



Checked & Verified, 2013

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IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

Cr.A.1254/96.

APPELLANT

: Lal @ Sheikh Masruddin son of
Sheikh Nabi, aged about 26 years,
Resident of Talapara, Civil Lines,
Bilaspur.

-Versus-

RESPONDENT

: The State of M.P.

CRIMINAL APPEAL UNDER SECTION 374(2) CRIMINAL PROCEDURE CODE.

CONVICTION

SENTENCE

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1254 of 1996**

1. Lal alias Sheikh Masruddin son of Sheikh Nabi, aged about 26 years, Resident of Talapara, Civil Lines, Bilaspur

---- Appellant

Versus

1. State of M.P. (Now CG)

---- Respondent

For Appellant	:	Shri UKS Chandel, Advocate
For Respondent/State	:	Shri Adil Minhaj, PL

Hon'ble Shri Justice Pritinker Diwaker**Judgment on Board****07/11/2016**

This appeal has been filed against the judgment of conviction and order of sentence dated 2.4.1996 passed by Additional Sessions Judge Bilaspur in Sessions Trial No. 269/1995 convicting the accused/appellant under Section 397 IPC and sentencing him to undergo rigorous imprisonment for seven years.

2. According to the case of prosecution, on 28.12.1990 at about 10 PM when complainant Ashok Kumar was returning home after closing his shop along with his brother Ghanshyam, the accused/appellant met him on the way and asked for money for liquor. When complainant did not agree to give money, accused put knife on his chest and after taking out Rs. 50/- from his pocket he ran away. FIR Ex. P-1 was lodged by the complainant immediately after the incident and based on which offence u/s 394 IPC was registered against the accused/appellant. Complainant was medically examined, however, no external injury was seen on his

body. On completion of investigation charge sheet was filed against the accused/appellant under Sections 397 and 394 IPC as well as 25 of the Arms Act. Trial Court then framed the charge under Sections 394 and 397 IPC. (62)

3. In order to prove the complicity of the accused/appellant in the crime in question, the prosecution has examined 05 witnesses. Statement of the accused/appellant under Section 313 Cr.P.C. was also recorded in which he denied his guilt and pleaded innocence and false implication in the case.

4. After hearing the parties, the Court below has convicted and sentenced the accused/appellant as mentioned in paragraph No.1 of this judgment.

5. Counsel for the accused/appellant submits as under:

(i) that except complainant Ashok Kumar (PW-1) and his brother Ghanshyam (PW-2) there is nothing on record on the basis of which accused/appellant could be convicted under Section 397 IPC;

(ii) that at the time of incident though one Suresh and Narayan Das are also stated to be present but Suresh has not been examined by the prosecution and the other one namely Narayan Das (PW-3) has not supported the case of the prosecution and has been declared hostile;

(iii) that the statements of Ashok Kumar (PW-2) and Ghanshyam (PW-2) are not reliable and they have implicated the accused/appellant in a false case on account of political rivalry and this defence has been taken by the accused in his statement recorded under Section 313 of the Code of Criminal Procedure;

(iv) that the prosecution has not led any evidence that the

accused/appellant was known to the complainant and in the absence of any identification parade it will not be safe to hold the accused guilty of the offence u/s 397 IPC;

(v) that recovery of money cannot be used against the accused/appellant as Rs. 50/- being a meagre amount is supposed to be carried by one and the all; and

(vi) that the incident took place about 26 years back and the accused has already remained in jail for about one year and ten months, no useful purpose would be served in again sending to jail.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below are based on due appreciation of the evidence on record and there is no infirmity in the same.

7. Heard counsel for the parties and perused the material available on record.

8. Ashok Kumar (PW-1) has stated that on the date of incident in between 9 and 9.30 PM when he was returning home after closing his shop along with his brother Ghanshyam, near a tailoring shop at Masanganj, the accused/appellant stopped him and putting knife on his chest asked for money for liquor. When he refused for the same, accused slapped him and took out Rs. 50/- from his pocket. Earlier also the accused had demanded money from him - sometimes Rs. 100/- and sometimes Rs. 100/- and even Rs. 500/-. Incident is stated to have been witnessed by his brother Ghanshyam (PW-2), one Suresh (not examined) and Narayan Das (PW-3) who later turned hostile. He has denied the suggestion that accused used to purchase grocery from his shop. Ghanshyam (PW-2) has also made almost similar statement like Ashok Kumar (PW-1). According to

him, previously also the accused came to his shop and demanded money putting under threat. He has stated that on account of being afraid, he did not raise cry. He is stated to have informed the police about the earlier acts of the accused but if it is not recorded in the report, he could not tell the reason for that. Narayan Das (PW-3) who is said to have seen the incident has not supported the case of the prosecution and has been declared hostile. A.K. Mishra (PW-4) is the investigating officer who has supported the case of the prosecution. A.L. Koshle (PW-5) is the witness who recorded the FIR. 64

9. Perusal of the record shows that at the relevant time apart from the complainant and his brother, two other persons namely Suresh and Ghanshyam had also seen the incident but unfortunately Suresh has not been examined by the prosecution and the other though examined, has not supported the case of the prosecution and has been declared hostile. Now the only evidence on record is the statements of the complainant and his brother (PW-1 and PW-2) which is required to be seen. On seeing their evidence it appears difficult to believe that in a busy market area the sole accused overpowered two young men and snatched Rs. 50/- from Ashok Kumar (PW-1) and that too they did not make any effort to raise any hue and cry. Statment of the complainant that the accused/appellant put knife on his chest and gave two-three slaps to him does not appear very convincing because on being medically examined no external injury was noticed on his body by the doctor. Furthermore, the recovery of Rs. 50/- from the accused is also of no help to the prosecution because this meagre amount could be easily possessed by a common man. Thus the prosecution has not led any pinpointed evidence on the basis of which guilt of the accused can be proved beyond reasonable doubt, and for that

the benefit has to go to the accused.

10. Appeal is accordingly allowed and the findings recorded by the Court below convicting the accused under Section 397 IPC being without proper appreciation of the evidence are hereby set aside and he stands acquitted of the charge levelled against him. As the accused/appellant is already on bail, no further order regarding his release etc. is necessary. Bail bonds executed by the accused stand discharged.

Sd/-
Pritinker Diwaker
Judge

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