

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1292 of 2016

Judgment Reserved on : 22.9.2021

Judgment Delivered on : 18.10.2021

Kapil Das Mahant, son of Roopdas Mahant, aged about 20 years,
resident of Village Karma, Police Chowki Pantora, Police Station
Baloda, District Janjgir-Champa, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Station House Officer, Police Station
Baloda, District Janjgir-Champa, Chhattisgarh

--- Respondent

Criminal Appeal No.1747 of 2017

Kamal Chandra, son of Late Shri Ganpat Chandra, aged about 18
years, resident of Village Sukhada, Police Station Dabhara, District
Janjgir-Champa, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through the Station House Officer, Police Station
Baloda, District Janjgir-Champa, Chhattisgarh

--- Respondent

Criminal Appeal No.578 of 2019

1. Sharad Goutam, son of Satyaprakash Goutam, aged about 27 years,
resident of Village Sarawa, Police Station Shikarpur, District Buland
City, U.P.
2. Radheshyam Kashyap, son of Shivram Kashyap, aged about 33 years,
resident of Village Barbhatha, Police Station Baloda, District Janjgir-
Champa, Chhattisgarh

---- Appellants

versus

State of Chhattisgarh through Police Station Baloda, District Janjgir-
Champa, Chhattisgarh

--- Respondent

For Respective Appellants	:	Shri Vipin Singh, Shri Rishi Rahul Soni and Shri Akath Kumar Yadav, Advocates
For Respondent/State	:	Shri Akhtar Hussain, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. Since all the three appeals arise out of a common judgment, they are decided together.

2. The instant appeals have been preferred against the judgment dated 29.8.2016 passed by the 2nd Additional Sessions Judge, Janjgir-Champa in Sessions Trial No.51 of 2016, whereby the present Appellants have been convicted and sentenced as under:

<u>Appellant</u>	<u>Conviction</u>	<u>Sentence</u>
All the Appellants	Under Section 392/34 of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.1,000/- with default stipulation
	Under Section 397/34 of the Indian Penal Code	Rigorous Imprisonment for 7 years
	Under Section 398/34 of the Indian Penal Code	Rigorous Imprisonment for 7 years
Appellant Sharad Goutam (Additional Conviction)	Under Section 25(1A) of the Arms Act	Rigorous Imprisonment for 3 years and fine of Rs.500/- with default stipulation
Appellant Radheshyam Kashyap (Additional Conviction)	Under Section 25(1B) of the Arms Act	Rigorous Imprisonment for 1 year and fine of Rs.500/- with default stipulation
The jail sentences are directed to run concurrently		

3. Prosecution case, in brief, is that on 4.1.2016 in the afternoon at about 12:30 O'clock, Complainant Mahendra Agrawal (PW1) and

his wife Pooja Agrawal (PW2) and their children were returning on a motorcycle. When they reached near jungle nahar bridge, 3 unknown persons came there on a motorcycle, overtook and prevented them. They showed them a katta (country-made pistol) and a knife and demanded money from them. Thereafter, they looted a mobile phone of Nokia brand in which a sim of idea company bearing mobile number 8889892627 was placed from the pocket of Complainant Mahendra Agrawal. They also looted gold tops which were worn by Pooja Agrawal. Thereafter, all the accused persons fled from the spot. On 11.1.2016, Complainant Mahendra Agrawal (PW1) lodged First Information Report (Ex.P15) in this regard against 3 unknown persons at Police Station Baloda. During the course of investigation, it was found that a separate crime bearing Crime No.6 of 2016 was registered against the accused persons at Police Station Baloda for the offence punishable under Section 392/34 of the Indian Penal Code and Section 25 of the Arms Act. In Crime No.6 of 2016, memorandum statements of accused/Appellants Kapil Das, Radheshyam Kashyap, Kamal Chandra and Sharad Goutam were recorded vide Ex.P6, P7, P8 and P9 and on the basis of the said memorandum statements, the weapons of offence, i.e., the katta and the cartridges were seized vide seizure memo Ex.P3 and the knife was seized vide seizure memo Ex.P4. The looted mobile phone of Nokia brand was seized from Appellant Kapil Das vide seizure memo Ex.P10. During the course of investigation, it was found that accused/Appellant Kapil Das along with his mother co-accused Shantabai (acquitted) sold the looted gold tops to co-accused

Purushottam Soni (acquitted). The said gold tops were seized from Purushottam Soni vide seizure memo Ex.P17. Later on, the said gold tops were duly identified by Pooja Agrawal (PW2) vide Ex.P11. During the course of investigation, all the accused persons/Appellants were duly identified by Complainant Mahendra Agrawal (PW1) and his wife Pooja Agrawal (PW2) vide Ex.P12 and P13. On completion of the investigation, a charge-sheet was filed. Charges were framed by the Trial Court.

