
(2019) 03 CHH CK 0041

In the Chhattisgarh High Court

Case No : Criminal Appeal (CRA) No. 656, 668, 752 Of 2010

Inder Sonwani @ Lambu And Ors

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 06-03-2019

Acts Referred:

Indian Penal Code, 1860 — Section 395

Citation : (2019) 03 CHH CK 0041

Hon'ble Judges : Ram Prasanna Sharma, J

Bench : Single Bench

Advocate : Sunil Dubey, T.K. Tiwar, Shivali Dubey, A.N. Bhakta

Final Decision : Allowed

Judgement

Ram Prasanna Sharma, J

1. As all the aforesaid three appeals arise out of same incident they are heard analogously and are being disposed of by this common judgment.
2. All the three appeals are directed against the judgment dated 27.8.2010 passed by 4th Additional Sessions Judge (FTC) Ambikapur, District - Sarguja (C.G.), in Sessions Trial No.80/2005, wherein the said Court convicted the appellants for the commission of offence under Section 395 of the Indian Penal Code, 1860 and sentenced them to undergo rigorous imprisonment for 8 years and to pay fine of Rs.1000/- each with default stipulations.
3. In the present case the complainants were Kaush Bano, Mubarak, Mohammad Noor, Mohammad Kudus . It is alleged that all the appellants in the intervening night of 30 th August, 2001 at about 11 P.M. committed dacoity in the house of Mubark, Mahammand Noor and Mohammad Kudus. It is alleged that ornaments, motor-cycle and other articles were stolen during the course of said offence. The matter was reported and investigated. After investigation and appellants were chargesheeted and convicted as mentioned above.

4. Learned counsel for the appellants submits as under:

1)

In the present case one motorcycle Bajaj Kawasaki bearing registration No. M.P. 27 D 9728 was seized as per Ex. P-10.

ii)

In FIR different vehicle was mentioned which was champion vehicle bearing registration No. MP-27 D 9728 therefore, seizure in the present case is not bearing with the offence in question and therefore, this is not incriminating piece of evidence against rest any of the appellants.

iii)

Though, one vehicle bearing registration No. C.G. 15 E 2466 is seized during investigation but there is no mention of the said vehicle in the FIR therefore, seizure of this vehicle is also not connecting piece of evidence against any of the appellants.

iv)

No one is named in the FIR therefore, identification must have been done within short period but that is not done and one identification parade which was conducted on 17th October, 2004, is delayed by one month and 18 days therefore same is suspicion. Kudus PW-9 who participated in identification of parade has identified appellant Turka as alleged by the prosecution of the witnesses while deposing before the trial court has not stated in his examination-in-chief regarding identification parade. In cross-examination he deposed regarding identification but after cross-examination appellant Turka was not provided opportunity to cross-examine him. Therefore, version of the witnesses cannot be used against appellant Tirka.

v)

As there is no connecting piece of evidence against the appellants, the finding arrived at by the trial court is not fit in the factual matrix of the case.

vi)

The trial court has overlooked material omissions and contradictions in the statement of prosecution witnesses and has not evaluated the evidence in its true perspective, therefore finding of the trial court is liable to be set aside.

5. On the other hand learned State Counsel supporting the impugned judgment has submitted that the judgment of conviction and order of sentence passed by the trial Court is based on the evidence adduced by the prosecution and the same is well founded and there is no illegality or infirmity in it warranting any interference by this Court.

6. I have heard learned counsel for the parties and perused the record in which judgment has been passed.

7.. In the present case first information report is lodged without naming any of the appellants. Kaush Bano (PW-3), Mohd. Mubarak (PW-5), Mohd. Noor (PW-6), and Mohd. Kudus (PW-9) are eye witnesses account to the incident, but they did not identify any of the appellants at the time of incident, that is why report was not lodged naming any of the appellants as culprit. When any of the complainant has not identified any of the appellant during course of the incident, the case of the prosecution rests on identification and seizure of the article as mentioned in the first information report. Two seizures Ex.P-9 and Ex.P/10 were marked in trial Court and vehicle bearing registration No. MP-27-D-9728 was seized which was Bajaj Kawashaki but the said number is not mentioned in the first information report. The number mentioned in the first information report is Champion vehicle bearing No. CG 27 D 9728, therefore, seizure in the present case as per Ex.P10 is not connecting piece of evidence. Again one other vehicle is seized as per Ex.P/9 bearing registration No. CG 15-E- 2466 which is Splendour Hero Honda vehicle but same is not mentioned in the first information report, therefore, Ex.P/-9 is also not incriminating piece of evidence against any of the appellants Kaush Bano (PW-3) Mohd. Mubarak (PW-5) and Mohd. Kudus (PW-9) did not participate in identification parade. The only person who participated in identification parade is Mohd. Noor (PW-6) as per Ex.P-14 it is alleged that he identified appellant Tirka. But while examination before the Trial Court the witness Kudus did not depose anything regarding identification parade during examination in chief. In cross-examination he deposed about identification parade but after cross- examination appellant Tirka was not provided to cross-examine to the said witnesses. In absence of cross examination by appellant Tirka the statement against him cannot be used because version of this witness is not tested by said appellant which is basic requirement for accepting the evidence of said witness, therefore, evidence regarding identification parade cannot be used against appellant Tirka. There is no other connecting piece of evidence which substantiates the charge. The articles which were mentioned in the FIR were not seized from any of the appellants and case of the prosecution is not based on eye witness account, therefore, evidence for establishing guilt is lacking in the present case. Again identification is also not substantiated by evidence and this part of the evidence is also not establishing the guilt. On an overall assessment, the finding arrived by the trial Court is not sustainable and same is liable to be set aside. Accordingly all the three appeals are allowed. Conviction and sentence of the appellants is set aside. The appellants are acquitted of the charge framed against them.