

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.810 of 2001**

1. Tamatar @ Chhote Lal, S/o Sitaram @ Thakur Sonkar, aged about 20 years, R/o Hall Camp -II, Near of Milan Chowk, P.S. Bisanpur, District Aazamgarh, U.P.
2. Omprakash, S/o Ram Kishun Lohar, aged about 26 years, R/o Camp-II, Shardapara, Opposite Nishad Seva Samiti, P.S. Chhawani, District Durg, Chhattisgarh

---- Appellants**versus**

State of Chhattisgarh through Police Station Chhawani, District Durg, Chhattisgarh

--- Respondent

For Appellants	:	Ms. Aparajita Gayakwad, Advocate
For Respondent	:	Shri Ramakant Pandey, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****9.7.2018**

1. The instant appeal has been preferred against the judgment dated 24.8.2001 passed by the 2nd Additional Sessions Judge, Durg in Sessions Trial No.385 of 1991 convicting and sentencing each of the accused/Appellants as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 392 read with Section 397 of the Indian Penal Code	Rigorous Imprisonment for 7 years

2. Learned Counsel appearing for the Appellants submits that since Appellant No.2, Omprakash has already completed the sentence imposed upon him by the Trial Court and has already been released from jail on 17.10.2004, she does not want to press the

instant appeal so far as it relates to Appellant No.2. In view of the above submission, the appeal, so far as it relates to Appellant No.2, Omprakash, is dismissed as not pressed.

3. Prosecution case, in brief, is that on 3.9.1991 in the night hours at about 12:30 a.m., Complainant Kaushal Kishore was returning home. It is alleged that at that time, both the accused/Appellants showed him a knife and robbed his purse in which cash of Rs.250/- was kept. At that time, Deepchand reached there and having seen him, both the Appellants ran away from there. Immediately after the incident, First Information Report (Ex.P1) was lodged by the Complainant. During investigation, on the basis of memorandum statements given by the accused/Appellants, purse was seized from Appellant No.2, Omprakash vide Ex.P3 and cash of Rs.10/- was seized from Appellant No.1, Tamatar @ Chhote Lal vide Ex.P4. On completion of the investigation, a charge-sheet was filed against the accused/Appellants for offence punishable under Section 392 read with Section 397 of the Indian Penal Code followed by framing of charges against them under Section 392 read with Section 397 of the Indian Penal Code.
4. After trial, the Trial Court convicted and sentenced the Appellants as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for Appellant No.1 submits that she does not press the appeal against conviction and confines her arguments to the sentence part only. She further submits that during trial, Appellant No.1 remained in custody for about 10 months and after imposition of conviction on him he remained in

custody for about 13 months. The matter is of the year 1991. Therefore, considering the period of detention already suffered by Appellant No.1, the sentence imposed upon him may be restricted to the period already undergone by him.

6. Learned Counsel appearing for the State opposes the submission made on behalf of Appellant No.1 and supports the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. Appellant No.1 has remained in jail for about 2 years. Thus, out of the rigorous imprisonment of 7 years, he has already suffered about 2 years. The matter is of the year 1991, i.e., Appellant No.1 is facing the *lis* for about 27 years. At the time of commission of the offence, he was a young boy of 20 years only. He has no known criminal antecedent. Therefore, in my considered opinion, it would be in the interest of justice to sentence him with the period already undergone by him. Ordered accordingly.
9. Consequently, the appeal is allowed in part to the extent indicated above.
10. 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