4. In support of its case, the prosecution examined as many as 13 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the accused persons/Appellants denied the guilt and pleaded innocence. No witness has been examined in their defence.
5. On completion of the trial, the Trial Court convicted and sentenced the accused persons/Appellants as mentioned in the second paragraph of this judgment. Hence, the present appeals.
6. Learned Counsel appearing for the respective Appellants jointly submitted that without there being sufficient evidence on record against the Appellants, the Trial Court has wrongly convicted them. The incident took place on 4.1.2016, but the First Information Report (Ex.P1) was lodged by Complainant Mahendra Agrawal (PW1) on 10.1.2016 when the Appellants were caught in Crime No.6 of 2016. Thereafter, in the present case also, i.e., in Crime No.13 of 2016, to falsely implicate the Appellants, a false and fabricated First Information Report (Ex.P15) was lodged by

Complainant Mahendra Agrawal (PW1) on 11.1.2016. It was further submitted that according to the FIR (Ex.P15), 3 unknown persons looted the articles from victims Mahendra Agrawal (PW1) and Pooja Agrawal (PW2), but the charge-sheet was filed against 4 accused persons for the alleged commission of loot. During the Test Identification Parade, accused persons Sharad and Kapil were identified by Complainant Mahendra Agrawal (PW1) vide Ex.P12 and accused persons Sharad and Radheshyam were identified by Pooja Agrawal (PW2) vide Ex.P13, but the Test Identification Parade Reports (Ex.P12 and P13) do not bear signatures of Complainant Mahendra Agrawal (PW1) and his wife Pooja Agrawal (PW2). Other accused persons were not identified by Mahendra Agrawal and Pooja Agrawal. Both Mahendra Agrawal (PW1) and Pooja Agrawal (PW2) categorically admitted the fact that at the time of the test identification parade, police officials were also present along with them and they identified the accused persons as told by the police officials. It was further submitted that the Test Identification Parade Reports (Ex.P12 and P13) do not bear signatures of Complainant Mahendra Agrawal (PW1) and his wife Pooja Agrawal (PW2) and, therefore, the whole Test Identification Parade is doubtful. Though at the time of recording of their statements in the Court, both Mahendra Agrawal (PW1) and Pooja Agrawal (PW2) identified all the Appellants, in their Court statements they have admitted the fact that at the time of incident two accused persons had covered their faces with cloth. But, despite that, they identified the Appellants in the Court and, therefore also, the identification of the accused persons/Appellants

by Complainant Mahendra Agrawal and his wife Pooja Agrawal during the course of recording of their statements in the Court is doubtful. It was further submitted that though in the instant case one mobile phone of Nokia brand is shown to be seized (Ex.P10) from Appellant Kapil Das, identification of that mobile phone has not got been done by Complainant Mahendra Agrawal (PW1). Even the First Information Report does not contain detailed description including IMEI number of that mobile phone. Therefore, it is not established that the seized mobile phone belongs to Complainant Mahendra Agrawal. As regards the gold tops, they were identified by Pooja Agrawal (PW2), but accused Purushottam Soni from which said gold tops were seized has been acquitted by the Trial Court and, therefore, the said gold tops were looted by any of the Appellants at the time of alleged incident is not established. Finally, it was argued that looking to the evidence adduced by the prosecution, the offences alleged against the Appellants are not duly proved and the Appellants are entitled to get benefit of doubt.

7. Learned Counsel appearing for the State/Respondent supported the impugned judgment of conviction and sentence.
8. I have heard Learned Counsel appearing for the parties and perused the record including the statements of the witnesses with due care.
9. As regards the present incident which took place on 4.1.2016, it is not in dispute that the First Information Report (Ex.P15) was lodged by Complainant Mahendra Agrawal (PW1) belatedly on 11.1.2016.

The FIR (Ex.P15) was lodged by Complainant Mahendra Agrawal (PW1) against 3 unknown persons only, but in their Court statements, both Mahendra Agrawal (PW1) and his wife Pooja Agrawal (PW2) deposed that at the time of incident when they reached near the jungle nahar, there all the Appellants (total 4 persons) prevented them and looted one mobile phone of Nokia brand from Mahendra Agrawal (PW1) and 2 numbers of gold tops from Pooja Agrawal (PW2). Both these witnesses admitted the fact during their cross-examination that 2 accused persons had covered their faces with cloth and, therefore, they were unidentifiable. Tahsildar Shabab Khan (PW4) had arranged Test Identification Parade of the accused persons in District Jail, Janjgir on 18.2.2016 vide Ex.P12 and P13. This witness admitted the fact that the Test Identification Parade Reports (Ex.P12 and P13) do not contain signatures of identifiers Mahendra Agrawal (PW1) and Pooja Agrawal (PW2). Mahendra Agrawal (PW1) and Pooja Agrawal (PW2) have also admitted the fact that during the Test Identification Parade, police officials were present along with them and both these witnesses identified the accused persons as told by the present police officials.

10. According to the case of prosecution, during the course of investigation, the looted mobile phone of Nokia brand was seized vide Ex.P10 on being produced by Appellant Kapil Das. No identification of this seized mobile phone was got done by Complainant Mahendra Agrawal (PW1). Even the FIR (Ex.P15) does not contain detailed description of the said mobile phone nor

any receipt was obtained from the Complainant regarding this mobile phone. In the Trial Court also, during recording statement, this mobile phone was not produced and got identified by Complainant Mahendra Agrawal (PW1). Therefore, the mobile phone of Nokia brand seized (Ex.P10) from Appellant Kapil Das was the looted mobile phone of Complainant Mahendra Agrawal is not established.

