

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 710 of 2012

1. Satya @ Satyaprakash @ Pradeep S/o Jayram Dhrutlahare, aged about 25 years, R/o Kaneri , P.S. Chakarbhata, Distt. Bilaspur C.G.
2. Manjeet @ Kallu S/o Soman aged about 19 years, R/o Devari , P.S. Chakarbhata , Distt. Bilaspur C.G.

---- Appellants

Versus

1. State Of Chhattisgarh through - P.S. Balouda Bazar , Distt. Raipur (now Baloudabazar - Bhatapara) C.G.

---- Respondent

For Appellants – Praveen Kumar Tulsyan, Advocate.
For Respondent – Shri Arvind Shukla, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

11/05/2015

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 24-05-2012 passed by the First Additional Sessions Judge, Balodabazar, C.G., in Sessions Trial No.03/2011 whereby and whereunder the trial Judge after holding the appellants guilty for robbery and at the time of attempting robbery armed with deadly weapon firearm, convicted them under Section 392 of the Indian Penal Code (in short 'the IPC') and sentenced them rigorous imprisonment for 7 years and to pay fine of Rs.200/-, in default of payment of fine, to further undergo rigorous imprisonment for one month to each appellants.
2. Conviction is impugned on the ground that without there being any iota of evidence, the Court below has convicted and sentenced the appellants as aforementioned and thereby committed illegality.

3. As per the case of the prosecution, on 26-06-2008, at about 9.00 p.m., when Anand Gupta (PW-8) was returning to Balodabazar from village Sonadih via Latua, three persons in a motorcycle made overtake and when the motorcycle of the complainant got fell down being slipped in the mud, appellant Satya @ Satyaprakash @ Pradeep (A-1) and other two persons looted him, his mobile phone and Rs.400/- and also his motorcycle CG 04 CD 0943 and ran away from the spot. After the incident, Anand Gupta (PW-8)/the complainant, lodged the First Information Report before Balodabazar police. Police registered the FIR (Ex.-P/10) vide registering the crime number against the persons who committed the robbery and started investigation. During the investigation, appellant Manjeet @ Kallu (A-2) gave disclosure statement (Ex.-P/1). Appellant Satya @ Satyaprakash @ Pradeep (A-1) gave disclosure statement Ex.-P/2. The looted motorcycle was duly recovered in abandoned condition. Police arrested both the appellants vide Ex.-P/8 and Ex.-P/9. Executive Magistrate conducted the test identification parade of both the appellants. The complainant identified both the appellants during the test identification parade. The spot map was prepared vide Ex.-P/11. The statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (in short 'the Code'). After completion of the investigation, charge sheet was filed before the Judicial Magistrate First Class, Balodabazar, who, in turn, committed the case to the Court of Sessions, Raipur, the learned First Additional Sessions Judge, Balodabazar received the case on transfer and conducted the trial. During the trial, the appellants were charged for the offence under Sections 397, 398 of the IPC. Both the appellants denied the charges and prayed for trial.

4. In order to prove the guilt of the appellants, the prosecution examined 10 witnesses in all. The statements of the appellants were recorded under

Section 313 of the Code wherein they denied the circumstances appearing against them and pleaded innocence and false implication in crime in question.

5. After affording opportunity of hearing to the parties, the learned trial Court convicted and sentenced the appellants as aforementioned.

6. I have heard learned counsel for the parties and perused the judgment impugned and record of the trial Court.

7. Learned counsel appearing for the appellants submitted that they are not contesting the instant appeal for the point of conviction, instead they are assailing the quantum of sentence awarded by the trial Court to the appellants. Learned counsel further submitted that as per certificate of detention issued by the trial Court affixed along with the judgment of the trial Court, appellant Satya @ Satyaprakash @ Pradeep (A-1) served the major part of the sentence. He remained in custody from 02-02-2009 to 22-06-2009 and thereafter from 28-11-2009 to till date, thereby he has completed his detention period of 5 years 10 months and 3 days in all. Appellant Manjeet @ Kallu (A-2) remained in custody for serving the major part of the sentence from 02-02-2009 to till date, this appellant remained in custody for 6 years 3 months and 9 days. Both the appellants were of the age of 25 years and 19 years respectively. They were the first offender with no criminal past. They will not commit any offence in future. They may be given an opportunity to remain in society without committing any crime. Though in arrest memo Ex.-P/8 and Ex.-P/9 in para 12 for every part police gave positive report but to substantiate police had not annexed any document regarding the previous conduct. Hence, as arrest memo says regarding the conduct and previous criminal record but to prove no document is filed along with the charge sheet. There is no minimum sentence provided for offence under Section 392 of the IPC. No any revolver/firearm was

seized from their possession. They may be sentenced for the period already undergone by them.

8. Per contra, learned counsel appearing on behalf of the State/respondent opposed the argument advanced on behalf of the appellants and submitted that at about 9.00 p.m. the appellants looted the motorcycle, Rs.400/- and one mobile after being armed with deadly weapon. Looking to the conduct and act, there is no scope for reduction of the sentence. Hence, the prayer may be dismissed and the judgment of conviction and sentence may be affirmed.

9. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.

10. As the appellants are not contesting this criminal appeal regarding their conviction part, even otherwise, the complainant vide test identification parade (Ex.-P/7) duly identified both the appellants and he is corroborated by the Executing Magistrate who conducted the test identification parade, the FIR was lodged within time, there is no reason to have any doubt over the test identification parade and in the entire statement made by complainant Anand Gupta (PW-8) before the Court, in view of this Court, the trial Court was very right to hold guilty both the appellants for offence under Section 392 of the IPC, thus, there is no scope for any interference with the conviction part awarded by the trial Court.

11. So far as the fine sentence is concerned, the appellants are sentenced to pay fine of Rs.200/- and in default of payment of fine, to further undergo rigorous imprisonment for one month. Looking to the act, the fine sentence may not held as excessive. Hence, the fine sentence awarded by the trial Court against both the appellants also requires no interference.

12. So far as the prayer made for the quantum of sentence is concerned, the motorcycle looted from the complainant was not recovered from the

custody of both the appellants, also no other property was recovered from the appellants, motorcycle in question was seized from other place, alleged firearm was also not recovered from the appellants, both the appellants were of 25 and 19 years of age at the time of the incident, no any document annexed along with the charge sheet so that to ascertain regarding any previous registration of crime or conviction by any Court of Law to the present appellants which goes to show that in the absence of any admissible evidence it may not be held that the appellants are previous convict, appellant Satya @ Satyaprakash @ Pradeep (A-1) served the major part of the sentence for 5 years 10 months and 3 days and appellant Manjeet @ Kallu (A-2) also served almost nearer to the entire sentence i.e. for 6 years 3 months and 9 days, looking to the entire facts and circumstances and also the facts that the alleged deadly firearm was not seized, Section 392 of the IPC is not having any minimum sentence barrier, in the considered view of this Court, an opportunity has to be given to the appellants so that they may remain in society without committing any crime in future. It would be appropriate to sentence both the appellants for the period already undergone by them.

13. Consequently, the appeal filed on behalf of the appellants is allowed in part. The judgment of conviction under Section 392 of the IPC passed against the appellants is hereby affirmed. The fine sentence awarded by the trial Court is also hereby maintained. For substantive jail sentence instead of rigorous imprisonment for 7 years, both the appellants are sentenced for the period already undergone by them. Both the appellants are in jail. They be released forthwith, if not required in any other case.

Sd/-

(C.B.Bajpai)
JUDGE

