

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.235 of 2009**

Santosh Singh, aged about 21 years, S/o. Bablu Singh, R/o. Kharuha, Godaru, Thana Kotma, Distt. Anuppur (MP) at present R/o. Sonmani Club, Dafai, Thana Chirmiri, Distt. Korea (CG)

---- Appellant

Versus

State Of Chhattisgarh, Through the Police Station
Manendragarh Distt. Korea (CG)

---- Respondent

For the appellant : Shri Parag Kotecha, Advocate

For the respondent/State: Shri Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****10.12.2018.**

1. This appeal is directed against the judgment dated 17.3.2009 passed by Second Additional Sessions Judge (FTC), Manendragarh, Distt. Korea (CG) in Session Trial No.13/2008 wherein the said Court convicted both the appellants for commission of offence under Section 392 of the Indian Penal Code, 1860 and sentenced them to undergo rigorous imprisonment for four years and to pay fine of 200/-with default stipulation.

2. As per the case of the prosecution, name of the victim is Khilawan Ram. On 21.8.2007 he along with his friend Virendra were coming to Baikunthpur (Korea) from Nagpur in a motor cycle Hero Honda bearing registration No.CG 16 C/5480. The appellant along with co-accused Dheeraj stopped them and on the point of

weapon they robbed the said motor cycle. The matter was reported and investigated and after completion of the trial, both the accused have been convicted as mentioned above.

3. Learned counsel for the appellants submits as under:

(i) No proper identification parade has been conducted and memorandum of discovery was also not established before the trial Court.

(ii) Version of Khilawan (PW-5) is not corroborated by the evidence of Virendra (PW-6).

(iii) No independent witnesses have been examined in support of their version, therefore, charges levelled against the appellant are not established even then the trial Court convicted him which is liable to be set aside.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record.

6. Khilawan (PW-5) deposed that on the date of incident he was coming with Virendra in motor cycle as mentioned above and when they reached in Chirimiri Rail crossing, present appellant along with co-accused Dheeraj stopped them, then they forcibly threw Virendra from motor cycle and again they forcibly threw Khilawan from the motor cycle and on the point of knife they robbed their motor cycle and fled away from the spot. Version of

this witness is supported by the version of Virendra (PW-6). These witnesses have been subjected to searching cross-examination but nothing could be elicited from them in favour of the defence. Again version of these witnesses is supported by the version of Ashish Saxena (PW-10) who is the Tahsildar/ Executive Magistrate and he conducted identification parade at the Rest House of the Public Works Department, Chirimiri. As per the version of this witness, Khilawan and Virendra have identified both the accused persons. This witness is the official witness and remained unshaken during cross-examination.

7. It is established that present appellant along with co-accused have performed the offence of robbery. Though some of the witnesses have not supported the version, but the fact remains that they were not present on the spot and they were not the real witnesses of the incident, therefore, their version is not reliable. Minor contradictions which do not go to the root of the case are insignificant and therefore, minor contradictions have no adverse affect to the entire case of the prosecution.

8. Looking to the evidence in its entity, the trial Court opined the charges under Section 392 is established. This Court has no reason to record a contrary finding.

9. Heard on the point of sentence.

The appellant has suffered the jail sentence from 31.8.2007 to 11.5.2009, i.e. about one year and nine months. This Court is of the view that no useful purpose would be served by sending him to jail again and ends of justice would be served if the sentence is reduced to the period already undergone by him while

maintaining the fine amount imposed by the trial Court. It is ordered accordingly.

10. With this modification the appeal is allowed in part.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**

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