11. With regard to the seizure of the gold tops, according to the case of the prosecution, the said gold tops were seized from acquitted accused Purushottam Soni, but the seizure witnesses have not supported the case of the prosecution regarding the seizure. It was not established before the Trial Court that acquitted accused Purushottam Soni received the gold tops from acquitted accused Shantabai and, therefore, on this ground itself, the Trial Court acquitted Purushottam Soni and Shantabai of the charge framed against them under Section 411 of the Indian Penal Code. Therefore, it is not established that the said gold tops were received by Purushottam Soni from any of the Appellants.
12. It is the further case of the prosecution that at the instance of accused/Appellant Sharad Goutam, 1 country-made pistol and 7 live cartridges of 315 bore were recovered and seized (Ex.P3) from the *parawat* kept behind the house of Puniram Kaushik situated in Village Kosmanda. Though seizure witnesses Ritesh Kaushik (PW3) and Santosh Kumar Rajwade (PW7) have supported the seizure of these articles, they have only stated that the country-

made pistol and the cartridges were seized from Appellant Sharad Goutam from Village Kosmanda. But, the prosecution has not specified that from which place of Village Kosmanda, seizure of these articles was made. Both these witnesses are residents of Villages Baksara and Kanki, respectively. No resident of Village Kosmanda has been made a witness nor has it been properly explained why this was done so. Even if for the sake of argument, it is considered that the country-made pistol and the cartridges were seized from Appellant Sharad Goutam, the country-made pistol and the cartridges were in live and running condition there is no examination report of any armorer or any ballistic expert on record to this effect nor has any such expert been examined by the prosecution in this regard. Apart from this, as required under Section 39 of the Arms Act, no prior sanction for prosecution has been obtained from the concerned District Magistrate.

13. With regard to the recovery of the knife, according to the case of the prosecution, the knife was recovered and seized (Ex.P4) from the house of Appellant Radheshyam situated at Village Barbhatha. Again the seizure witnesses are same, i.e., Ritesh Kaushik (PW3) and Santosh Kumar Rajwade (PW7), who are residents of Villages Baksara and Kanki, respectively. No resident of Village Barbhatha has been made a witness by the prosecution and it has not been explained also why this was done so. As stated by seizure witnesses Ritesh Kaushik (PW3) and Santosh Kumar Rajwade (PW7), they had put their signatures in the seizure memorandums in Police Chowki Pantora. Therefore, it is not established that the

knife was seized from Village Barbhatha in presence of these witnesses. Even if for the sake of argument, it is considered that any knife was seized from Appellant Radheshyam, no examination report of the knife given by any expert regarding size of the knife has been placed before the Court nor was even the knife produced before the Court. Therefore, the prosecution does not get any help from the recovery and seizure of the said knife.

14. On a minute examination of the above evidence, it is clear that the FIR (Ex.P15) was lodged against 3 unknown persons, but in their Court statements, Mahendra Agrawal (PW1) and Pooja Agrawal (PW2) deposed that the offence in question was committed by all the Appellants, in total 4 persons and the charge-sheet was filed against 4 accused persons for commission of the alleged loot. In their Court statements, Mahendra Agrawal (PW1) and Pooja Agrawal (PW2) admitted that two accused persons had covered their faces with cloth and, therefore, they were not identifiable. Despite that, both these witnesses identified all the 4 Appellants during recording of their statements before the Trial Court. Looking to the above, statements of these witnesses with regard to the identification of the Appellants are suspicious. With regard to the Test Identification Parade also, both these witnesses admitted that during the Test Identification Parade, police officials were present along with these witnesses and they identified the accused persons as told by the present police officials. In addition to this, the Test Identification Parade Reports (Ex.P12 and P13) do not contain signatures of these two witnesses. Therefore, the Test

Identification Parade (Ex.P12 and P13) is also suspicious. As regards the looted mobile phone of Nokia brand, as discussed above, it is not established that the seized mobile phone was the looted mobile phone. As discussed above, the gold tops reached to acquitted accused Purushottam Soni through any of the Appellants is not established and, therefore, if any looted article was seized from Purushottam Soni that does not help the case of the prosecution. With regard to the knife and the katta (country-made pistol), it has already been discussed above that their seizure is also suspicious. The necessary sanction for prosecution under Section 39 of the Arms Act has not been obtained. Even any report of any armorer or ballistic expert has not been produced nor have they been examined and, therefore also, the offences alleged under the Arms Act against Appellants Sharad Goutam and Radheshyam Kashyap are not proved. The finding of the Trial Court is not in accordance with the evidence available on record. All the Appellants are entitled to get benefit of doubt.

15. Consequently, all the appeals are allowed. The impugned judgment of conviction and sentence is set aside. All the Appellants are acquitted of the charges framed against them.

Sd/-

(Arvind Singh Chandel)
JUDGE