

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1282 of 2000**

- Suresh Kumar Nishad, S/o Budhram Nishad, aged about 24 years, R/o Simga, Tihupara, P.S. Simga, District Raipur (C.G.)

---- Appellant/Accused**Versus**

- State of Madhya Pradesh (Now Chhattisgarh), Through Police Station – Simga, District Raipur (C.G.)

---- State/Respondent

For Appellant : Smt. Kiran Jain, Advocate

For Respondent/State : Shri Rahul Tamaskar, Panel Lawyer

Hon'ble Shri Justice Gautam Chourdiya, J**Judgment on Board****07.08.2018**

1. This appeal arises out of the judgment of conviction and order of sentences dated 21.02.2000 passed by Second Additional Sessions Judge, Baloda Bazar (C.G.) in Sessions Trial No. 79/1999, the appellant stands convicted and sentenced as under:-

<u>Conviction:</u>	<u>Sentences:</u>
Under Section 455 of the Indian Penal Code (hereinafter referred to as the 'IPC')	Rigorous imprisonment for seven years and pay a fine of Rs. 500/- and in default of payment to further undergo simple imprisonment for three months
Under Section 392 of IPC	Rigorous imprisonment for seven years and pay a fine of Rs. 1000/- and in default of payment to further undergo simple imprisonment for six months.
Under Section 397 of IPC	Rigorous imprisonment for seven years
All the sentences to run concurrently	

2. Case of the prosecution, in brief, is that on the date of incident 14.06.1998 at about 8:30 AM, complainant- Dr. Sudha Samvel (PW-3) and her mother- Dyna

Samvel (PW-4) were inside the room of their home which is situated in the premise of hospital. Then door-bell rang and her mother opened the door and saw that one unknown person was standing there and told her mother that he came for treatment due to abdominal pain. Her mother was coming inside to tell the complainant, then the accused kept *Katta (Revolver)* on the right side of ear of her mother telling her to close the door. Thereafter, her mother closed the door from inside and the accused told her mother to go inside. At that time the complainant came towards courtyard and she was frightened on seeing this. The accused said them, to give whatever ornaments they are wearing. Then, she (PW-3) and her mother (PW-4) gave chain and tops to the accused and the accused threatened to kill them if they cry. Thereafter, the accused took them inside the room, where the accused took Rs.400 from the purse. The accused tied the hands of her mother and gaged her mouth from cloth and the accused said that if you will report to anyone, he will kill both of them. Thereafter, the accused locked them in the room and also closed the room from outside of door. Prakash Kumar, staff of the complainant, had seen the accused- Suresh Nishad to go inside the room of the complainant, at that time Purjan Sidar was also there with him.

3. Named First Information Report (Ex.-P/2) was lodged by PW-3 – Dr. Sudha Samvel against the accused/appellant under Sections 454 and 392 IPC. As per arrest panchnama (Ex.-P/7), the accused/appellant was arrested on 15.06.1998 and his memorandum (Ex.-P/5) was recorded, based on which one *katta* (revolver) with four cartridges, two golden chains, two pairs of ear rings and Rs.400/- were seized at the instance of the accused/appellant.

4. As per Ex.-P/3, identification of the seized articles from the accused was conducted on 16.07.1998, in which, complainant – Dr. Sudha Samvel (PW-3) and her mother- Dyna Samvel (PW-4) identified their articles and Test Identification Parade (TIP) was also conducted on 03.09.1998, in which, the accused/appellant was identified by the PW-3 and PW-4 vide Ex.-P/4.

5. After investigation, the charge-sheet was filed against the accused/appellant under Sections 455, 392 and 397 IPC and Sections 25(1A) and 27 of the Arms Act and while framing the charges, the trial Judge framed the charge against the accused/appellant under Sections 455, 392 and 397 IPC and charge under Sections 25(1A) & 27 of the Arms Act.

6. The prosecution, in all, has examined as many as 10 witnesses. Statement of the accused was also recorded under Section 313 of the Criminal Code of Procedure, in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. There was no witness examined on behalf of the defence.

