

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 162 of 2014**

- Dilip @ Pathu S/o Ram Charan Yadav aged about 28 Years R/o In front of Masjid, Supela, Village Purai, PS Utai, Tahsil and Distt. Durg C.G. Civil & Rev. Distt. Durg C.G. , Chhattisgarh

---- Appellant**Versus**

- State of Chhattisgarh Through PS Utai Distt. Durg C.G. , Chhattisgarh

---- Respondent

For the Appellant : Mr. Shashi Kumar Kushwaha, Advocate.

For the State/Respondent : Mr. N.K Mehta, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Judgment on board

29/11/2018

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 30.12.2013, passed by the 6th Additional Session Judge, District- Durg, Chhattisgarh, in Sessions Trial No.64/2005, convicting the accused/appellant under Section 392/397 of Indian Penal Code (for short 'IPC') and sentencing him to undergo RI for 7 years.
2. The prosecution case, in brief, is this that on 3.3.2004 at about 9 pm complainant Laxmikant Chandrakar PW-12 was going on his motorcycle from village-Risama to VIP Nagar Risali. On the way, members of Maoist group stopped the complainant and looted Rs.1,000/- & one wrist watch from the complainant on the point of knife & sickle. FIR ExP-7 was lodged by the complainant based on

which investigation was done. During investigation, the appellant was apprehended and at their instance, recovery and seizure of cash & wrist watch of the complaint was made. The appellant was identified by the complainant in the TIP(Test Identification Parade).

3. On completion of investigation, the charge sheet has been filed before the concerned Court. Charges under Sections 392 & 397 of IPC were framed against the appellant, he denied the same and sought for trial. Appellant was examined under Section 313 of CrPC in which he denied all the incriminating evidence appearing against him, pleaded innocence and false implication. No witness was examined by appellant in his defence.
4. It is submitted by counsel for the appellant that as per report received from the concerned jail authority, the appellant has already been released from jail after serving out the entire substantive sentence imposed upon him by the trial Court. Even then, it is submitted that the appellant has been falsely implicated in the present case and has been convicted & sentenced by the trial Court without there being any evidence to sustain the conviction & sentence. Incident is said to have taken place in the night of 3.3.2010 and thus the prosecution witnesses did not have sufficient opportunity of identifying the present appellant as one of robbers. He further submitted that no incriminating article has been seized from the present appellant connecting him with the crime in question. Therefore, the prosecution witnesses identifying him in the said identification parade, cannot be treated to be reliable for convicting and sentencing present appellant.

Hence, the conviction of appellant under Section 392/397 is bad in law and fit to be set aside.

5. Learned counsel for the State has opposed the grounds raised in this appeal as also the arguments advanced by the counsel for the appellant. It is submitted that prosecution has proved its case beyond doubt. The judgment impugned passed by the trial Court is strictly in accordance with law and needs no interference by this Court in exercise of its appellate jurisdiction. Hence, the appeal is liable to be dismissed.
6. I have heard learned counsel for the parties and perused the record of the trial Court including the impugned judgment.
7. The question that requires determination in this appeal is as to whether the prosecution has been able to establish guilt of accused/ appellant, on the basis of evidence beyond reasonable doubt ?
8. After perusing and closely scrutinizing the entire evidence available on record, it is apparent that the trial Court elaborately considered the evidence of each individual material witness in detail and that being the position, this Court is the opinion that the trial Court has not committed any mistake in arriving at a conclusion that the appellant is guilty for the offence punishable under Sections 392/397 of IPC. Hence, this appeal has no substance, the same is liable to be dismissed and is hereby dismissed.
9. Since the appellant has already served the period of rigorous

imprisonment to which he was sentenced, no further direction regarding his surrender etc. is needed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nisha