

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 125 of 2010**

Md. Hussain S/o Shri Sheikh Saleem, Aged about 20 years, R/o Shikola Basti Near Pond, behind Ayurvedic Hospital, Police Station : Mohan Nagar, Durg, District Durg (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through : Station House Officer, Police Station Dondi Lohara, District- Durg (C.G.)

---- Respondent

For Appellant	:	Mr. B.P. Singh, Advocate.
For State	:	Mr. Sanjeev Pandey, G.A.

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

20/08/2018

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 31.01.2010 passed by Additional Sessions Judge (FTC), Balod, District- Durg (C.G.) in Sessions Trial No. 07/2008, wherein the said Court convicted the appellant for commission of offence under Section 392 of IPC and sentenced to R.I. for 10 years and fine of Rs. 500/- with further default stipulations.
2. As per the case of prosecution, the present appellant and two other persons namely Rajesh Yadav and Somlal @ Vicky stopped Santram, Purushottam and Mahesh on road near village- Semhardih and removed one motorcycle from possession of Santram and removed Rs. 400/- and Rs. 100/- from possession of Purushottam and Mahesh respectively. The matter was reported and investigated and after completion of trial, the trial Court convicted the appellant as mentioned above.
3. Learned counsel for the appellant submits as under:-

- (i) Complainant Santram, Purushottam and Mahesh have not identified the appellant during course of the offence and since there is no occasion to see the culprit therefore, identification parade lost its significant.
 - (ii) Memorandum and seizure witnesses regarding seizure of motorcycle have not supported version of the prosecution therefore, seizure of motorcycle from present appellant is not established.
 - (iii) No other incriminating circumstances is established to bring who committed the offence therefore, finding of the trial Court is not sustainable.
- 4. On the other hand, learned State counsel submits that finding of the trial Court is based on identification parade and all three victims have categorically stated against the present appellant recording his presence during course of commission of offence and his active role, therefore, finding of the trial court is based on proper marshaling of evidence and the same is not liable to be interfered while invoking jurisdiction of the appeal.
 - 5. The case of the prosecution is based on identification parade of the appellant. Mahesh Ram (PW-1), Purushottam (PW-3) and Santram (PW-4) are victims of the offence and as per their version, they have seen the present appellant during course of the offence and therefore, they identified him during the parade.
 - 6. It has been deposed by all the witnesses in their cross-examination that there was darkness on the spot, but it is settled law that finding cannot be arrived at on any fraction of the evidence or any statement of the witness in isolation. Evidence of the witnesses

have to read as a whole and all other relevant materials should also be taken on account while adjudicating the matter.

7. From statement of Mahesh (PW-1), he identified the present appellant on the basis of mark on his nose. Same is the version of Purushottam (PW-3). Santram (PW-4) deposed (para 7) that he has seen the appellant on spot that is why he identified the appellant during identification parade. Version of these witnesses is supported by version of Arun Kumar Tripathi (PW-6) and Smt. Lata Urvasha, Naib Tahsildar (PW-8). From the evidence of these witnesses, it is established that the appellant have been identified by all three victims.
8. As per version of Vipin Rangari, Sub Inspector (PW-9), motorcycle which is subject matter of the crime is seized near Parasada road on the memorandum of the appellant. All the evidence in its totality goes to show that the present appellant participated in commission of crime in question.
9. From the evidence, it is established that the motorcycle removed from possession of the complainant after putting them in fear with intent to hurt on point of knife.
10. Act of the appellant as established falls within definition of robbery as defined under Section 390 of I.P.C. and the same is punishable under Section 392 of the Code of Criminal Procedure for which the trial Court has convicted the present appellant. After revaluation of the evidence, finding of the trial Court is found to be based on legal evidence and the same is hereby affirmed.
11. Heard on the point of sentence.

12. Three persons have been implicated by the prosecution, but the offence is not established for other two persons. If the appellant would have alone at the time of commission of offence, it would not have been possible to commit crime against three persons who are victims of the case.
13. The appellant suffered jail sentence from 26.11.2007 to 08.03.2010 which comes out two years and four months.
14. Considering all the facts and circumstances of the case, I am of the view that the ends of justice would be served if the sentence imposed on the appellant by the trial Court is reduced to the period already undergone by him.
15. Consequently, the appeal is allowed in part. The appellant is convicted under Section 392 of IPC and sentenced to the period already undergone by him. The fine amount shall remain intact. The appellant is reported to be on bail. His bail bond shall continue for a period of six months in view of Section 437-A of Cr.P.C.
16. With these modifications, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge