

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 935 of 2013**

Rajendra Nayak S/o Trinath Nayak Aged About 25 Years R/o
 Kundrapara Shanti Nagar Raipur, Ps Civil Line Raipur, Tah.
 And Distt. Raipur C.G. Civil And Rev. Distt. Raipur C.G. ,
 Chhattisgarh **-- Petitioner**

Versus

State of Chhattisgarh through P.S. Civil Line Raipur, Tah. &
 Distt. Raipur C.G. Civil & Rev. Distt. Raipur Chhattisgarh
--- Respondent

For the Appellant	:	Ms. Sangeeta Mishra, Advocate
For the State	:	Mr. Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****10.02.2017**

1. This appeal is against the Judgment/order dated 13th June 2013 passed by the Court of 7th Addl. Sessions Judge, Raipur in Sessions Trial No. 169/2012 whereby the appellant was convicted u/s 394 of IPC and sentenced to undergo R.I. for 5 years. He was further directed to pay a fine of Rs.500/- u/s 394 of IPC, in absence of payment of fine, to undergo additional R.I., for 3 months.
2. As per the prosecution case, complainant David Das was a student of XIth class and is resident of Meeranagar, Raipur. On 21.03.2012 while he was going to the residence of his tutor Danish Sir for attending tuition classes, on the way at about 7.00 p.m., near Ekta Nursing home at Raja Talab one person met him and asked him to give the mobile to make an urgent call. When he refused to give the mobile the accused disclosed his name to be Rajendra and he was mischief-monger of the area and thereafter at knife point

snatched the mobile and Rs.10/- from his pocket and also slapped him. Further threat was extended that the complainant should not appear in that area and also threat was made not to make report to police. Subsequently when the complainant disclosed the incident to the tutor Danish Sir and his father, the report was made and the appellant was arrested. On his memorandum, the mobile was seized.

3. During the course of trial, the appellants abjured the guilt and claimed to be tried. In order to prove the guilt of accused, the prosecution had examined 8 witnesses. The trial Court after evaluating the entire evidence, convicted and sentenced the accused as aforesaid. Hence this appeal.
4. Learned counsel for the appellant would submit that a trivial dispute had given the colour of offence like nature and the other circumstantial evidence would show that there was no *mens-rea* in this case. It is further contended that the evidence of the witnesses would show that false allegations have been made, therefore, the order of the court below may be set aside.
5. Per contra, learned State Counsel supports the judgment of conviction and order of sentence passed by the trial Court and submit that the judgment/order is well merited which do not require any interference.
6. The complainant in this case has been examined as P.W.1 wherein he stated that on the date of incident at about 7.00 p.m., while he was going to attend tuition classes, on the way near the turning point of Ekta Nursing at Shanti Nagar, two persons came to him and asked him the mobile to call urgently. On which, the complainant asked them to tell their

mobile number so that he would connect the same. Thereafter he was taken to a corner and when he was noting down the mobile number, one of the accused caught him from behind and the appellant took out a knife and placed it on the abdomen and demanded money. When the complainant disclosed that he do not have anything, on which accused Rajendra Naik forcibly took out the mobile from his pant pocket and further took out Rs.10/- from his back pocket and they have fled from the scene alongwith mobile and cash and the complainant was advised to rush back. Thereafter, the complainant reached to the tuition center where he disclosed the incident to tuition sir Danish Tanwir. Thereafter he disclosed this fact to the father of complainant who in turn made a report by Ex.P-1. The suggestion given to the complainant that the appellant was known to him and he only requested to make call has been denied. The fact that immediately the incident was reported to the father of complainant i.e., P.W.2 Alind Das is corroborated by P.W.3 Danish Tanwar, the tuition teacher.

7. The investigating officer Smt. Sandhya Dwivedi (P.W.6) has stated that the appellant was arrested on 02.4.2012 and the memorandum of appellant was taken vide Ex.P-4. Thereafter as per Ex.P-5 the seizure was made and from the house of the appellant from Almirah, the mobile was seized. The said seizure and memorandum have not been rebutted by the appellant. Dr. P.Lal in this case was examined as P.W.8. He has examined the victim and only certain pain in the neck was reported. Except that, no evidence is on record.
8. If the statement of P.W.1, the victim is examined as a whole,

it would show that on the knife point the mobile was looted and according to the complainant the the map was prepared vide Ex.P-2 which has also not been rebutted by the appellant. Though the complainant has stated that loot was committed on the knife point but the statements of prosecution witnesses would show that the weapon of offence i.e., knife which was used has not been proved beyond doubt by the prosecution. Consequently taking into the nature of allegations and the statements of witnesses, it would show that the statement of P.W.1 the victim remained unrebutted and thereby the finding of the court below that the appellant has committed offence u/s 394 IPC is held to be justified. Accordingly, the conviction of the trial Court is affirmed.

9. With respect to the sentence, it appears that the appellant has already suffered the jail sentence as he was arrested on 02.04.2012 and he has been granted bail on 20.12.2016 and as such the accused had completed the jail sentence of more than 4 years and 8 months. Taking into fact that the incident took place on 21.03.2012 and the appellant has already undergone the jail sentence of 4 years and 8 months, I am of the opinion that the interest of justice will be sub-served if the sentence is held as undergone. Accordingly, the period of jail sentence suffered by the appellant is held as undergone and the fine is maintained.
10. With the above observation, this appeal stands disposed of.

Sd/-
GOUTAM BHADURI
JUDGE