

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.94 of 2013**

Vinod Kumar @ Chandrika Prasad Sahu, son of Shiv Shankar Prasad Sahu, aged 35 years, R/o Madanpur, PS Ratanpur, District Bilaspur (CG) at present R/o House of Hirabati, Kota, Raipur, District Raipur (CG).

---- Appellant**Versus**

State of Chhattisgarh, through Police Station, Amanaka, Distt. Raipur (CG).

---- Respondent

For Appellant
For respondent/State

Ms.Sareena Khan, Advocate.
Shri Bhaskar Pyasi, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy**Judgment on Board****14/02/2017**

1. The appellant stands convicted for the offence under Sections 307 and 397 IPC and have been sentenced to undergo RI for 10 years and 7 years respectively with default stipulations by the 7th Additional Sessions Judge, Raipur, in Sessions Trial No.258 of 2011.
2. The case of the prosecution in brief is that, an FIR, Ex.P/20 was lodged by one J.P. Achari on 13.08.2011 at Police Station Amanaka, Raipur. As per FIR, it is a case where when the complainant J.P. Achari, PW-1, had gone to work leaving behind his 10 years old son at the house, the present appellant, who is an Electrician by profession, had visited the house of the complainant in the morning. He inquired about the complainant and when the minor son informed that his father has gone to work and would be coming back in the evening, he went back and

returned in the afternoon and is said to have entered into the house of the complainant on the pretext of being thirsty and asked water from the minor son. Later he bolted the house from inside and is said to have attacked the minor son and snatched the gold locket from the neck of the minor son leaving him unconscious on account of the assault. In addition, the appellant is also said to have looted the mobile phone of the complainant as well as a gold ring. The minor son, after regaining consciousness ran to the neighbors seeking help who informed the complainant and the neighbors meanwhile took the victim to nearby hospital and later on to Ramkrishna Hospital, Raipur where it was found that the minor had received head injury.

3. After the FIR was lodged, investigation was conducted and during the course of investigation, ring was recovered from a goldsmith and on the memorandum statement of appellant, gold locket and mobile phone were also recovered from the possession of the appellant. After investigation, the matter was put to trial before the 7th Additional Sessions Judge, Raipur, vide Sessions Trial No.258 of 2011.
4. The prosecution, in all, has examined as many as 12 witnesses and there was no witness examined on behalf of the defence.
5. The important witness in this case is PW-1, J.P. Achari, the complainant and the father of the victim and PW-6, Sajin Prasad, the victim, a minor, aged around 10 years at the time of incident.
6. After conclusion of trial, the court below finally held that the prosecution has been able to establish its case beyond all reasonable doubts so far

as offence under Sections 307 and 397 IPC are concerned against the appellant and sentenced him for the period as enumerated in the first paragraph of this judgment, leading to filing of this appeal.

7. Learned counsel appearing for the appellant assailing the judgment submits that the entire judgment of court below is totally bad in law for the reason that the case of the prosecution has not been fully proved inasmuch as there was no identification test made by the prosecution. In the absence of any identification test being conducted, the identification of the appellant would become doubtful. He further submits that no weapons were recovered from the possession of the appellant which also creates doubt on the prosecution story as to whether the act has been committed by the appellant himself or not. There was no evidence so far as offence under Section 397 IPC is concerned as none of the articles were recovered from the appellant. So far as offence under Section 307 IPC is concerned, counsel for the appellant submits that taking into consideration the injuries sustained by the minor victim, it cannot be a case where the offence under Section 307 IPC would have been made out. At best, it can be a case under Section 324 IPC and for which the appellant has already remained in custody for about 5 and ½ years. Therefore, conviction of the appellant can be modified to one under Section 324 IPC instead of Section 307 IPC and sentence can be reduced to the period already undergone.
8. On the other hand, learned counsel appearing for the State opposes the appeal and drawing the attention of the court to the contents of the

FIR submitted that the nature of act committed by the appellant itself shows the gravity of the offence. The offence has been fully established and proved by the prosecution before the court below beyond all reasonable doubts. Therefore, there is no scope of interference with the judgment of trial court. According to State counsel, the offence has been proved by the victim, PW-6 and which further stands corroborated from the statement of father of the victim. In addition, recovery which were made on the memorandum statement of the appellant is an admissible piece of evidence. Thus, the case of the prosecution stands fully established beyond all reasonable doubts and prayed for rejection of the appeal.

9. Having considered the rival contentions put forth on either side and on perusal of the record, what clearly reflects is the fact that victim, PW-6, Sajin Prasad, himself in his deposition very categorically stated that it was the appellant who had entered into the house of the victim on the pretext of water to drink and then subsequently is said to have after having glass of water the covered the victim's face and neck with his Gamchha (Towel) and tried to choke him with the Gamchha. In the process, he also said to have assaulted the victim on his head on account of which the victim fell unconscious on the ground. Later on it was found that the appellant had taken away the locket from his neck. The fact which has to be taken note of is that from the cross examination of the minor witness, the defence has not been able to extract much which could create a doubt on the version of the victim.
10. Further, from the initial statement made by the victim during the course

of the investigation when compared to the statement made before the court also, there does not appear to be much contradiction or omission. Neither is there much improvement made which can give rise to any doubt on the statement of the victim. In the absence of any such discrepancy, the version of the victim itself is sufficient to prove the case of the prosecution.

11. A perusal of statement of PW-6, Sajid Prasad, also clearly gives in indication so far as the identification of the appellant is concerned because he has specifically referred of knowing the Electrician as he had earlier visited the house for some work and on the date of incident also he had visited his house once in the morning and again came back in the afternoon. Thus, there is not much for disbelieving the version of PW-6.
12. The case of the prosecution further gets strengthened from the recovery which were made at the instance of appellant inasmuch as Ex. P/5 is the recovery of mobile phone belonging to the complainant which had taken by the appellant from the house of the complainant. The EMIE and other number of the said mobile matches with the details given at the time of registration of FIR. Likewise, gold locket which the victim was wearing on the date of incident was also recovered from the possession of the appellant. Meanwhile, the golden ring belonging to the complainant was also recovered from the goldsmith, who has disclosed the fact that he had purchased the said ring from the brother of the present appellant who had sold the ring on the ground that it is the ring of his brother who had asked him to sell

the same. The recovery made at the instance of the appellant is an admissible piece of evidence and there is not much which has been brought on record by the defence to disbelieve or doubt the recovery also.

13. In the light of the aforesaid evidence, this court has no hesitation in reaching to the conclusion that the prosecution has infact been able to prove its case both under Sections 307 as also under Section 397 IPC beyond all reasonable doubts. However, taking into consideration the nature of injuries sustained by the victim PW-6, and also the evidence of PW-11, Dr. S.N.Madariya, who had treated the victim, and further taking into consideration the fact that the victim did not have to undergo prolong treatment and was relieved from the Hospital within a short span of time, this court is of the opinion that maximum sentence under Section 307 IPC which has been imposed is too harsh. Therefore, ends of justice would meet if the sentence is reduced to the period of 7 years instead of 10 years which has been awarded. Accordingly, the impugned judgment stands modified to that extent.

14. With the aforesaid modification of the sentence, the appeal is dismissed. The conviction of the appellant under Sections 307 and 397 IPC is affirmed. However, sentence under Section 307 IPC is reduced to the period of 7 years instead of 10 years. The conviction under Section 397 IPC is maintained.

Sd/-
(P. Sam Koshy)
Judge