

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 305 of 2015

Judgment reserved on : 16.11.2016

Judgment delivered on : 23.11.2016

- Vyas Yadav, s/o Sadhu Yadav, aged about 36 years, Machchharganva Bazar, West Champaran, PS - Jogapatti, district - Betiya (Bihar) ---- **Appellant (In jail)**

Versus

- State of Chhattisgarh, through PS- GRP Raipur, district - Raipur (CG) ---- **Respondent**

For Appellant : Shri Anil Kumar Trivedi, Advocate
For Respondent/State : Shri Sanjeev Pandey, GA

Hon'ble Shri Justice Anil Kumar Shukla
CAV Judgment

1) This appeal is directed against the judgment of conviction and order of sentence dated 12.02.2015 passed by the Sessions Judge, Raipur in Sessions Trial No.210 of 2013, whereby learned Sessions Judge after holding the appellant guilty for commission of offences punishable under Sections 328 & 379 of the IPC, sentenced him to undergo RI for 6 years and RI for 2 years respectively.

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

3) Case of the prosecution, in brief, is that on 14.01.2013 at about 21.30 hours, complainant- Pappu Yadav was going from Durg to Devariya (UP) in Sarnath Express. The appellant also

started from Durg in the same train and was sitting beside the complainant. As the train reached Raipur, the appellant gave 20-20 biscuit to the complainant, after eating the biscuit, the complainant became unconscious and when he regained consciousness, he found himself at Allahabad Hospital and all his belongings were looted. He lodged FIR at Allahabad Police Station and the same has been transferred to GRP Police, Raipur.

4) Statements of the witnesses were recorded under Section 161 of the Cr.P.C., and after completion of investigation, charge-sheet was filed before the Special Railway Magistrate and he committed the case to the Sessions Judge, Raipur.

5) In order to prove the guilt of the accused/appellant, the prosecution has examined as many as 9 witnesses. The appellant was examined under Section 313 of the Cr.P.C., in which he denied the circumstances appearing against him and claimed innocence and false implication in the crime in question.

6) After providing opportunity of hearing to the parties, learned Sessions Judge, Raipur has convicted and sentenced the appellant as aforementioned.

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

8) At the outset, counsel for the appellant submits that in light of evidence of the witnesses available on record, he is not disputing the conviction, but considering the fact that the appellant is in jail for more than three years, the sentence of the appellant requires

re-consideration. Therefore, looking to the custody period of the appellant, his sentence may be reduced to the period for which he remained in the custody.

9) On the other hand, learned State counsel supported the judgment impugned and submitted that the evidence adduced on behalf of the prosecution is sufficient for drawing inference that the appellant has committed offences punishable under Sections 328 and 379 of the IPC.

10) In order to appreciate the arguments advanced on behalf of the parties, I have examined the evidence available on record.

11) It is not in dispute that the appellant was 36 years of age at the time of the incident, he remained in jail for more than three years and the total sentence awarded to him was six years. Looking to the submissions made by learned counsel for the parties; considering the facts and circumstances of the case; and also considering the fact that the appellant was in jail for more than three years; more over, he does not want to challenge the conviction imposed upon him but, only prays for a lenient view in respect of the sentences imposed upon him, the prayer of learned counsel for the appellant appears to be acceptable.

12) In view of above, it would be appropriate that if the jail sentence is reduced to the period for which he remained in jail, that would meet the ends of justice.

13) Accordingly, the appeal filed by the appellant is hereby partly allowed. The conviction directed against the appellant for the

offences punishable under Sections 328 and 379 of the IPC is hereby maintained but, jail sentence is reduced to the period for which he has already undergone in the custody.

14) Seized mobile (IMEI No.356902038251499) be returned to complainant- Pappu Yadav as per direction of the Court below.

15) It is stated that the appellant is in jail. He be set at liberty at once, if not required in any other case.

Sd/-
(Anil Kumar Shukla)
JUDGE

padma