

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.912 of 2007

Chandrika Yadav, Son of Laxmi Yadav, Aged 24 years, Occupation Farming, Resident of Village Randaha (Jhanakpur), Police Station Babhni, District Sonbhadra, U.P.

---- Appellant

versus

State of Chhattisgarh through the Station House Officer Police Station Basantpur, District Surguja, Chhattisgarh

--- Respondent

For Appellant	:	Shri Ranbir Singh Marhas, Advocate
For Respondent	:	Shri Priyanshu Gupta, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

3.2.2021

1. The instant appeal has been preferred against the judgment dated 9.8.2007 passed by 1st Additional Sessions Judge (FTC), Ramanujganj, Surguja in Sessions Trial No.407 of 2006, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 395 of the Indian Penal Code	Rigorous Imprisonment for 3 years and fine of Rs.100/- with default stipulation
Under Section 398 of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.100/- with default stipulation
Under Section 427 of the Indian Penal Code	Rigorous Imprisonment for 3 months and fine of Rs.100/- with default stipulation

Under Section 25 of the Arms Act	Rigorous Imprisonment for 1 year and fine of Rs.100/- with default stipulation The sentences are directed to run concurrently
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2. According to the case of prosecution, on 11.7.2006, i.e., the date of incident, Complainant Lalbabu Singh (not examined) was a conductor of a bus bearing registration No.CG 15 A 4449 owned by Chhabra Bus Company. On that date, the said bus started from Ambikapur to go to Renukot. The bus was being driven by Gopal Thapa (PW1). When the bus reached Fulidumar Valley, a long thick wooden log was found lying ahead on the road and 9–10 persons armed with guns and sticks were standing beside the road. Those persons pelted stones over the bus and broke the glasses of the bus. They stopped the bus and out of them two persons entered the bus and thrashed the passengers of the bus. They looted cash of Rs.13,000/- from the pocket of Complainant Lalbabu Singh. Besides this, they also took away the music player (deck) installed in the bus. They also looted cash of Rs.15,000/- from the passengers travelling in the bus. First Information Report (Ex.P29) was lodged by Lalbabu Singh. Crime was registered against unknown persons. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of investigation, a charge-sheet was filed against 7 accused persons including the present Appellant. The Trial Court framed charges against them.
3. In support of its case, the prosecution examined as many as 12

witnesses. In examination under Section 313 of the Code of Criminal Procedure, the accused persons denied the guilt and pleaded innocence. No witness has been examined in defence.

4. On completion of the trial, vide the impugned judgment, the Trial Court convicted and sentenced all the accused persons including the present Appellant. Instant is the appeal preferred by the present Appellant.
5. Learned Counsel appearing for the Appellant submits that without there being clinching evidence on record against the Appellant, the Trial Court has wrongly convicted him. Complainant Lalbabu Singh could not be examined due to his death during trial. Gopal Thapa (PW1), driver of the bus in question and Sandeep (PW12), Khalasi (helper) of the said bus were only examined as eyewitnesses of the alleged incident. Statements of these eyewitnesses are totally contradictory to each other and, therefore, their statements are suspicious and not reliable. From their statements, it is well established that time of the incident was of late night. Accused persons had covered their faces with *gamchha* (a piece of cloth) and, therefore, their identification was not possible. Thus, the test identification parade conducted by the prosecution is also suspicious. It is further submitted that from the Appellant, one wooden stick looking like a *bharmar* gun, one mobile phone and cash of Rs.800/- were seized. Even if this seizure is considered to be true, relevancy of these articles with the alleged offence has not been established. Therefore, even this seizure does not support the case of the prosecution. Thus, the conviction of the Appellant is not sustainable.

6. Learned Counsel appearing for the State opposes the above submission and supports the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the entire record including the statements of the witnesses with due care.
8. Complainant Lalbabu Singh died during trial and, therefore, he could not be examined. Eyewitnesses Gopal Thapa (PW1) and Sandeep (PW12) were driver and khalasi (helper) of the bus in question, respectively. Apart from them, no passenger, who were travelling in the bus, has been examined.
9. In their Court statement, Gopal Thapa (PW1) and Sandeep (PW12) have deposed that on the date of incident they were taking passengers in the bus in question from Ambikapur to Renukot. At about 2:00 O'clock in the night, when the bus was being driven over the valley, a big piece of wood was found lying ahead on the road of the valley. The bus was stopped. On stopping of the bus, the accused persons came to the bus. They were armed with guns. They pelted stones over the bus and broke the glasses of the bus. Thereafter, some of the accused persons entered the bus and committed *marpeet* with the passengers and also committed loot from them. Thereafter, the accused persons stepped down from the bus and fled from there. The above statements of these two witnesses have not been rebutted during their cross-examination. Thus, it is established that at the time of incident, the accused persons had stopped the bus and committed loot from the

passengers.

10. Now, the only fact remains for consideration is whether the present Appellant was also involved in the offence in question or not.
11. Though Gopal Thapa (PW1), driver of the bus in question, in his Court statement, has identified the Appellant, in paragraphs 7 and 8 of his Court statement, he has categorically admitted the fact that the time of incident was a dark night. The persons who committed the loot had covered their faces with *gamchha*. Contrary to this, Sandeep (PW12), khalasi (helper) of the said bus, has deposed that the faces of the persons who committed the loot were not covered by any cloth. But, this witness has admitted the fact that the time of incident was a dark night and at that time it was raining.
12. According to the case of the prosecution and as deposed by Naib-Tahsildar B.R. Kashyap (PW6), he had conducted a test identification parade in Primary School, Basantpur where Gopal Thapa (PW1) and Sandeep (PW12) had identified the accused persons including the present Appellant. Gopal Thapa (PW1) and Sandeep (PW12) have also deposed that during the test identification parade, they had identified the present Appellant and other accused persons, but Gopal Thapa (PW1) has deposed that the said test identification parade was conducted on the road outside the police station and during that time police officials were also present there and the Station House Officer of the said police station had conducted the said test identification parade. Gopal Thapa (PW1) has further deposed that the police officials who were present there themselves had told that the persons present there

were involved in the loot and then they had identified the accused persons. Other witness Sandeep (PW12), who had also identified the accused persons, has deposed that the proceedings of the test identification parade was conducted in an agricultural field situated 3 kilometres away from the police station. Sandeep (PW12) has categorically admitted the fact that the proceedings of the test identification parade was not conducted in the Primary School, Basantpur.

13. On a minute examination of the evidence led by the prosecution, it is clear that the loot in question was committed, but the Appellant was involved in the said loot is doubtful because the statements of the eyewitnesses are contradictory to each other. Apart from this, the test identification parade is also suspicious. Though some articles were seized from the possession of the Appellant, their relevancy with the offence in question has not been established. Thus, I find that the conviction imposed upon the Appellant is not sustainable.
14. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charges framed against him.

Sd/-
(Arvind Singh Chandel)
Judge