

(2019) 03 CHH CK 0045

In the Chhattisgarh High Court

Case No : Criminal Appeal (CRA) No. 157 Of 2013

Pushpendra Nath Chouhan @ Manish @ Manoj @ Pappu Baba
And Ors

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 07-03-2019

Acts Referred:

Indian Penal Code, 1860 — Section 394, 397
Evidence Act 1872 — Section 25, 27

Citation : (2019) 03 CHH CK 0045

Hon'ble Judges : Rajendra Chandra Singh Samant, J

Bench : Single Bench

Advocate : Ajay Ayachi, Rahim Ubawani

Final Decision : Allowed

Judgement

Rajendra Chandra Singh Samant, J

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by the learned Sessions Judge, Korba, District Korba (C.G.), in Sessions Trial No.65/2010 on 07.12.2012, convicting the appellants for the offence under Section 394/397 of the Indian Penal Code and sentencing them to undergo R.I. 7 years and fine of Rs.1000/- each with default stipulations.

2. Facts of the case in brief is this that on 19.03.2009, complainant Ramdayal Kanwar (P.W.-1) was stopped on his way at about 11.00 AM by two unknown persons by brandishing a revolver, demanded the motor cycle in his possession. When the complainant refused, he was shot on his left thigh and in another leg twice with revolver and while forcefully taking the motor cycle again he was shot on his waist. FIR (Ex.P-1) was lodged by the complainant. Complainant Ramdayal Kanwar (P.W.-1) was medically examined and sent for treatment. During the investigation, the appellants were apprehended, who are identified vide Ex.P-2 before the Executive Magistrate. Seizure from the spot was made and the spot map was prepared and at the instance of the appellant vide memorandum

statements (Ex.P-8 and Ex.P-9), seizure of articles were made. On completion of investigation, charge-sheet was filed before the Court concerned.

3. The trial Court charged the appellants and co-accused Dinesh Kumar @ Deepak with offence under Section 394 read with Section 397 of the Indian Penal Code. The appellants denied the charges and prayed for trial. The prosecution examined as many as 19 witnesses on its behalf. On examining the appellants under Section 313, they denied all the incriminating evidence against them and pleaded innocence and false implication. No witness was examined in defence. On completion of trial, judgment has been delivered, in which the appellants stand convicted and sentenced as mentioned aforesaid.

4. It is submitted by the learned counsel appearing on behalf of the appellants, that the trial Court has passed totally erroneous judgment of conviction without there being any basis of reliable and cogent evidence in support of the charge. It is further submitted that the evidence of the complainant - Ramdayal Kanwar (P.W.-1) had not been reliable and trustworthy for the reasons, that the FIR (Ex.P-1) was lodged against two unknown persons, whereas, third person, who was also prosecuted, was also identified by the complainant as one of the accused. The complainant has made statement before the Court, that he was acquainted with the appellants, then the reason for lodging FIR against unknown persons has remained unexplained. Further he has made an admission in his cross-examination, that the appellants were first shown to him in the Police Chowki and only on that basis, he has identified them in the test identification parade. It is submitted that Ramdayal Kanwar (P.W.-1) is the only witness of identification, hence, identification made by him of the appellants is totally unreliable. It is also submitted that no single article has been seized at the instance of these appellants or from their possession, therefore, there is nothing in the evidence of prosecution to connect the appellants with the offence committed. Therefore, it is prayed that the appellants be acquitted of the charges leveled against them. It is prayed in the alternative that in case, this Court is not inclined to allow this appeal and acquit the appellants in that case, at least sentence imposed upon the appellants, which appears to be too harsh, may be reduced.

5. Counsel for the State opposes the grounds raised in appeal and the submissions made in this respect. It is submitted that the prosecution has proved its case beyond all reasonable doubts. There is eye-witness account of Ramdayal Kanwar (P.W.-1), who had seen the appellants present in the spot. The evidence of Ramdayal Kanwar (P.W.-1) is corroborated with medical evidence and the evidence of other investigative procedures. Apart from that it has been clearly established from the evidence of identification of the appellants, before the Executive Magistrate, that the appellants were the persons, who had assaulted and injured the complainant and looted the motor cycle from his possession. Therefore, there is no merit in this appeal and no case is made out for acquittal or for reduction of the sentences. Hence, the appeal be dismissed.

