

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 629 of 2013

1. Shiv Prasad @ Shiva S/o Kishun Ram Rajwade, aged about 24 years, R/o Kunj Nagar, Thana Jainagar, Tah. Bishrampur, Distt. Surguja C.G. Civil and Rev. Distt. Surguja C.G.

----Appellant

Versus

1. State of Chhattisgarh through Station House Officer, P.S. Patna, Distt. Korea C.G.

---- Respondent

For Appellant – Shri Nasimuddin Ansari, Advocate.

For Respondent – Shri Avinash K.Mishra, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment (on Board)

15/05/2015

1. challenge is in this appeal is to the judgment of conviction and order of sentence dated 23-03-2013 passed in Sessions Trial No.64/2007 whereby and whereunder the learned Sessions Judge, Korea, Baikunthpur, C.G., after holding the appellant guilty for voluntarily causing hurt in committing robbery, convicted him under Section 394 of the Indian Penal Code (in short 'the IPC') and sentenced the appellant to undergo rigorous imprisonment for 10 years and to pay fine of Rs.1000/-, in default of payment of fine, to undergo additional rigorous imprisonment for 6 months.

2. Conviction is impugned on the ground that without there being any iota of evidence, the Court below has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. As per case of the prosecution, in brief, on 24-01-2007, at about 10.00 p.m., near Dumariya Gobri Nala, the present appellant other co-accused

stopped truck CG 10A/9299 and assaulted the driver of the truck namely Shravan Kumar, beaten him and committed robbery while taking forcibly Rs.2700/- in cash, wrist watch and cassettes. They also used sharp edged weapon to inflict injuries to complainant Shravan Kumar and after the incident they with the help of rope tied the complainant along with a tree. The matter was reported to Patna Police. Police recorded an unnumbered FIR vide Ex.-P/20 which was later on numbered vide Ex.-P/21. During investigation, police seized the articles looted, the motorcycle which was used for committing offence by the appellant and other co-accused, and also the concerned truck's papers. Police prepared the spot map. The appellant was taken into custody. He gave disclosure statement (Ex.-P/13). Other co-accused also gave disclosure statement vide Ex.-P/15. The looted money Rs.163/- was seized through seizure memo Ex.-P/16. 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 against the appellant and other co-accused before the Judicial Magistrate First Class, Baikunthpur, District Korea, who, in turn, committed the case to the Court of Sessions, Korea, Baikunthpur, the learned trial Court framed the charges against the appellant and other co-accused for the offence under Section 394 read with Section 397 of the IPC. The appellant and co-accused denied the charges and prayed for trial.

4. In order to prove guilt of the appellant and co-accused the prosecution examined as many as 17 witnesses in all. The statements of the appellant and other co-accused 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 providing opportunity of hearing to the parties, the learned trial Court acquitted the co-accused Jagdish Rajwade from the charges framed

against him and the trial Court also acquitted the present appellant for the offence under Section 397 of the IPC and convicted him only under Section 394 of the IPC and sentenced him 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 on behalf of the appellant submitted that he is not challenging the judgment of conviction passed against the appellant, and as instructed, he is confining his argument only to the quantum of sentence. As submitted, the appellant is in jail since 25-01-2007 thereby he is in jail for about 8 years, 3 months and 21 days. There is no minimum sentence provided under Section 394 of the IPC. No previous criminal history duly proved during the trial. At the time of incident, the appellant was 24 years of age. He will not commit any offence in future. Therefore, he may be given an opportunity.

8. On the other hand, learned counsel for the State/respondent opposed the argument advanced on behalf of the appellant and submitted that looking to the act of the appellant, the trial Court rightly convicted and sentenced the appellant. The judgment of the trial Court is well founded. There is no scope for interference. Hence, the appeal may be dismissed.

9. As the appellant is not contesting the instant appeal for the point of conviction under Section 394 of the IPC, even otherwise after perusal of the entire evidence, I do not find any illegality or infirmity in the judgment passed by the trial Court convicting the appellant under Section 394 of the IPC. Consequently, so far as conviction part of the impugned judgment is concerned, the same requires no interference, hence, the judgment of conviction passed against the appellant by the trial Court is hereby affirmed.

10. So far as fine sentence is concerned, the appellant was sentenced to pay Rs.1000/- as fine; looking to the act, the fine part also cannot be said as

disproportionate. Consequently, the fine part awarded by the trial Court also requires no interference and the same is also hereby affirmed.

11. So far as quantum of sentence is concerned, the appellant already served 8 years, 3 months and 21 days of the sentence, there is no minimum sentence provided for Section 394 of the IPC; looking to the value of the property looted, age of the appellant and the sentence already served, it would be appropriate to allow the appeal for the quantum of sentence.

12. Consequently, the appeal filed by the appellant is partly allowed. Conviction under Section 394 of the IPC and fine part are hereby maintained. So far as quantum of sentence is concerned, instead of rigorous imprisonment for 10 years, the appellant is sentenced for the period already undergone by him.

Sd/-

(C.B.Bajpai)
JUDGE

