



2026:CGHC:4342-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 248 of 2018

State of Chhattisgarh, Through Police Station Khairagarh, District : Rajnandgaon, Chhattisgarh

...Appellant

versus

Anil @ Annu Kandra, S/o Sarju Ram Kandra, Aged About 20 Years, R/o Village Dharampura, Khairagarh, Police Station- Khairagarh, District Rajnandgaon Chhattisgarh, Chhattisgarh

... Respondent

For State/Appellant : Ms. Nandkumari Kashyap, PL

For Respondent : Mr. Ujjawal Agrawal, Advocate on behalf of Mr. Abhishek Pandey, Advocate.

Hon'ble Smt. Justice Rajani Dubey, J.
Hon'ble Shri Justice Radhakishan Agrawal, J.

Judgment on Board

Per. Rajani Dubey, J.

27.01.2026

1. This acquittal appeal has been preferred by the State/Appellant against the impugned judgment of acquittal dated 23.02.2018 passed by learned Additional Sessions Judge, Rajnandgaon, District-Rajnandgaon (C.G.) in Sessions Trial No. 11/2017, whereby the accused/respondent has been acquitted of the charge under Sections 458 and 397 of IPC.

2. Brief facts of the case are that on 27.07.2010 at about 10:00 pm, the complainant and his wife Kanti went to sleep at their room and the wife of the complainant went to bring cot (*khat*) and to lock the channel gate of the terrace at that time, three unknown persons wearing mask were coming from the terrace towards her, then she shouted and was caught by one of the accused then the complainant went to the terrace and asked them who are they and held the throats of two unknown persons wearing mask at that time, the third one has assaulted the complainant with the help of knife on his stomach and chest, thereafter the accused demanded for money and subsequently, they looted around Rs. 10-12,000/- and one mobile phone and they locked the complainant and his wife inside the room and fled from there. During the scuffle, the mask of one of the accused person was removed who was known to the complainant. Thereafter, the complainant has lodged the complaint at Police Station- Khairagarh and F.I.R. was registered by the Police and the matter was taken into investigation. During the investigation, the complainant and his wife have identified the present accused before the concerned Jurisdictional Magistrate and after collecting sufficient evidence against the accused, he was arrested. After completion of due and necessary investigation, charge-sheet was led before the concerned jurisdictional Magistrate who, in turn, committed the case for trial. On the basis of the material contained in the charge-sheet, learned trial Court acquitted the accused/respondent of charge punishable under Sections 458 and 397 of IPC, against which the present appeal has been filed by the State/appellant.
3. Learned counsel for the appellant submits that the impugned judgment of acquittal is bad in law and facts, hence the same is liable to be set aside. The Learned Trial Court has failed to appreciate the evidence

recorded in its true and correct perspective and the prosecution proved its case beyond all reasonable doubts against the respondent, but despite the same, the accused/respondent was acquitted. Learned trial Court is not justified by discarding the evidence of complainant without there being any strong reason to discard the evidence of the prosecution. He would further submit that learned trial Court has failed to appreciate the fact that six witnesses have categorically deposed the fact of incident which is supported by the circumstances of the case and has also committed an error of law in not believing the testimony of the prosecution witnesses and has acquitted the accused only on the basis of minor omissions and contradictions, but the learned trial court utterly failed to consider the aforesaid facts. Therefore, looking to the facts and circumstances of the case, the judgment and finding of the learned trial Court is perverse and is liable to be set aside.

4. *Ex adverso*, learned counsel for the accused/respondent supported the impugned judgment and submits that the learned trial Court upon due appreciation of oral and documentary evidence rightly acquitted the respondent/accused of the aforesaid charge levelled against him and as such, there is no need to interfere with the impugned judgment.
5. We have heard learned counsel for parties and perused the material available on record.
6. It is evident from the record of the learned Trial Court that it framed charges under Sections 458 and 397 of IPC against the accused/respondent and after appreciation of oral and documentary evidence available on record, the learned trial Court acquitted the accused/respondent of both the charges.

