

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.27 of 2007**

Shakh Amedu @ Shekh Ahamed, S/o. Shekh Ramjan
Musalman, aged about 35 years, R/o. Bandhavapara, Thana
Purani Basti, Raipur (CG)

---- Appellant

Versus

State of Chhattisgarh, Through Station House Officer, Thana -
Purani Basti Raipur Distt. Raipur (CG)

---- Respondent

For the appellant : Shri YC Sharma, Advocate
For the respondent/State : Shri Bhaskar Payashi, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****12.4.2018.**

1. This appeal is directed against the judgment of conviction and order of sentence dated 23.11.2006 passed by Second Additional Sessions Judge, Raipur (CG) in Sessions Trial No.465/2002, wherein the said Court convicted the appellant under Section 398 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for seven years.

2. In the present case, name of the victim is Smt. Sadhna Sahu (PW-3) . As per the version of this witness, appellant demanded Rs.5000/- from her and at the time of demanding money he made the victim under fear of instant hurt by showing knife and extorted Rs.4000/- from her. Version of Sadhna Sahu (PW-3) is supported by the version of Shyam Prakash Sahu (PW-4), husband of Sadhna. All the witnesses have been subjected to searching cross-examination but nothing could be elicited in

favour of the defence. Version of the victim is supported by prompt FIR (Ex-P/3) lodged by Shyam Prakash Sahu (PW-4), wherein name of the appellant is clearly mentioned.

3. From the evidence adduced by the prosecution, it is established that the appellant extorted Rs.4000/- from the possession of Sadhna Sahu and at the time of extorting the amount he made her under the fear of instant hurt.

4. Now the point for consideration is as to what was the offence committed by the appellant. Robbery is defined under Section 390IPC which reads as thus:

“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.”

5. In the present case, the appellant has committed theft and in order to commit theft he made the victim under fear of instant hurt. The trial Court convicted the appellant under Section 398 IPC but this Section speaks about attempt to commit robbery with deadly weapons, i.e. at the time of committing robbery, the offender is armed with deadly weapon. In the present case, the offence is not attempt, but it is committed and the act of the appellant falls under the definition of robbery which is punishable

under Section 392 IPC. Hence conviction of the appellant under Section 398 IPC is not sustainable. He is convicted under Section 392 IPC instead of Section 398 IPC.

6. The appellant remained in jail during trial from 30.8.2002 to 18.10.2002 and after his conviction he suffered the jail sentence from 23.11.2006 to 22.5.2007 that comes out nearly 8 months. The incident took place in the year 2002. Looking to the totality of the facts, period already undergone would be sufficient sentence.

7. Consequently, the appeal is allowed in part. The appellant is acquitted of the charges under Section 398 IPC but convicted under Section 392 IPC and he is sentenced to the period already undergone by him.

8. With the above modifications, the appeal is allowed in part.

Sd/-

(Ram Prasanna Sharma)

JUDGE