7. The trial Court after hearing counsel for the parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant mentioned as para- 1 of this judgment, hence this appeal. The trial Court acquitted the appellant/accused from the charge under Sections 25(1A) & 27 of the Arms Act.

8. Learned counsel for the appellant submitted that the prosecution has failed to prove the guilt of the appellant in crime in question. She further submitted that the appellant is an innocent person and he has not committed any loot or dacoity and has been falsely implicated in this case.

9. On the other hand, counsel for the respondent/State supports the judgment impugned. It has been argued by the State Counsel that the conviction of the appellant is in accordance with law and there is no infirmity in the same.

10. I have heard the counsel for the respective parties and perused the evidence on record.

11. PW-3 – Dr. Sudha Samvel, PW-4 – Dyna Samvel- mother of PW-3, both are

important eye-witnesses of this case.

12. PW-3 – stated, in her statement, that on the date of incident, when accused had rung the door bell of her home, the door was opened by her mother (PW-4). The accused/appellant complaint of pain in his abdomen and wanted treatment from her (PW-3). When this was informed by her mother, she told her mother to call the accused to come after one hour. After sometime, she heard crying of her mother and so she went towards her mother and saw that the accused kept *Katta* (revolver) on the head of her mother and was dragging her mother inside the home. Thereafter, the accused told her to tie the hands of her mother and gaged the cloths in the mouth of her mother. Then the accused looted ear ring, chain from her and her mother and Rs.400-450/-. The accused threatened that if anybody is informed, he will kill them and their family members. Statement of the complainant (PW-3) is supported by her mother- Dyna Samvel (PW-4).

13. PW-3 – Dr. Sudha Samvel and PW-4 – Dyna Samvel also identified their ornaments as per Ex.-P/3 in the identification of articles and also identified the accused/appellant in test identification parade (Ex.-P/4) and identification of articles are not challenged in the cross-examination and they were affirmed in their statements before the Court. There are no reason to disbelieve the evidence of PW-3 and PW-4 and there are no any major contradictions and omissions in the statements of these both witnesses.

14. PW-1 – Prakas Kumar, staff of the complainant, had seen the accused- Suresh Nishad to go inside the room of the complainant. PW-2 – Purjan Sidar also identified the accused/appellant. He stated in his statement that on the date of incident at about 8:00 AM, when he was wandering in the premises of hospital, he saw the accused was going from main-road towards Tilda. There is no reason to disbelieve the evidence PW-2.

15. PW-5 – Deepak Soni is the witness of identification of seized articles

(Ex.-P/3). PW-6 – Prabhat Tamrakar is the witness of memorandum of accused/appellant and seizure of looted articles by accused, including *katta* (Ex.-P/6). There are no contradictions or omissions to disbelieve these witnesses.

16. PW-7 – Istaaz Khan is the witness of identification of seized articles. PW-8 – M.P. Choudhary is formal witness. PW-9 - Yuvraj Singh Kurre, Naib-Tehsildar has proved the TIP. PW-10 – Satyendra Pandey, Investigating Officer, who registered the FIR (Ex.-P/2).

17. I have gone through the entire evidence and material available on record, it is proved that it was the accused/appellant who committed loot with use of deadly weapon *katta* (revolver) loot of golden chains, ear rings of the complainant-PW-3 and her mother-PW-4 and Rs.400/- in their house and the accused/appellant was identified in TIP by the PW-3 and PW-4 and also identified the looted articles in identification. Therefore, I am of the considered opinion and come to the conclusion that the learned trial Court has rightly convicted the appellant/accused under Sections 455, 392 and 397 IPC.

18. I do not find any reason to interfere with the judgment of conviction and order of sentences passed by the trial Court. The appeal has no merits. The same deserves to be and is accordingly dismissed.

19. A report has been received from Office of Jail Superintendent, Central Jail, Raipur (C.G.) dated 07.08.2018 about the status of the accused/appellant. It is stated in that report that the accused/appellant Suresh Kumar Nishad has been released after completion of his sentence awarded to him by the trial Court, therefore, no further order regarding his arrest/surrender etc. is required to be passed.

Sd/-

(Gautam Chourdiya)
Judge