

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 737 of 2007

1. Raju @ Rajkumar S/o. Ramnaresh, Aged 22 years, occupation- Agriculture, R/o. Village Sundari, Police Station Duddhi, District Sonbhardra (UP)
2. Sitaram S/o. Nanku, Aged 25 years, occupation- Agriculature, R/o. Village Aasandih, Police Station Babhani, District Sonbhardra (UP)

---- Appellants

Versus

State of Chhattisgarh, through Police Station- Basantpur, District Surguja (C.G.)

---- Respondent

with

Criminal Appeal No. 743 of 2007

Dayashankar S/o. Laxandhari, Aged 20 years, occupation-Agriculture, R/o. Village Mahewa, PS Basantpur, District Surguja (C.G.)

---- Appellant

Versus

State of Chhattisgarh, through Police Station- Basantpur, District Surguja (C.G.)

---- Respondent

For the Appellants :	Ms. Nirupama Bajpai, Ms. Iturani Mukharjee and Mr. A.K. Prashad, Advocates.
For Respondent :	Mr. Anand Verma, Dy. Govt. Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment on Board

16.07.2020

1. All the appeals arise out of the common judgment, hence they are being disposed of by this common judgment.
2. As per prosecution case, on 11.07.2006 the appellants and other co-accused persons had stopped the passenger bus bearing registration No. 15-A/4449, which was coming from Ambikapur to Renukot, when the said bus reached near Fulidumar Ghat, the appellants along with co-accused entered in it, looted Rs. 28,000/- and a music system of the bus. It is also alleged that the appellants and co-accused were carrying deadly weapon with them and they also damaged the bus. FIR (Ex.P-29) was registered against the unknown persons by Lalbabu Singh- (conductor) of the bus in Police Station Basantpur. After completion of investigation charge sheet was filed for the said offences followed by framing of charge accordingly.
3. Learned Court below held the accused/appellants guilty for all the aforesaid charges and sentenced them to undergo RI for 3 years with fine of Rs.100/- u/s 395, RI for 7 years u/s. 398; RI for 3 months with fine of Rs. 100/- u/s. 427 IPC and RI for 1 year with fine of Rs. 100/- u/s. 25 of the Arms Act respectively, vide judgment impugned dated 09.08.2007 passed in ST No. 407/2006. Hence this appeal.
4. Counsel for the appellants submits that the witness of identification namely Chandramani Yadav (PW-4) has denied the identification and

seized articles. It is also submitted that there are number of contradictions and omissions in the statements of witnesses which makes the case of the prosecution doubtful. It is further submitted that the testimony of prosecution witnesses, who have been declared hostile, cannot be relied upon to convict of the appellants and, therefore, judgment of conviction is liable to be set aside and they be acquitted of the charge levelled against them.

5. 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.
6. Heard counsel for the parties and perused the material available on record including the judgment impugned.
7. Gopal Thapa (PW-1) is driver of the bus. He deposed that at the time of incident about 20 passengers were in the bus. He stated that the appellants and co-accused stopped the bus near Fulidumar Ghat, on the point of gun/pistol and when he stopped the bus then some of them have entered in it and broken the front mirror of the bus. He stated that the accused/appellants and co-accused assaulted the passengers and the conductor namely Lalbabu Singh of the bus and looted a music system and Rs. 28,000/- from them. He also stated that he drove the bus along with the passengers to police station Basantpur where he lodged the made FIR (Ex. P-29). Spot map was prepared vide Ex.P-30. During the course of investigation,

accused/appellants were taken into custody and on the memorandum of the appellants, looted currency and gun (*Bharmar* banduk) were seized from the appellants under (Ex.P-3, Ex.P-4 and Ex.P-5) and the same were recovered at their instance vide Ex.P-8, Ex.P-9 and Ex.P-10. Mohammad Imtiyak (PW-3) is the witnesses to the memorandum and seized articles has supported the case of the prosecution. Investigating Officer, S.B. De (PW-11) deposed that during the investigation appellants were taken into custody and disclosure statements of accused Sitaram, Raju @ Rajkumar and Dayashankar were recorded vide Ex.P-3, Ex.P-4 and Ex.P-5 under Section 27 of the Evidence Act on 14.07.2006 currency notes and Bharmar Banduk/ gun were seized. O.P. Singh (PW-2) has proved the permission of prosecution (Ex.P-1) in respect of District Magistrate -Ambikapur. Nayab Tahsildar B.R. Kashyap (PW-6) has deposed that he has conducted test identification parade on 16.07.2006 at primary school Basantpur on the request of police. Accused persons were mixed with other fifteen persons and accused persons were identified by Gopal Thapa (PW-1) Lalbabu Singh (conductor) and Sandeep Gond (PW-12), thereafter he prepared test identification parade document vide Ex.P-21 and Ex.P-22 and the same is supported by Chandramani Yadav (PW-4), who participated in that test identification parade and he admitted his signature in the documents.

8. After appreciating the evidence available on record, prosecution has clearly proved that accused/appellants stopped the bus on the date of incident i.e. on 11.07.2006, they were armed with deadly weapon i.e.

firearm and looted total Rs. 28,000/- from them, later on from the possession of accused /appellants some currency notes were recovered. Court below has thus been fully justified in convicting the accused/appellants under Sections 395,398, 427 IPC and 25 Arms Act and the finding so recorded being in conformity with the evidence collected by the prosecution does not call for any interference by this Court.

9. As regards sentence, the report received from the Superintendent, Central Jail, Ambikapur, dated 17.02.2016 shows that after getting the benefit of remission, the accused/appellant Raju @ Rajkumar has been released from the jail on 03.12.2011, appellant Sitaram has been released from jail on 18.12.2011 and appellant Dayashankar has already been released from jail on 14.09.2011, therefore, no observation regarding the sentence part is required to be made by this Court.
10. In view of what has been discussed as above, the appeals being without any substance are liable to be dismissed and are hereby dismissed as such.

Sd/-
(Vimla Singh Kapoor)
JUDGE