

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.551 of 2004

Order Reserved on : 27.10.2017

Order Passed on : 21.11.2017

Shyam Sunder, S/o Shri Jhatu Das, aged about 35 years, R/o Rajga Marg,
Thana Rajga Marg, District Korba, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through District Magistrate Korba, Chhattisgarh

--- Respondent

For Applicant	:	Shri Pushkar Sinha, Advocate
For State/Respondent	:	Shri O.P. Sahu, Government Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. The Applicant has preferred the instant revision under Section 397 read with Section 401 of the Code of Criminal Procedure against the judgment dated 30.10.2004 passed in Criminal Appeal No.5 of 2004 by the Sessions Judge, Korba by which the Learned Sessions Judge has affirmed the conviction but reduced the sentence awarded to the Applicant vide judgment dated 21.7.2003 passed in Criminal Case No.2180 of 1998 by the Judicial Magistrate First Class, Katghora convicting and sentencing the accused/Applicant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 394 of the Indian Penal Code	Rigorous imprisonment for 3 years and fine of Rs.3,000/- with default stipulation

2. While affirming the conviction imposed upon the Applicant under Section 394 of the Indian Penal Code, the Appellate Court reduced the sentence of rigorous imprisonment to 2 years from 3 years and affirmed the sentence of fine.
3. Brief facts of the case are that on 24.8.1993 at about 8:00 a.m. Complainant Kaushilyabai (PW1) went behind her house to attend the call of nature. All of a sudden, the Applicant came there from her back and snatched her mangalsutra made of silver and nose ring made of gold and fled. He was caught by the villagers immediately thereafter. First Information Report (Ex.P1) was lodged by her. During investigation, disclosure statement of the Applicant was recorded on 26.8.1993 and based on which a mangalsutra and a nose ring were recovered from him and seized. Later on, the said ornaments were identified by Complainant Kaushilyabai to be of her vide Ex.P2. On completion of the investigation, a charge-sheet was filed against the Applicant for the offence punishable under Section 394 of the Indian Penal Code. Charge was framed against him under Section 394 of the Indian Penal Code.
4. In support of its case, the prosecution examined as many as 7 witnesses. Statement of the accused/Applicant was also recorded under Section 313 Cr.P.C. in which he denied the guilt. No defence witness has been examined.
5. After trial, the Trial Court convicted and sentenced the Applicant and the Appellate Court affirmed the conviction imposed upon him but reduced the sentence awarded to him as mentioned in the first and second paragraphs of this order. Hence, this revision.

6. Learned Counsel appearing for the Applicant argued that the Complainant has categorically stated in her cross-examination that at the time of commission of the offence she did not see the person who snatched her ornaments from her neck and nose. The disclosure statement of the Applicant and the recovery of ornaments from the Applicant are not proved. The Applicant has been falsely implicated in the case. The impugned judgment of conviction and sentence suffers from material illegality and deserves to be set aside.
7. Per contra, Learned Counsel appearing for the State supported the impugned judgment.
8. I have heard Learned Counsel appearing for the parties and perused the material available on record with utmost circumspection.
9. Complainant Kaushilyabai (PW1) has deposed that when she had gone behind her house to attend the call of nature, the Applicant came there and snatched her mangalsutra and nose ring and ran away from there. The villagers caught him. She lodged the FIR (Ex.P1). Later on, she identified the mangalsutra and the nose ring to be of her vide Ex.P2.
10. Bundram (PW2), husband of the Complainant is a hearsay witness. He has deposed that he heard about the incident from his wife.
11. Awadhram (PW3) and Chitrabhan (PW5) have supported the statement of Complainant Kaushilyabai (PW1) and deposed that when Kaushilyabai shouted "*Chor Chor*", they chased the Applicant and caught him.

- 12.** Dr. R.S. Kanwar (PW7), who medically examined Complainant Kaushilyabai (PW1) and gave report (Ex.P3), has deposed that he found long abrasion measuring 4"x1/4" caused on the left side of the neck and multiple abrasions measuring 1/4", linear and curve, caused on the right side of the neck of Kaushilyabai.
- 13.** From the statements of Kaushilyabai (PW1), Awadhram (PW3), Chitrabhan (PW5) and Ramlal (PW6), it reveals that soon after the occurrence, the Applicant was caught on the spot. From the statements of Kaushilyabai and Dr. R.S. Kanwar (PW7), it further reveals that Kaushilyabai had sustained the above stated injuries. From the statement of Kaushilyabai, it also reveals that the said injuries were caused to her by the Applicant during the commission of the offence.
- 14.** As per the prosecution story, the mangalsutra and the nose ring were snatched by the Applicant and the same were recovered from him on 26.8.1993 on the basis of the disclosure statement made by him. The snatched articles were identified by the Complainant vide Ex.P2.
- 15.** Lakhanlal and Amarsingh, who are witnesses of the disclosure statement and the seizure and the Investigating Officer have not been examined by the prosecution. Therefore, there is no evidence on record to show that the articles identified by the Complainant vide Ex.P2 were seized or recovered from the possession of the Applicant. In the circumstance, the offence under Section 394 of the Indian Penal Code is not established against the Applicant. The evidence available on record goes to show that the Applicant is liable to be convicted only under Section 323 of the Indian Penal Code.

- 16.** Therefore, the conviction and sentence imposed upon the Applicant under Section 394 of the Indian Penal Code is set aside and instead he is convicted under Section 323 of the Indian Penal Code. So far as sentence part is concerned, the Applicant has already undergone about 3½ months. I am of the view that the ends of justice would be met if the Applicant is sentenced with the period already undergone by him and fine of Rs.1,000/- only payable within two months from the date of receipt of a copy of this order. Ordered accordingly. If the amount of Rs.3,000/- imposed upon the Applicant by the Trial Court has already been deposited by him, the same shall be adjusted against the amount of fine imposed upon him today and the remaining amount of Rs.2,000/- shall be refunded to him within a period of two months from today.
- 17.** Consequently, the revision is allowed in part to the extent indicated above.
- 18.** It is reported that the Applicant is on bail. His bail bonds shall continue for a further period of six months from today in terms of Section 437A of the Code of Criminal Procedure.
- 19.** Records of the Courts below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
JUDGE