

(2011) 07 CHH CK 0005

Chhattisgarh High Court**Case No:** Criminal Appeal No. 1301 of 1995

Rajesh Kumar and Another

APPELLANT

Vs

State of M.P. (Now C.G.)

RESPONDENT

Date of Decision: July 22, 2011**Acts Referred:**

- Evidence Act, 1872 - Section 27
- Penal Code, 1860 (IPC) - Section 34, 394, 397

Citation: (2011) 4 CGLJ 551**Hon'ble Judges:** Sunil Kumar Sinha, J**Bench:** Division Bench**Final Decision:** Allowed

Judgement

Hon"ble Shri Sunit Kumar Sinha, J.

This appeal is directed against the judgment dated 23rd of August, 1995 passed in Session Trial No. 135/94 by the Additional Session Judge, Khairagarh, Camp Kawardha. By the impugned judgment, the appellants have been convicted u/s 394 & 397/34 IPC and sentenced to undergo R.I. for 7 years and pay fine of Rs. 1,000/- and R.I. for 7 years respectively with a further direction to run the sentences concurrently. The facts, briefly stated, are as under:--

Three accused persons namely Bhagoli, Rajesh Kumar (appellants herein) and Rammurat were prosecuted for the offences punishable u/ ss 394 & 397/ 34 IPC.

The case of the prosecution is that on 1.6.94 at about 9.00 p.m. complainant-Chamra Ram (PW-7) was returning from village Kawardha having a bag containing Rs. 41,000/- which he had received as the sale price by selling his grams in Krishi Upaj Mandi. He was accompanied by Narad Ram (PW-5) and Kashiram (PW-6). When they reached in the outer area of village Biranpur, two unknown persons stopped them on the way. They assaulted Narad Ram (PW-5) by iron rod and looted his bag containing Rs. 41,000/-. Chamra Ram (PW-7) reported the matter to the concerned

police station. During the course of investigation, on 23.6.94 appellant-Bhagoli was taken into custody and his memorandum statement u/s 27 of the Evidence Act (Ex.-P/6) was recorded and cash amount of Rs. 10,000/- was seized at his instance vide seizure memo Ex.-P/7. Appellant- Rajesh Kumar was also taken into custody on 24.6.94 and his memorandum statement u/s 27 of the Evidence Act (Ex.-P/11) was recorded and cash amount of Rs. 6,700/- was seized at his instance from the possession of his mother on 24.6.94 vide seizure memo Ex.-P/3. The seized currency notes were put for identification on 28.7.94 and were duly identified by Jaichand (PW-9) who claimed that he had given those notes to the complainant after purchasing his grams. The identification memo is Ex.-P/14.

After completion of usual investigation, the charge-sheet was filed in the Court of Judicial Magistrate First Class, Kawardha, who in turn committed the matter to the concerned Session Court, from where, it was received on transfer by the Additional Session Judge, Khairagarh, Camp Kawardha, who conducted the trial and convicted & sentenced the appellants as aforementioned. However, the 3rd accused namely- Rammurat was acquitted of the charges framed against him.

2. The conviction of the appellants is solely based upon the identification of the currency notes.

3. Mr. Ravi Kumar Bhagat, learned counsel appearing on behalf of the appellants, argued that the seizure of the currency notes from the possession of the appellants were not proved and the identification of the currency notes was also not possible, therefore, the entire story of the prosecution becomes doubtful.

4. On the other hand, Mr. Sandeep Yadav, learned Dy. Govt. Advocate appearing for the State, opposed these arguments and supported the judgment passed by the Session Court.

5. I have heard learned counsel for the parties at length and have also perused the records of the sessions case.

6. Admittedly, the assailants were not identified by the victims and the complainant. Complainant- Chamra Ram (PW-7) deposed in clear words that he could not identify the assailants. It is also clear from the contents of the First Information Report (F.I.R. - Ex. P/10) promptly lodged by Chamra Ram (PW-7). It is for this reason, the accused persons were not put to test identification parade (T.I.P.) by the complainant or by the eye witnesses. The incident took place in dark-night in the outer area of the village, therefore, there was no question of identification of the assailants which the witnesses also admitted. The case of the prosecution is solely based on the identification of the currency notes allegedly seized from the possession of appellant- Bhagoli and the mother of appellant- Rajesh Kumar on their discovery statements. The identification memo (Ex.-P/14) would show that the proceedings of identification were conducted on 28th July, 1994 and the 3 bundles of packed currency notes of Rs. 50/- denomination and loose currency notes amounting to Rs.

1,700/-, also of Rs. 50/- denomination, were identified by Jaichand (PW-9). Jaichand (PW-9) deposed that he had purchased 28 quintals and 5 Kg grams from Tirath in Mandi on 1.6.94 and has paid Rs. 41,358.50 p. He simply deposed that he was called for identification of the currency notes and he had identified the notes. Even he did not depose that what were the configuration of the currency notes which he had paid to the seller and what were the configuration of the currency notes which were put for identification and how he could identify after such a long period that the above currency notes were the same notes which he had paid to the seller of grams in Krishi Upaj Mandi on 1.6.94. He has not deposed about any particular mark either on the bundles of the notes or on any particular note.

7. In [Arjun Marik and Others Vs. State of Bihar](#), the Supreme Court held the identification as doubtful on the ground that the witnesses of the identification most surprisingly identified the currency notes which were said to have been stolen from the house of the deceased. The Supreme Court observed that it was beyond comprehension as to how the currency notes could be identified by the witnesses, and thus, the identification was held to be doubtful.

8. In case on hand, the incident took place on 1.6.94 and the currency notes were seized on 23.6.94 & 24.6.94. Thus there is a long delay in seizure of the currency notes, and a possibility of passing the notes in circulation from the hands of actual assailants to the hands of possession holder in a normal manner also cannot be fully ruled out. Apart from the above, it also appears unreasonable that a person giving currency notes on 1.6.94, without number of currency notes and without identification marks over those notes, would be able to identify them after about 2 months. I am of the view that in the above facts and circumstances, reliance placed by the Session Judge on the sole evidence of identification of the currency notes for conviction of the appellants was wholly unjustified and the conviction of the appellants on the above set of evidence cannot be sustained. For the foregoing reasons, the appeal is allowed. The conviction and sentences awarded to the appellants u/ss 394 & 397/34 IPC are set-aside. The appellants are acquitted of the charges framed against them. It is stated that the appellants are on bail. Their bail bonds are cancelled and sureties stand discharged.