

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.3053 of 1998

1. Jagdish alias Satish, son of Mahabir, aged about 22 years, occupation Cultivator, R/o Khobhi Chalgali, P.S. Chalgali, District Surguja, M.P. (now Chhattisgarh)
2. Pal alias Parmeshwar, son of Amin Sav, aged about 20 years, occupation Cultivator, R/o Beharadeeh Lundra, P.S. Dhourpur, District Surguja, M.P. (now Chhattisgarh)

---- Appellants

versus

The State of Madhya Pradesh (now Chhattisgarh)

--- Respondent

and

Criminal Appeal No.42 of 1999

Pintu alias Paramanand, S/o Heera Das, aged about 20 years, occupation Business, R/o Dadgoun Lundra, P.S. Dhourpur, District Surguja, M.P. (now Chhattisgarh)

---- Appellant

versus

State of Madhya Pradesh (now Chhattisgarh)

--- Respondent

For Appellants	:	Ms. Savita Tiwari, Advocate
For State/Respondent	:	Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

15.1.2018

1. Since both the appeals arise out of a common judgment, they are disposed of by this common judgment.
2. The appeals are preferred against the judgment dated 17.11.1998 passed in Sessions Trial No.122 of 1997 by the 1st Additional Sessions Judge, Ambikapur convicting and sentencing each of the Appellants as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 450 of the Indian Penal Code	Rigorous Imprisonment for 10 years

Under Section 394 of the Indian Penal Code	Rigorous Imprisonment for 10 years
Under Section 342 of the Indian Penal Code	Rigorous Imprisonment for 1 year
In addition to the above, Appellant Pal has also been convicted under Section 25(1B)(a) of the Arms Act and sentenced with rigorous imprisonment for 1 year.	

3. Facts of the case, in brief, are that on 19.1.1997 at about 11:30 p.m., Raghunath (PW2) was sleeping in his house along with his family members. At that time, some persons called him from outside and said that wood was being theft. He opened the door. One person entered his house carrying one *desi katta* (country-made pistol) in one hand and one bomb in the other hand. Another person also entered with a *khukhari* (knife). That person made a demand for money. He gave them Rs.100/-. A third person also entered with a rod and made a search of his house. Thereafter, all the three persons looted his Rajdoot Motor Cycle, one wrist watch of HMT make, one torch, cash of Rs.400/- and one suitcase of Alfa make in which clothes, anklet and official documents were kept, and pushing him away closed him inside the room of the house and ran away. Later on, he broke the door and came out of his house and informed about the incident to his neighbours. He also informed about the incident to Police Chowki, Lundra vide Ex.P3. Later on, First Information Report (Ex.P3A) was registered at Police Station Dhourpur. During investigation, memorandum statement (Ex.P22) of Appellant Jagdish was recorded and based on which seizure of various articles were made from him vide Ex.P23, memorandum statement (Ex.P11) of Appellant Pal was recorded and based on which seizure of various articles were made from him vide Ex.P12 and memorandum statement (Ex.P24)

of Appellant Pintu was recorded and based on which seizure of various articles were made from him vide Ex.P25. Vide identification parade (Ex.P8), Complainant Raghunath identified the accused who had entered his house and made the loot. Vide Ex.P6, Raghunath identified his motorcycle and vide Ex.P7, he identified the other articles looted from his house. It is further alleged that some looted articles were purchased by Mustafa and Kalam and those articles were also seized from them. On completion of the investigation, a charge-sheet was filed against the accused for offences punishable under Sections 394, 201, 412, 34, 120B, 450, 342 of the Indian Penal Code, Sections 25 and 26 of the Arms Act and Sections 4 and 5 of the Explosives Substances Act. Charges were framed against accused Pintu under Sections 450, 394, 342 of the Indian Penal Code, against accused Jagdish under Sections 450, 394, 342 of the Indian Penal Code and Section 4 of the Explosive Substances Act, against accused Pal under Sections 450, 394, 342 of the Indian Penal Code and Section 25(1B)(a) of the Arms Act, against accused Kalam under Section 411 of the Indian Penal Code and Section 4 of the Explosive Substances Act and against accused Mustafa under Section 411 of the Indian Penal Code.

4. In support of its case, the prosecution examined as many as 12 witnesses. Statements of the accused were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the guilt and pleaded innocence.
5. After trial, the Trial Court held accused Jagdish, Pal and Pintu guilty under Sections 450, 394, 342 of the Indian Penal Code, accused Pal under Section 25(1B)(a) of the Arms Act and accused

Kalam and Mustafa under Section 411 of the Indian Penal Code. The Trial Court acquitted accused Jagdish and Kalam of the charge framed against them under Section 4 of the Explosives Substances Act.

6. Being aggrieved by the judgment of conviction and sentence passed by the Trial Court, accused Jagdish and Pal preferred an appeal, being Criminal Appeal No.3053 of 1998 and accused Pintu preferred an appeal, being Criminal Appeal No.42 of 1999. Rest of the accused, i.e., Kalam and Mustafa preferred separate appeals before this Court, but thereafter, they absconded and arrest warrants have been issued against them.
7. Learned Counsel appearing for the Appellants submits that she does not press the appeals on merits and confines her arguments to the sentence part only. She further submits that out of the total jail sentence of 10 years, accused Jagdish and Pintu have remained in jail for about 6 years and 1 month and accused Pal has remained in jail for about 5 years and 11 months. None of them have criminal antecedent. They are facing the *lis* since 1997 and the matter is pending for about 20 years. Therefore, she prays that the accused/Appellants may be sentenced only to the period already undergone by them.
8. Per contra, Learned Counsel appearing for the State, supporting the impugned judgment, opposed the prayer made on behalf of the Appellants.
9. I have heard Learned Counsel appearing for the parties and perused the record with due care.
10. Considering the facts and circumstances of the case and the

submissions put-forth by the parties, particularly, the period suffered by the Appellants in jail, I am of the view that while affirming the conviction imposed upon them sentencing them with the period already undergone by them would serve the interest of justice. Ordered accordingly.

11. Consequently, the appeals are allowed in part to the extent indicated above.
12. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge