

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 30 of 2013

1. Sadhe Lal S/o Amoloi Kewat, Age - 27 years, R/o Fulwari Chouki Chilfi, P.S. Lormi, Distt.- Bilaspur At Present Distt. - Mungeli (C.G.)
2. Laxmi Narayan @ Padum Saket S/o Gayaprasad Saket, Age - 20 years, R/o Ochidongri Chouki Chilfi, P.S. Lormi, Distt. - Bilaspur At Present Mungeli C.G.
3. Ramchand S/o Ramadhar Sakat, Age - 35 years, R/o Ochidongri Chouki Chilfi, P.S. Lormi, Distt. Bilaspur At Present Mungeli C.G.

---- Appellants

Versus

1. State of Chhattisgarh Through : P.S. Lormi, District Bilaspur, At Present Distt. Mungeli C.G.

---- Respondent

And

CRA No. 94 of 2015

1. Jagdish Singh S/o Shri Hira Singh, aged about 37 years, R/o Mohbandha, Police Station - Lormi, Distt. - Mungeli C.G.

---- Appellant

Vs

1. State Of Chhattisgarh Through - Police Station - Lormi, Distt. - Mungeli C.G.

---- Respondent

And

CRA No. 281 Of 2013

1. Noor Mohammad S/o Mohammad Munir Ahmad Beg, aged about 26 years, R/o Phoolwari Chowki, Chilfi , P.S. - Lormi, Distt. Bilaspur C.G. Present Address Mungeli C.G.

---- Appellant

Vs

1. State of Chhattisgarh Through District Magistrate, Distt. Bilaspur C.G. Present Address Mungeli C.G.

---- Respondent

For Appellants – Mr. R.R.Soni, Advocate, in Cr.Appeal No.30/2013.
Mr. Vivek Tripathi, Advocate, in Cr.Appeal No.94/2015 and
Cr.Appeal No.281/2013.

For Respondent – Ms. Shobha Kashyap, Deputy Govt. Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment on Board

13/10/2015

1. By this judgment Criminal Appeal No.30/2013, Criminal Appeal No.94/2015 and Criminal Appeal No.281/2013 arising out by the common judgment passed in Sessions Trial No.54/2010 are being disposed of.
2. Challenge in these appeals is to the judgment of conviction and order of sentence dated 13-12-2012 passed by the Additional Sessions Judge, Mungeli, C.G., in Sessions Trial No.54/2010 whereby and whereunder learned trial Judge after holding all the 5 appellants guilty for committing dacoity, convicted them under Section 395 of the Indian Penal Code (in short 'the IPC') and sentenced RI for 10 years and fine of Rs. 2,000/-, in default of payment of fine, to further undergo additional RI for 1 year to each of the appellants.
3. Conviction is impugned on the ground that without there being any iota of evidence, learned Court below has convicted and sentenced the appellants as aforementioned and thereby committed illegality.
4. As per case of the prosecution, on 12-05-2010, at about 1.00 a.m. at Village Chandiyabhata, P.S. Lormi, all the appellants along with other co-accused entered into the house of complainant Mathuradas Vaishnav (PW-1) and looted the property worth Rs.70,000/- in cash, golden ornaments about 10 tolas and silver ornaments about 20 kgs. and mobile. On the report lodged by complainant Mathuradas Vaishnav (PW-1), Lormi Police registered the crime and during investigation, appellants and other accused persons were taken into custody. The appellants were identified in the test identification parade through Exs.-P/3, 4, 5, 6, 7, 8 and 9. On the disclosure statements recorded by the police, ornaments of gold and silver, cash, vehicle in question and other substance were seized and all the appellants and other co-accused persons were arrested.

5. After completion of investigation, charge sheet was filed before the Judicial Magistrate First Class, Lormi, who, in turn, committed the case to the Court of Sessions, learned Additional Sessions Judge received the case on transfer and conducted the trial. All the appellants were charged for the offence under Section 395 of the IPC. Other co-accused persons were charged for the offence under Section 412 of the IPC. All the accused persons denied the charges and requested for trial.

6. In order to prove guilt of the accused, prosecution examined 21 witnesses in all. Statement of the accused were recorded under Section 313 of the Code of Criminal Procedure, 1973 (in short 'the Code') wherein they denied the circumstances appearing against them in the prosecution case and pleaded innocence and false implication in the crime in question.

7. After affording opportunity of hearing to the parties, learned trial Court acquitted the co-accused persons from the charges under Section 412 of the IPC and convicted all the 5 appellants for the offence under Section 395 of the IPC and sentenced them accordingly.

8. I have heard learned counsel for the parties, perused the judgment impugned and record of the Court below.

9. Learned counsel appearing for the appellants submitted that, as instructed, they are not challenging the judgment of conviction passed against all the appellants, and they are confining their arguments only to the quantum of sentence in these three appeals. It is submitted that appellant Sadhe Lal, Jagdish Singh and Noor Mohammad were aged about 27 years, 33 years and 26 years at the time of incident. They are serving the sentence since 21-08-2010 to till date. Appellant Ramchandra was aged about 35 years at the time of incident and is serving the sentence since 27-09-2010. Appellant Laxminarayan was aged about 20 years at

the time of incident and is serving the sentence since 18-09-2010. They all are the first offender, completed more than 5 years of the sentence; they will not commit any offence in future. Therefore, they be given an opportunity. Learned counsel for the appellants further submitted that the appellants not assaulted any of the family members of the complainant, though they were in a position to inflict injuries if they wished so. They be given an opportunity to remain in society without committing any similar offence or any offence in future, hence, they may be sentenced accordingly.

10. Per contra, learned counsel appearing for the State opposed the arguments advanced on behalf of the appellants and submitted that by causing fear the appellants looted property, cash, golden ornaments and silver ornaments. Looking to the property, its value, the trial Court has rightly convicted and sentenced the appellants which is just and proper for the act they committed, hence, these three appeals are liable to be dismissed on both counts.

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

12. In all the three appeals, learned counsel for the appellants, as directed, are not contesting the instant criminal appeals for the judgment of conviction and sentence of fine. Even otherwise, after perusal of the evidence adduced by the prosecution before the trial Court, I do not see any illegality or impropriety in the judgment of conviction passed against all the 5 appellants; also the fine sentence looking to their act, in the considered view of this Court, is proper which does not require any interference.

13. So far as quantum of sentence is concerned, looking to the facts as surfaced in the trail, age of the appellants and the facts that they were not having any previous history regarding any offence, they are in jail serving the sentence for

more than 5 years; they pleaded that they will not commit any offence in future, they be given an opportunity; they tested the post effect of their act sufficiently, in the considered view of this Court, as there is no any minimum sentence prescribed by the legislature for the offence, sentence of rigorous imprisonment for 6 years would meet the ends of justice.

14. Consequently the criminal appeals filed by all the above 5 appellants are hereby partly allowed. Judgment of conviction and fine sentence awarded against all the appellants are hereby affirmed. However, substantive jail sentence awarded to the appellants is modified and instead of rigorous imprisonment for 10 years, they are sentenced rigorous imprisonment for 6 years along with set off as they served since date of their arrest mentioned in the certificate prepared by the trial Court under Section 428 of the Code; they are also entitled for the benefit of remission available under the law, if any. Authorities are directed to serve the appellants the sentence as directed by this Court and realize the fine amount as per para 54 of the judgment of the trial Court.

15. Appeals partly allowed.

Sd/-
(Chandra Bhushan Bajpai)
Judge