

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 3-12-2018****Delivered on 5-12-2018****CRIMINAL APPEAL No. 2916/1998**

(Arising out of judgment of conviction and order of sentence dated 17-11-1998 passed by 1st Additional Sessions Judge, Ambikapur, Distt. Sarguja, MP (now CG) in S.T. No. 122/1997)

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1. Mustafa, (Accused No. 2) S/o. Mohammad, aged about 26 years, occupation, Painting, R/o. Mohalla Mominpur, Ambikapur, Distt. Sarguja (MP)

2. Kalam (Accused No. 3) S/o. Fakhruddin, aged about 28 years, occupation Painting, R/o. Godhanpur, Police Station Ambikapur, Distt. Sarguja (MP)

----Appellant**-Versus-**

The State of Madhya Pradesh (now Chhattisgarh) through Police Station Dhourpur, District Sarguja (MP).

----Respondent

For appellant : Shri T. R. Chandrakar, Adv.

For State : Shri Ramakant Pandey, PL

Hon'ble Shri Sharad Kumar Gupta, Judge**CAV JUDGMENT**

1. In this criminal appeal, challenge is levied to the judgment of conviction and order of sentence dated 17-11-1998 passed by 1st Additional Sessions Judge, Ambikapur, Distt. Sarguja, MP (now CG) in S.T. No. 122/1997 whereby and whereunder he convicted and sentenced each appellant as under :-

Offence u/S.	Sentence
411, IPC	RI for 3 years

2. In brief, case of the prosecution is that complainant Raghunath Prasad was posted as Forester at Lundra. On 19-1-1997 when he was sleeping in his house, at about 11.30 pm 3 persons who had tied towel on their faces came to his house and looted from him one motorcycle bearing registration No. CIL 9600, one HMT watch, Rs. 600/-, one torch, one briefcase containing official papers. After completing the investigation a charge sheet was filed against appellants, co-accused Jagdish alias Satish, Permeshwar alias Pal, Pintu alias Parmanand. After conclusion of the trial, Trial Court convicted and sentenced the appellants as aforesaid.

3. Shri T. R. Chandrakar, counsel for the appellant at the outset urged that he is not challenging the conviction of the appellants rather he is challenging only the aforesaid period of sentence of RI of 3 years. He further submitted that the appellants have already undergone about 1 month thus the period of RI for 3 years may be reduced to the period undergone by them.

4. Shri Ramakant Pandey, Panel Lawyer argued that aforesaid RI is just and proper and does not call for any interference.

5. At the time of the incident, no minimum imprisonment was provided for the offences punishable under Section 411, IPC. The appellants have remained in jail for 1 month. About 22 years have passed after the incident. At the time of incident, appellant 1 Mustafa was aged 26 years, now he is of 48 years and the appellant No. 2 Kalam was aged about 28 years, now he is 50 years old. Now they are in mainstream of society. Sending them jail would disturb their as well as their family members' life.

Hence, no useful purpose would be served if they are sent to jail after 22 years of the incident. Looking to these circumstances and observation made by Hon'ble Supreme Court in the matter of **Manjappa -v- State of Karnataka** [(2007) 6 SCC 231] this Court is of the opinion that cause of justice would be sub-served, if RI of 3 years is reduced to the sentence for the period already undergone by them and suitable fine may be imposed.

6. Consequently, the appeal is partly allowed. The sentence of each appellant for offence under Section 411, IPC, RI for 3 years is reduced to the period already undergone by them and a fine of Rs. 5,000/- (Rupees five thousand) is imposed on each appellant. In default of payment of fine, each of the appellants shall further undergo RI for 3 months. Out of the total fine amount of Rs. 10,000/-, if deposited, Rs. 5,000/- (Rupees five thousand only) be given to the complainant as compensation, after the expiration of prescribed period of the further legal remedy available to the parties.

7. The appellants are granted two months' time for depositing the fine amount, from the date of this judgment.

8. The appellants are reported to be on bail. Their bail and bonds stand cancelled subject to the provisions of Section 437-A, Cr.P.C.

Sd/-
(Sharad Kumar Gupta)
Judge