

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 2927 of 1999**

1. Gudda @ Ramesh Sahu, S/o Ramlal Teli, aged 25 years, R/o Village Bhanpur, PS Surajpur, District Surajpur (M.P.) now (C.G.)

---- Appellant**Versus**

1. State of Madhya Pradesh Now Chhattisgarh.

---- Respondent

For Appellant	:	Smt. Savita Tiwari, Advocate.
For Respondent	:	Shri Vikas Shrivastava, P.L.

CRA No. 3040 of 1999

1. Ram Bilas Sahu, aged about 26 years, S/o Ram Prasad Sahu, R/o Village- Manpur, P.S. Soorajpur, District Serguja, (M.P.) now (C.G.).
2. Santosh Kumar Tiwari, S/o Pradumn Tiwari, aged about 28 years, R/o Premnagar, P.S. Premnagar, District, Serguja (M.P.) now (C.G.).

---- Appellants**Versus**

1. State Of Madhya Pradesh now Chhattisgarh.

---- Respondent

For Appellants	:	Smt. Savita Tiwari, Advocate.
For Respondent	:	Shri Vikas Shrivastava, P.L.

Hon'ble Justice Shri Gautam Chourdiya**Judgment On Board****11/07/2019**

- 1) Since both these appeals filed under section 374 of Code of Criminal Procedure, 1973 arise out of the common judgment of conviction and order of sentence dated 12/10/1999 passed by Sessions Judge, Surguja (Ambikapur) (M.P.) now (C.G.) in Session Trial No. 211/98, they are heard together and are being disposed of by this common judgment.

- 2) By the judgment impugned appellant Gudda @ Ramesh Sahu in Criminal Appeal No. 2927/1999 **and** Ram Bilas Sahu & Santosh Kumar Tiwari in Criminal Appeal No. 3040/1999 stand convicted and sentenced as under:-

Name of accused	Conviction	Sentences
Gudda @ Ramesh Sahu	U/s. 392 of Indian Penal Code	R.I. for 5 years & fine of Rs. 8,000/- in default of payment; eight months imprisonment
Ram Bilas Sahu	U/s. 392 of Indian Penal Code	R.I. for 5 years & fine of Rs. 8,000/- in default of payment; eight months imprisonment
Santosh Kumar Tiwari	U/s. 392/397 of Indian Penal Code	R.I. for 7 years & fine of Rs. 8,000/- in default of payment eight months imprisonment.

The Trial Court further directed that the entire amount of fine i.e. Rs. 24,000/- shall be payable to the complainant under section 357 of Cr.P.C. as compensation towards the damage caused to his motorcycle.

- 3) As per Ex. P-1 (F.I.R.) Ganeshwar Prasad aged about 42 years R/o Village Ghunchapur was going towards his home from School by riding motorcycle Rajdoot bearing registration No. MP27 C 8208. On the way three persons namely Santosh Kumar Tiwari, Ram Bilas Sahu and one unknown person stopped his vehicle. One of them was having sword in his hand and one accused had Club and another was empty handed. They asked the complainant Ganeshwar Prasad to drop them at village Lalati, on which complainant replied that he is not capable to ride the vehicle with four persons. Then one of them rode the vehicle and complainant was sitting as pillion rider on backside of the motorcycle. When they reached Village Lalati, the Ganeshwar Prasad asked the accused to stop the vehicle but he did not stop and drove away. However, the rider of the motorcycle lost control over the vehicle as a result of which the motorcycle skidded and all of them fell down. Thereafter, all the three accused threatened him of life and took away his motorcycle. Out of fear he could not do anything and move away

towards his village on foot. On the way Secretary of the Gram Panchayat met him, to whom he informed about the incident and the Secretary also informed him that he saw three boys going by motorcycle near Somtari. Thereafter, the Secretary dropped him at village Lalati and from there he went to his village Ghunchapur and informed about the incident to Sarpanch and others. Thereupon Ramendra Singh Kanwar and some other boys of Ghunchpur informed that they saw some boys going from Dumerpani and they recognize two of them i.e. Santosh Kumar Tiwari of Premnagar area and Ram Bilas Sahu of Surajpur area. However, the third boy was unknown to them. Thereafter, he alongwith Ramendra Singh Kanwar came to Udaipur and inquired about his motorcycle and the said boys, on which he came to know that these three boys met with accident at Surhul. When he (Ganeshwar Prasad) went to Surhul he came to know that these injured boys and the motorcycle were taken by Bus to Premnagar. However, it being night he did not go to Premnagar on that date. On the next day on 01/01/1998 report was lodged by Ganeshwar Prasad on which offence under section 398 read with 34 of IPC was registered against Santosh Kumar Tiwari, Ram Bilas Sahu and one unknown person. As per Ex. P-13 motorcycle was seized by Police of Police Station Premnagar. After investigation charge sheet was filed against three accused Gudda @ Ramesh, Santosh Kumar Tiwari and Ram Bilas Sahu under Section 392, 397, 398 and 34 of I.P.C. Learned Trial Court framed charge against three accused under section 392 & 397 of I.P.C. which was denied by the accused person.

