to Rs.400/- and one black coloured Hero Honda also came in which he filled petrol amounting to Rs.300/- and one person told him to give bill. When he (PW-2) was preparing bill in the counter of the petrol pump, four persons, who were the accused persons, assembled near the counter and accused Ram Dutt (A-1) told him that he will not give money. PW-2 stated that thereafter, at that time Ram Dutt who was having a pistol (*katta*), asked him about key of almirah and Ram Dutt (A-1) and Ulas (A-2) committed *marpit* with him (PW-2). PW-2 told the accused persons, he has no key and said that Govind Manager was sleeping behind. PW-2 has also stated that when accused Ulas (A-2) started opening the almirah, he crossed the boundary and fled from the place of occurrence. Suresh Kumar (PW-2) has duly identified the present appellants (A-2 to A-4) & other two co-accused persons (A-1 & juvenile-v) in test identification parade which was conducted by Naib Tehsildar in Tehsil Office, Sakti on 13.09.2005 vide Ex.-P/5. PW-2 has duly proved the T.I.P. (Ex.-P/5). In cross-examination, he (PW-2) remained firm and nothing could be elicited from him by the defence to render his evidence untrustworthy or doubtful.
- 18.** PW-3 Maya Ram is also a member of staff of the Petrol Pump. PW-3 has stated that on the date of incident at about 01:45 am he was sleeping behind the petrol pump in a room, at that time accused Pardeshi (A-3) and Ram Dutt (A-1) came there and asked about the key of almirah, then he told them, he has no key. Thereafter, they took him to office of petrol pump. PW-3 has further stated that accused (A-1 & A-3) asked from Govind Ram about the key and they found the key under the pillow where Govind Ram was sleeping and took the key. PW-3 has also stated that accused Pardeshi (A-3) and Ram Dutt (A-1) opened the almirah and looted a sum of Rs.1.75 lacs.

PW-3 has duly identified the present appellants (A-2 & A-4) & one co-accused juvenile-v in TIP vide Ex.-P/5 and has duly proved the T.I.P. (Ex.-P/5). In cross-examination, he (PW-3) also remained firm.

19. PW-16 Ramkhilawan Singh is the Watchman in Petrol Pump. PW-16 has stated that on the date of incident in the night at about 01:45 am, five persons had come in petrol pump by two motorcycles and the salesman filled the petrol in the said two motorcycles of about Rs.700-800/-. After filling petrol in the said motorcycles, they demanded a bill from the salesman and when salesman demanded money, they refused to pay. PW-16 has also stated that Ram Dutt (A-1) took out a *katta* and co-accused Ram Dutt made him (PW-16) and salesman sit inside the counter and assaulted upon PW-16 and salesman. Ram Dutt enquired from PW-16 about the money, then he told Ram Dutt that he was newly appointed and did not know as to where money was kept. PW-16 has further stated that five persons had come, out of them two persons stood outside and three persons were searching money inside. PW-16 has stated that after that they broke the lock of the almirah, took out the money and came out and thereafter, all five persons fled from there. PW-16 has duly identified the present appellants (A-2 & A-4) & two other co-accused persons (A-1 & Juvenile-v) in TIP vide Ex.-P/5 and has duly proved the T.I.P. (Ex.-P/5). In cross-examination, he (PW-16) remained firm and nothing could be elicited from him by the defence to render his evidence untrustworthy or doubtful.

20. PW-5 Satyanarayan Rathore, Patawari, was present as witness in TIP (Ex.-P/5), he admits his signature on Ex.-P/5 and he has duly proved the same.

21. PW-8 Nand Kumar Yadav and PW-9 Gajendra are the witnesses of memorandums (Ex.-P/11, Ex.-P/12, Ex.-P/13 & Ex.-P/14); seizures (Ex.-P/15, Ex.-P/16, Ex.-P/17 & Ex.-P/18) and arrest memos (Ex.-P/19, Ex.-P/20, Ex.-P/21 & Ex.-P/22). Both these witnesses have admitted that they have signed on the above documents, but they have been declared hostile by

prosecution as they have not supported the prosecution case.

22. PW-17 Vinod Kumar Dakhanwar has stated that he does not know the accused persons, but on the date of incident, he was sitting in petrol pump. In the night at about 01:30 am, 4-5 persons came in the petrol pump on motorcycle, after entering the petrol pump, they took out *katta*, screwdriver (*pechcus*) and the person who filled the petrol was the salesman. The accused persons threatened salesman and asked about the key and at that time staff members of petrol pump were also present, thereafter, the accused persons took out a key from bed, cut the wire of telephone and took out the money from almirah and fled from there. PW-17 further stated that he told the police about the physique of the accused persons and also told that one of the accused had slapt him and told him to sit down.

23. PW-14 Smt. Sadhana Singh, Investigating Officer, registered the FIR (Ex.-P/1) lodged by PW-1 Govind Ram Yadav, Manager of the Petrol Pump. PW-14 has stated that copy of F.I.R. was sent by him to A.C.J.M., Sakti and receipt of which is Ex.-P/30. PW-14 prepared the spot map vide Ex.-P/31 and she recorded the memorandums of the accused persons consequent to which seized the property from the accused persons. PW-14 has duly proved the F.I.R., memorandums of the accused persons and seizure of the property from the accused persons.

24. Therefore, there is no reason to disbelieve the evidence of PW-1, PW-2, PW-3, PW-16 & PW-17 and they have duly proved the dacoity committed in the night of 06.08.2005 in between 01:45-02:15 am in the Petrol Pump by the present appellants (A-2, A-3 & A-4) and two other accused (A-1) and juvenile (v). Further, Suresh Kumar (PW-2) and Ramkhilawan Singh have duly identified the present appellants (A-2 to A-4) & other two co-accused persons (A-1 & juvenile-v) in test identification parade which was conducted by Naib Tehsildar in Tehsil Office, Sakti on 13.09.2005 vide Ex.-P/5 and they have duly proved the same. PW-3 Maya Ram has correctly identified the

present appellants (A-2 & A-4) & one co-accused juvenile (v) in TIP vide Ex.-P/5 and he has proved the same.

25. I have gone through the entire evidence and material available on record, it is proved that it were present appellants (A-2 to A-4) and co-accused A-5 & juvenile-v who committed dacoity with use of weapons like *katta* (pistol), screwdriver (*pechcus*) etc and looted a sum of Rs.1,74,235/- which was kept in the office of the said Petrol Pump in almirah. The accused/appellants were correctly identified in TIP by PW-2, PW-3 and PW-16. Therefore, I am of the considered opinion that the learned trial Court has rightly convicted the present appellants/accused persons under Section 395 read with Section 34 of IPC. As such, I do not find any reason to interfere with the judgment of conviction and order of sentence passed by the trial Court. The appeal has no merits. The same deserves to be and is accordingly dismissed.

26. A report has been received from Office of Jail Superintendent, Central Jail, Bilaspur (C.G.) dated 14.02.2019 about the status of the accused/appellants. It is stated in that report that the accused/appellants namely Ulas Sidar @ Nanki (A-2), Pardeshi Yadav (A-3) and Kumar Yadav (A-4) have been released after completion of their entire sentence awarded to them by the trial Court, therefore, no further order regarding their arrest/surrender etc. is required to be passed.

Sd/-
(Gautam Chourdiya)
Judge