

HIGH COURT OF CHHATTISGARH, BILASPUR
Acquittal Appeal No.376 of 2010

State of Chhattisgarh through G.R.P O.P Rajnandgaon

---- Appellant

Versus

Ajay Swipar S/o Bodhan Swipar, aged about 36 years, 16 Kholi Ward No.11
Station Para, Rajanndgaon

-----Respondent

For Appellant/State:
For Respondent:

Shri BP Banjare, Dy. G.A
Shri Shreyankar Nandey, Advocate on
behalf of Shri Anup Majumdar, Advocate.

Single Bench: Hon'ble Shri Deepak Kumar Tiwari J
Order On Board

16.12.2021

1. This Appeal has been preferred under Section 378(1) Cr.P.C against the judgment of acquittal dated 02.03.2005 passed by the Judicial Magistrate, First Class, Rajnandgaon (CG) in Criminal Case No.621/2004, whereby the Respondent has been acquitted from the offence punishable under Section 392 IPC.
2. Case of the prosecution in brief is that on 08.08.2004, at 7.00 p.m, the accused/Respondent along with the absconded accused Sanjay, looted a purse having an amount of Rs.100/- and a railway pass from Ganga Singh (PW-3) near the railway signal yard, Rajnandgaon for which, the accused/Respondent was charged for offence punishable under Section 392 IPC.
3. After completing the investigation, the police has filed the charge sheet and framed charges against the accused/Respondent and other

absconding accused Sanjay under Section 299 Cr.P.C.

4. The accused/Respondent denied the charges levelled against him and stated in his statement that he has been falsely implicated in the case and produced no evidence in his defence.

5. In order to prove its case, the prosecution has examined as many as 5 witnesses and after completing the trial, by way of the impugned judgment of acquittal, the accused/Respondent has been acquitted from the charge alleged.

6. I have heard learned Counsel for the parties and perused the entire record minutely.

7. In this case, Ganga Singh (PW-3) has made a written complaint (Ex.P-6) to G.R.P and on such basis, FIR (Ex.P-5) was recorded. In the FIR (Ex.P-5), the time of information received at the police station was entered in a different ink and except such entry, all other particulars were entered in blue ink. But the information received at the police station was entered in black ink and the prosecution has not been able to explain as to why different ink was used for such entry.

8. Sanjay Agrawal, who conducted the test identification parade vide Ex.P-2 was not examined by the prosecution and Ganga Singh (PW-1) did not state that he identified the accused person in the test identification parade. In para-5 of the cross-examination, he admitted that the police has shown a person, therefore, he identified him. Suresh Chandra (PW-4) has not stated clearly that he has identified accused/Respondent Ajay in the test identification. He only says that from two unknown persons, he has identified one person in the test identification parade. As the person who conducted the test identification parade was not examined in the case and from the evidence, it is also clear that the accused persons were not known

to the complainant, therefore, without conducting proper identification and without establishing the identity of the person, it would not be possible for the Court to convict the accused.

9. Ganga Singh (PW-3) also did not depose that on the memorandum of the accused (Ex.P-3), any amount has been seized, though Dr. Singh (PW-6), Sub-Inspector has seized Rs.50/- on the memorandum of the accused Ajay.

10. Suresh Chandra (PW-4), has stated in his statement that on the memorandum of the accused, police has seized Rs.50/-, a screw driver and a purse. Dr. Singh (PW-5) has not seized any purse as stated by Suresh Chandra (PW-4) and Ganga Singh (PW-1). The complainant has stated that no amount or purse has been seized from the accused. So, there are infirmities in the statements of the prosecution witnesses as also material contradictions in the seizure and the memorandum of the accused.

11. The trial Court, after discussing the evidence on length, has reached to the conclusion that the police has failed to prove the memorandum seizure and identification, which is fatal to the prosecution and on such basis, acquitted the accused.

12. Therefore, on the aforesaid appreciation, this Court, while hearing the acquittal Appeal, does not want to disturb the finding recorded by the Court below as the incident is of the year 2004 and the view taken by the trial Court is possible view, therefore, the acquittal is affirmed and accordingly, the Appeal is dismissed.

Sd/-

(Deepak Kumar Tiwari)
JUDGE