6. I have heard the learned counsel for the parties and perused the record of the Court below.

7. The point in issue in this appeal is whether the prosecution has proved the charges against the appellants on the basis of the evidence beyond reasonable doubt?

8. It is not disputed in this appeal, that complainant - Ramdayal Kanwar (P.W.-1) was shot with firearm and injured and the motor cycle from his possession was looted. The only question raised is this that the identification of the appellants of the persons alleged to have committed the offence is not proved.

9. Ramdayal Kanwar (P.W.-1) has opened his statement saying that he knows both the appellants and has stated that it was the appellant Pushpendra Nath, who had fired shots and then his motor cycle was looted and taken away by the appellants. He then identified the appellants in the presence of Executive Magistrate in the test identification parade (Ex.P-3). In cross- examination, he has stated that he was called for identification after 3-4 months from the date of incident. He was informed by the police man that the appellants have been arrested and detained in Police Chowki, where he saw the appellants and thereafter, he appeared in the test identification parade and identified the appellants. He has made clear admission that as he had already seen the appellants in Police Chowki, therefore, he made the identification of the appellants on that basis. In further cross-examination, he has stated that he came to know about the names of the appellants from the police men.

10. A.S.I. Lallan Singh (P.W.-11) has stated in his examination-in-chief that he has requested the Executive Magistrate, Katghora vide Ex.P-18 to conduct test identification parade. He has denied in his cross-examination that he had shown the appellants to the complainant in Police Chowki, before the test identification parade. The witness of test identification parade Amti Das (P.W.-6) and Jamuna Prasad Shrivastava (P.W.-7) have not supported the prosecution case.

11. P.D. Mire (P.W.-19) is the Executive Magistrate, who has conducted test identification parade. In cross-examination, he has stated that the appellants and the witnesses identifying them were brought by the police men.

12. After scrutinizing and evaluating all the evidence on the point of identification of the appellants vide Ex.P-2, it has appeared that the complainant - Ramdayal Kanwar (P.W.-1) was not acquainted with the appellants and he had glimpse of them at the time of incident. Subsequent to that according to the admission made by him, he had already seen the appellants, before the test identification parade and has also made statement that he identified the appellants on the basis of having seen the appellants in Police Chowki, which makes the whole identification procedure doubtful.

13. Apart from the finding hereinabove, there is no recovery of any article made from these appellants. Although memorandum statement Ex.P-8 was recorded of

the appellant - Pushpendra Nath and Ex.P-9 of the appellant Gulab Singh on 28.07.2009, but there appears to be no recovery on the basis of these memorandum statements. The looted motor cycle bearing registration No.C.G.-12K/2294 was recovered and seized vide Ex.P-17, from the open place in an abandoned condition and no recovery of any pistol or firearm has been made from the possession of these appellants. Therefore, the memorandum statement can not be read as confessional statement against the appellants as it is barred under Section 25 of the Evidence Act and that would be met the scope of Section 27 of the Evidence Act, which speaks of evidence only by discovery of articles on the basis of the statement made by accused persons. Therefore, this case is based only on the evidence of test identification parade, which has already been found doubtful.

14. Other witnesses, who have examined i.e. Chamraram Kanwar (P.W.-2), who arrived on the spot after the incident had taken place. Roop Singh Binjhwar (P.W.-3), Jeevan Lal (P.W.-4) and Dhansingh Rajput (P.W.-5), who met the complainant after the incident had taken place. Therefore, these witnesses were neither present on the spot nor they had any occasion to see the appellants as the persons who committed the offence.

15. There is no need to peruse and scrutinize the remaining witnesses of prosecution, who have been examined on the point of investigative procedures conducted. On examination of the relevant witness and relevant evidence on the point of identification of the appellants of this case, it is found that the appeal has merits in its grounds. The evidence of prosecution as brought forth does not inspire confidence of the Court to come to conclusion beyond reasonable doubt, that it were the appellants only, who were responsible for the commission of offence in this case.

16. Hence, after close scrutiny of all the relevant evidence present on record of the trial Court, this appeal is allowed. The appellants are acquitted of the charges against them. If the, appellants are in jail, they be set at liberty forthwith, if not required to be detained in any other case.