7. PW-1, complainant- Indar Chand Jain has stated that on the date of incident, he was watching T.V. along with his family members in the room of his house and at that time, his wife went to close the channel gate of the terrace and at a moment, two unknown persons wearing mask were coming from the terrace towards her, then she shouted and was caught by one of the accused and one of the accused assaulted him with the help of knife and they looted key of his safe.
8. PW-2 Kanti has stated the same story that two unknown persons wearing mask have entered the house and assaulted her husband with the help of knife.
9. Both witnesses have identified the respondent in T.I.P. vide Ex.P/2, but PW-1 has stated that respondent is his neighbour that is why he identified him. PW-1 and PW-2 have admitted the suggestion of defence that at the time of incident, the accused persons were not recognized by them as their faces were concealed.
10. PW-3 Ku. Neha Jain, daughter of the complainant has stated the same story that of her parents, whereas PW-4 Manohar Jain, relative of the complainant had stated that he was apprised of the fateful incident by the complainant in the hospital when he went to see him. The prosecution declared him hostile and cross-examined him, but he denied the suggestion of the prosecution.
11. PW-5 Vijay Lal has not supported the prosecution case. PW-6 Shambhu Dhimar has admitted his signature on seizure memo (Ex. P/6), but he has also not supported the prosecution case. The prosecution declared them hostile and cross-examined them, but they denied all suggestions of the prosecution.
12. At this juncture, it is appropriate to look into the provisions of Section 397

of Indian Penal Code, which reads as under:-

“Section 397 of IPC- If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, so attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.”

13. Learned trial Court has convicted the respondent/accused under Sections 458 and 397 of IPC also whereas Section 397 of IPC deals with enhanced punishment only and it's not a substantive offence, but learned trial Court did not appreciate all this fact and framed charge under Section 397 of IPC.
14. The High Court of Madhya Pradesh in the matter of Kallu @ Ramkumar Vs. State of Madhay Pradesh, 1992 MPLJ 558 observed in para 11 of its judgment as under:

"11. Learned trial Judge has sentenced the accused persons under sections 395 and 397 of the Indian Penal Code separately. Section 397 of the Indian Penal Code deals with the enhanced punishment only. It is not a substantive offence. The substantive offence may be robbery or dacoity. In this case, the substantive offence as proved, is dacoity and, therefore, there ought to have been only one sentence. It is a different matter that the enhanced punishment could be inflicted with the aid of section 397 of the Indian Penal Code.

Consequently, the appeal filed by accused Kallu alias Ramkumar, Barelal and Sukhram is accepted. They are acquitted of the charges levelled against them. They are on bail. Their bail-bonds are discharged.

The appeal of accused-appellants Gabbar alias Goverdhan and Chhotu alias Dayaram is dismissed and sentence passed against them under section 395 read with section 397 of the Indian Penal Code, i.e., rigorous imprisonment for seven years, is maintained. Appellant No. 1 Gabbar alias Goverdhan is in jail. He be informed with the result of this appeal accordingly. Appellant Chhotu alias Dayaram is on bail. He is directed to appear before the Chief Judicial Magistrate, Seoni, on 11-12-1991 for serving out the remaining period of sentence."

15. Having regard to the facts and circumstances of the case, the oral and documentary evidence on record as discussed above, keeping in view the aforesaid judgment of the High Court of MP, this Court is of the opinion that no offence under Section 397 of IPC is made out against the accused/respondent. However, learned Trial Court has also minutely appreciated the oral and documentary evidence, rightly found that the prosecution has failed to prove its case beyond reasonable doubt against the respondent/accused, as such by giving him benefit of doubt, the learned trial Court acquitted the respondent/accused of the said charges.
16. The Hon'ble Apex Court vide its judgment dated 12.02.2024 (Criminal Appeal No 1162 of 2011) passed in **Mallappa and Ors. Versus State of Karnataka** has held in para 36 as under:-

"36. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as:-

- (i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive--inclusive of all evidence, oral and documentary;
- (ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;
- (iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;
- (iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;
- (v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;
- (vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court."

17. Considering the facts and circumstances of the case and the law laid down by the Hon'ble Supreme Court in **Mallappa** (supra) and the view which has been taken by the learned trial Court appears to be plausible and possible view and in the absence of any patent illegality or perversity this Court is not inclined to interfere with the impugned judgment.

18. Accordingly, the acquittal appeal is liable to be and is hereby **dismissed.**

Sd/-

(Rajani Dubey)
Judge

Sd/-

(Radhakishan Agrawal)
Judge