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Chhattisgarh High Court

Case No: Criminal Appeal (CRA) No. 567 Of 2010

Sudeshwar @ Chethala		APPELLANT
	Vs	
State Of Chhattisgarh		RESPONDENT

Date of Decision: Feb. 17, 2018

Acts Referred:

- Indian Penal Code, 1860 - Section 395, 398
- Arms Act, 1959 - Section 25, 25(1), 27, 27(1), 39

Hon'ble Judges: Ram Prasanna Sharma, J

Bench: Single Bench

Advocate: Ashok Swarnakar, Anand Dadariya

Final Decision: Dismissed

Judgement

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 29.1.2005 passed by the Additional Sessions Judge (FTC),

Ramanujganj, Sessions Division Sarguja (CG) in ST No.348/2001, whereby and whereunder the learned trial Judge after holding the appellant guilty

for commission of offence under Sections 395 and 398 of the IPC and Sections 25(1) and 27(1) of the Arms Act, 1959, convicted and sentenced him

to undergo R.I. for 10 years and fine of Rs.5,000/-, R.I. for 7 years, R.I. for 3 years and fine of Rs.2,000/- and R.I. for 3 years and fine of Rs.3,000/-

respectively with default stipulations. All the sentences were directed to run concurrently.

2. The conviction is impugned on the ground that without there being any iota of evidence, the Court below has convicted and sentenced the appellant

as aforementioned and thereby committed illegality.

3. As per the prosecution case, on 27.10.2002 at about 10.30 am, Vinod Prasad (PW1), Driver of Omprakash Bus was driving the public transport bus

bearing registration No. CG 15ZA /0103 carrying passengers. While he was crossing near Kanakpur, the appellant along with other co-accused

persons intercepted the Bus on the point of country made pistol and brought down him and assaulted with club. They snatched Rs.1,000/- from his

pocket and watch from hand. They also snatched the cash amount of tickets from Bus Conductor and other articles and money from the passengers

of the Bus. Vinod Kumar (PW1) reported the matter to Police Station Ramanujganj and after registration of F.I.R. police swung into action.

Rs.15,500/- one pistol (loaded country made pistol) and substance for preparation of cartridge was seized from the appellant as per his discovery

statement Ex.P/8 and seizure Ex. P/9,. Firearm seized from the appellant was sent to Ballistic Expert for examination and after examination the expert

opined that the said firearm is in service condition. Sanction for prosecution was obtained under Section 39 of the Arms Act and the same was

accorded by the District Magistrate, Sarguja vide Ex. P/25. Identification parade was conducted by the Executive Mgistrate. The appellant was

identified by witness Nisar (PW7). After investigation charge sheet was filed. The appellant did not plead guilty, therefore, trial was conducted and

after completion of the trial, the trial Court has convicted and sentenced the appellant as above.

4. Learned counsel for the appellant submits as under : I. In identification parade, the appellant was not identified before the Executive Magistrate that

shows the appellant was not present at the time of commission of offence.

II. Kanhairam (PW2) deposed that one Katta was seized from the appellant, whereas, the seizure memo Ex. P/9 shows that one loaded gun was

seized, thus, both statements are contradictory in nature and the same witness stated about recovery of money but not deposed regarding exact

amount.

III. In absence of any corroborative piece of evidence, the finding arrived at by the trial Court is not sustainable.

5. On the other hand, learned counsel for the State supported the judgment and submits that the finding arrived at by the trial Court is based on proper

marshelling of evidence and not liable to be interfered with invoking jurisdiction of appeal.

6. I have heard Learned Counsel for the parties, perused the judgment impugned and record of the Court below.

7. To sustain the conviction, prosecution has examined as many as 16 witnesses.

8. Vinod Prasad (PW1) is Driver of the Bus. He deposed that at the time of incident, the appellant and other co-accused persons stopped the Bus

near Kanakpur on the point of Katta/pistol and they brought down him and assaulted with club and snatched Rs.1,000/- and one wrist watch (HMT

company). He further deposed that the accused persons also snatched currency notes from the Bus Conductor, Sunil (PW3) and also robbed money

and articles from the passengers and assaulted them. They again directed the passengers and him to board on the Bus and not to leave the place

before 2 hours and thereafter, they fled away. He further deposed that he drove the Bus along with the passengers to Police Station Ramanujganj

where he lodged the report Ex. P/1. Spot map was prepared vide Ex.P/2. He was examined by the Doctor and he identified the accused persons in

the Identification Parada vide Ex.P/3. Bus Conductor, Sunil (PW3) deposed on the same line. Kalamuddin (PW5) deposed on same line.

9. Nisar(PW7) has identified the present appellant in dock identification. Identification in Court i.e. dock identification is a substantive piece of

evidence and admissible in evidence. If dock identification is otherwise reliable then reliance can be placed upon the same.

10. In the matter of Suraj Pal & Others Vs. State of Haryana, reported in 1995(2) SCC 64, it has been held that dock identification is accepted if

otherwise found to be reliable. From the evidence of Nisar (PW7) it is established that the incident had occurred in broad day light and he had full

opportunity to see the entire incident and the person who committed robbery. It is not a case where the incident is committed in some dark place

where facility of light was not available. True it is that certain contradictions are there in the statements of seizure witnesses, but the same is not

sufficient to discard the evidence of Nisar (PW7) who is an eye witness to the incident. Thus, version of Nisar (PW7) inspires confidence of the

Court and it is trustworthy. Therefore, the finding arrived at by the trial Court is sustainable under the law and not liable to be reversed.

11. As regard question of conviction is concerned, offence under Section 398 IPC is related to attempt to commit robbery or dacoity but, here offence

of dacoity is completed, therefore, independent conviction for offence Section 398 IPC is not sustainable under the law. Conviction/sentence under

Section 398 IPC is hereby set aside.

12. It is established from the evidence that the appellant was having firearm at the time of commission of offence and he used the same for the

purpose of robbery and again the said arm is workable as per report of Ballistic Expert. The sanction for prosecution under Section 39 of the Arms

Act is accorded as per the letter and spirit of law, therefore, conviction under Section 25 & 27 of the Arms Act is sustainable.

13. The appellant is convicted under Section 395 read with Section 398 IPC and the sentences awarded by the trial Court except for Section 398 IPC

are maintained.

14. Accordingly, the appeal is liable to be and is hereby dismissed. The trial Court will execute the sentence part if the appellant had not already

suffered full term.