

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 195 of 2007**

1. Rakesh @ Rinku Sharma s/o NK Sharma age 27 years, R/o Chandani Bhata, Dallirajhara, District Durg
2. Vikram s/o Amar Singh age 29 years, Caste Gandu, R/o Chikhalikasa, PS Rajhara, District Durg

--- Appellants**Versus**

State of Chhattisgarh through SHO Rajhara, Police Station Dalli Rajhara, District Durg

--Respondent

For the Appellants	:	Shri Amiyakant Tiwari, Advocate
For the Respondent :	:	Shri Anil S. Pandey, Govt. Advocate

Hon'ble Shri Justice Ram Prasanna Sharma**Order on Board****13.12.2017**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 27.2.2007 passed by the Additional Sessions Judge, Balod, Sessions Division Durg (CG) in Sessions Trial No. 87/2006 wherein, the said Court has convicted the accused/appellants for commission of offence under Section 394 IPC and sentenced them to undergo rigorous imprisonment for 2 years and to pay fine of Rs.500/- in default of payment of fine to further undergo R.I. for 3 months.
2. As per prosecution case on 6.11.2005, at about 16.45 hrs. complainant Raghvendra Sharma was sitting in his Medical shop situated at Bus Stand Rajhara, at the same time, both the appellants came there on a

motorcycle and by causing injury to the complainant removed Rs.1,000/- from his possession. The matter was reported to Police Station Rajhara. After registration of First Information Report investigation was conducted and after completion of investigation charge sheet was filed before the Court. The accused/appellants did not plead guilty and trial was conducted. After completion of the trial, the accused/appellants have been convicted and sentenced as aforementioned.

3. Learned counsel for the appellants submits as under :

(i) There is no evidence of removing Rs.1,000/- from the possession of complainant Raghvendra Sharma and therefore, offence under Section 394 IPC is not made out against the appellants;

(ii) No individual act of accused Vikram is established before the trial Court even then the trial Court has convicted and sentenced the appellant Vikram for the said offence;

(iii) Independent witnesses have not supported the version of the prosecution and even there is serious lacuna in the statement of complainant Raghvendra Sharma and his statement is not reliable.

4. On the other hand, learned counsel for the State supporting the impugned judgment submits that the finding of the trial Court is well within its jurisdiction and the same is not liable to be interfered with invoking jurisdiction of appeal.

5. Vishal Motwani(PW1) has not supported the version of the prosecution. As per this witness Police Authorities have not interrogated the accused/appellants before him. Deepak Singh(PW2) deposed on same line. Valmiki Dhruv (PW3) is a witness of identification. G.L. Yadav (PW4), Naib Tehsildar is witness of identification. Ghanshyam Sharma (PW5) has not supported the prosecution version and nothing is brought from his statement against the accused/appellants even after leading questions by the

prosecution side. Dilip Kumar Thakur (PW7) assisted in investigation. Rimpi Sharma (PW8) has not supported the version of prosecution. Jeevan Nagesh (PW12) is a Police Inspector who investigated the matter.

6. As per statement of Raghvendra Sharma (PW10) he was standing in his Medical Shop at about 4.30 pm and at the same time, both the accused/appellants came on motorcycle and appellant Rakesh @ Rinku demanded money from him. He deposed that he has given Rs.1000/- to accused Rakesh @ Rinku. From his statement it is established that complainant has given money to accused/appellant Rakesh @ Rinku. For commission of offence under Section 394 IPC committing or attempting to commit robbery is necessary and in committing the same, voluntary causing hurt is also necessary.

7. Robbery is defined in Section 390 IPC which may be read as under:

390. Robbery.—In all robbery there is either theft or extortion.

When theft is robbery.—Theft is “robbery” if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When extortion is robbery.—Extortion is “robbery” if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

8. Theft is defined under Section 378 IPC.

378. Theft.—Whoever, intending to take dishonestly any moveable property out of the possession of any person without that

person's consent, moves that property in order to such taking, is said to commit theft.

9. Extortion is defined in Section 383 IPC.

383. Extortion.—Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits “extortion”.

10. In the present case, the complainant has given money to Rakesh @ Rinku and the same is not removed by any of the appellant. Therefore, it cannot be said that any of the appellant has dishonestly induces the complainant to deliver the money or they have removed the money from the possession of the complainant without his consent.

11. The ingredients of theft and extortion is lacking in the present case. Therefore, the offence under Section 394 IPC is not established by the evidence adduced by the prosecution. Though prosecution witness Raghvendra Sharma (PW10) deposed that accused/appellants have assaulted him and Dr. A.K. Thakur (PW9) found simple injury on the body of the complainant but offence under Section 323 IPC is non-cognizable and as per Section 155(2) Cr.P.C. no police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

12. In the present case, no such order was passed by the Magistrate for investigating the offence under Section 323 IPC which is non-cognizable and therefore, the appellants cannot be tried for the offence under Section 323 IPC and cannot be convicted for the same.

13. Considering the totality of the facts and legal aspect of the matter, offence under Section 394 IPC is not established against the accused/appellants. Therefore, the appeal is allowed. The judgment of conviction passed by the trial Court is not sustainable and the same is set

aside. The accused/appellants are acquitted of the charge under Section 394 IPC.

14. The appellants are reported to be on bail. Their bail bonds stand discharged.

**Sd/
(Ram Prasanna Sharma)
JUDGE**