- 4) The prosecution in support of its case examined as many as 10 witness namely PW-01 Ganeshwar Prasad (complainant), PW-02 Ramendra Kumar Singh, PW-03 Shyam Sunder Jaiswal, PW-04 Ghurdas, PW-05 Amarnath Singh, PW-06 Dr. Satyaketu Gupta, PW-07 Kailash Mirri, PW-08 M.K. Singh, PW-09 Baijnath Ram(Head Constable), PW-10 Dulardas. The statements of the accused person were also recorded under section 313 of Cr.P.C. in which they denied the circumstances appearing against them

in the prosecution case and pleaded innocence and false implication. However, no witness was examined by them in defence.

- 5) Learned Trial Court after hearing counsel for the parties considering the material available on record convicted and sentenced the accused as mentioned above.
- 6) Learned counsel for the appellants submitted that in this case, no any theft or loot committed by accused and ingredients of theft, loot or use of deadly weapon for attempt to loot are not proved by the prosecution. As per statement of complainant, he himself admitted that with the permission of complainant, vehicle was taken by appellants, no any threatening or attempt of loot was committed by the accused.
- 7) On the other hand learned counsel for the respondent State supports the impugned judgment of the Trial Court.
- 8) Heard counsel for the parties and perused the material available on record.
- 9) PW-01 Ganeshwar Prasad in Para-2 of his cross examination has stated that while he was going by motorcycle to his village the accused persons met him on the way and asked for dropping them at village Lalati and when he expressed his inability to ride the motorcycle being a learner, accused Gudda @ Ramesh took the motorcycle for riding and other accused Santosh Kumar Tiwari and Ram Bilas Sahu sat behind him and this witness/ complainant sat on the carrier. In Para-4 he states that when they reached at the turning near village Khondla the motorcycle skidded. When he asked the accused persons to stop the vehicle at village Lalati, they asked for dropping them up to Tar (Pakki Sadak) road. He further states that accused persons took away the vehicle from Khondla turning and out of fear he could not stop them. Though in Para-3 he has stated that one accused Santosh Kumar Tiwari was having a Sword and Ram Bilas Sahu was having a Club but nowhere he has stated that the accused

persons threatened them with the said weapon. Rather in para-23 he admits that the accused persons did not loot his motorcycle but the same was taken away with his consent and permission. Further in Para-23 he admits that he lodged report on the next day of accident because his motorcycle had got damaged.

- 10) Complainant PW-01 Ganeshwar Prasad himself admitted this fact that the vehicle motorcycle was taken by the accused/appellant with consent of the complainant Ganeshwar Prasad and they are not looted their vehicle, therefore, this not a case of theft and loot. As per PW-02 Ramendra Kumar Singh also admitted this fact in para 2 that Ganeshwar Prasad informed him 3 persons requested to Ganeshwar Prasad to drop at Lalati. PW-02 Ramendra Kumar Singh has turned hostile and he has not supported the prosecution case regarding the loot. PW-03 Shyam Sunder Jaiswal only proved this fact that one motorcycle was found between village Dandgaon and Surhul in accident condition and one constable was sitting near the motorcycle. PW-03 has not stated anything regarding loot. PW-04 Ghurdas only proved this fact that one Sword was seized from accused Santosh Kumar Tiwari according to Memo and Seizure but whether that weapon is used in crime has not been stated by witness. No any threatening was given by the accused. Looking to the entire evidence of prosecution, no theft and loot was made out by the accused. With the consent of complainant who is the owner of the motorcycle, accused had taken his motorcycle and were riding the motorcycle with the permission and consent of complainant. Therefore, ingredients of offence under Section 379, 392 and 397 of I.P.C. are not proved by the prosecution. Complainant himself admitted that his vehicle is found in accident condition, therefore, he lodged FIR.
- 11) The accused/appellants in their statement under section 313 of Cr.P.C. and have specifically stated that motorcycle was not looted by them, it was given by the complainant himself for riding of his own free will and he was accompanying them for dropping

up to the Tar road.

- 12) Section 390 of I.P.C. defines Robbery which reads as under:-

“In all robbery there is either theft or extortion.

When theft is robbery — *Theft is “robbery” if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.*

When extortion is robbery — *Extortion is “robbery” if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.”*

- 13) Considering the facts and circumstances of the case, the manner in which the incident occurred, the specific admission of the complainant in his disposition before the Court, the fact that there is nothing on the record to show that the accused persons used the weapons carried by them for threatening or putting in fear the complainant during the course of incident, this Court is of the opinion that the basic ingredients for attracting the offence under section 392/397 of I.P.C. are completely missing in this case. Being so, the Trial Court was not justified in convicting and sentencing the accused/appellants under section 392/397 of I.P.C. because the prosecution has failed to prove this case against the appellants beyond reasonable doubt and as such they are entitled to be acquitted of the charge under section 392 of I.P.C. by extending them benefit of doubt.

- 14) In the result, both the appeals are allowed. The impugned judgment is hereby set aside. The accused/appellants are

acquitted of the charges under section 392/397 of I.P.C. respectively. They are reported to be on bail, therefore, their bail bond shall continue for a period of six months from today in view of provision of section 437A of Cr.P.C.

**-Sd/-
(Gautam Chourdiya)
Judge**

Chandrakant