

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.610 OF 2014**

**IMRAN @ DHAPU ISMAIL WARALI )...APPELLANT**

**V/s.**

**THE STATE OF MAHARASHTRA )...RESPONDENT**

Mr.Aniket Vagal, Advocate for the Appellant.

Mr.Deepak Thakre, APP for the Respondent - State.

**CORAM : ABHAY M. THIPSAY, J.**

**DATE : 12<sup>th</sup> FEBRUARY, 2015.**

**ORAL JUDGMENT :**

1           This appeal is directed against the judgment and order dated 13<sup>th</sup> September, 2010, delivered by the Additional Sessions Judge, Dindoshi, Mumbai, in Sessions Case No.18 of 2010, convicting the appellant who was the accused in the said case of an offence punishable under Section 392 of the Indian Penal Code

(IPC) read with Section 397 of IPC read with Section 34 thereof, and sentencing him to suffer Rigorous Imprisonment for 10 years and to pay a fine of Rs.5,000/-, in default, to suffer Rigorous Imprisonment for 6 months.

2           The learned counsel for the appellant made a grievance that the appellant did not get able assistance during the trial. However, he did express that the appellant was given legal aid and was represented by an advocate.

3           The learned counsel for the appellant submitted that, in the circumstances, he is not challenging the finding of the trial court that the appellant is guilty of the alleged offences, but that, he would urge that the sentence imposed upon the appellant is rather harsh, and that the same be reduced.

4           I have, therefore, confined the hearing of this appeal only to the propriety of the sentence that has been imposed upon the appellant by the trial court.

5           The learned counsel for the appellant submitted that, there is nothing in the impugned judgment to show that, the learned Judge considered as to what sentence should be imposed upon the appellant. He pointed out that, the impugned judgment even does not show that after arriving at a finding, that the appellant was guilty, the learned Judge gave him any opportunity of being heard on the question of sentence. Indeed, what the learned counsel submits, appears to be correct, from the fact that the impugned judgment nowhere indicates that the appellant was heard with respect to the question of sentencing.

6           It also appears that, the entire property, allegedly robbed by the appellant and the co-accused (who could not be traced and is absconding), was recovered and has been restored to its owners. Thus, no gain has actually been made by the appellant by committing the offence in question.

7           Also, the fact that the offence was allegedly committed by two persons, but only one of them, i.e. the present appellant, could be arrested, was prosecuted, and has been sentenced, should weigh in favour of the appellant, in the matter of considering imposition of sentence.

8           In my opinion, the imposition of sentence of Rigorous Imprisonment for 10 years, as done by the trial court, without hearing the appellant, and without discussing, why a harsher sentence than the one prescribed as minimum by the Statute was necessary, when the appellant had not made any actual financial gain by committing the offence in question, needs to be interfered with. In my opinion, it would be proper to reduce the substantive sentence imposed upon the appellant to Rigorous Imprisonment for a period of 7 years, which is the statutory minimum provided for by Section 397 of the IPC.

9           In the result, the appeal is partly allowed. The order of conviction of the appellant, as recorded by the trial court, is maintained. However, the substantive sentence imposed upon the appellant is reduced to Rigorous Imprisonment for a period of 7 years.

10          Save and except the modification in the sentence imposed upon the appellant, no other order in this appeal, which stands disposed of in the above terms.

**(ABHAY M. THIPSAY, J.)**