

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 222 of 2009**

Chitwa @ Chitram, S/o Birbal Ram, aged about 20 years, R/o Village- Sakola, P.S.- Gandhi Nagar, District- Surguja, Ambikapur, District- Surguja (C.G.)

---- Appellant**Versus**

The State of Chhattisgarh, Through: Police Station- Jainagar, District- Surguja (C.G.)

---- Respondent

For Appellant : Mr. Amiyakant Tiwari, Advocate.

For State/respondent : Mr. Ravish Verma, Govt. Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****18/03/2019**

1. Mr. Goutam Khetrapal, Advocate has been engaged for arguing the case on behalf of the appellant. Despite repeated calls, he has not appeared when the case is called for final hearing, therefore, Mr. Amiyakant Tiwari, Advocate, who is present in the Court has been appointed as *Amicus Curiae* to argue the case on behalf of the appellant.
2. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 26.12.2008 passed by Second Additional Sessions Judge (FTC), Surajpur, District- Surguja (C.G.) in Session Trial No. 21/2007, wherein the said court convicted the appellant for commission of offence under Section 394 read with Section 397 & 34 of

IPC, 1860 and sentenced to undergo R.I. for 10 years and fine of Rs. 100/- with further default stipulations.

3. As per version of the prosecution, the appellant and other co-accused persons on 16.01.2006 at about 10.00 p.m. committed robbery of Rs. 2000/- from complainant- Sushant Kumar (PW-6) when he was going to his house Subhash Nagar from Village- Silfili. The matter was reported, the appellant was charge-sheeted and after completion of trial, the trial court convicted as mentioned above.
4. This appeal is preferred on the following grounds :-
 - (i) There is no reliable evidence to warrant conviction of the appellant, but the trial court recorded finding of conviction on the basis of unreliable testimony of complainant- Sushant Kumar (PW-6) & Manful Guldar (PW-7).
 - (ii) Complainant- Sushant Kumar (PW-6) identified Vinod Prajapati and he did not identify the present appellant, therefore, conviction of the appellant is bad in law.
 - (iii) The finding arrived at by the trial court is based on conjectures and surmises, therefore, the same is liable to be reversed.
5. Learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

6. The case of the prosecution is based on identification parade of the appellant. Identification parade was conducted on 7th February, 2006 at Sub-Tahsil Office- Vishrampur. Irshad Ahmed (PW-18) & Jagannath Verma (PW-20) are Executive Magistrates, who conducted identification parade of the appellant. As per version of Irshad Ahmed (PW-18), he conducted identification parade and Sushant Kumar (PW-6) & Manful Guldar (PW-7) have identified the appellant as culprit. These witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence.
7. There is no reason for victim of the offence Sushant Kumar (PW-6) & Manful Guldar (PW-7) to rope the present appellant in false charge or to identify him on account of any grudge, therefore, it is established that the offence of robbery was committed by the appellant on the date of incident against Sushant Kumar. Looking to the entire evidence on record, it cannot be said that the finding of the trial court is based on irrelevant material placed on record or on extraneous material, therefore, argument advanced on behalf of the appellant is not sustainable.
8. From the evidence, it also appears that the appellant was in company of other co-accused, who were in possession of country made revolver and other sharp object which is deadly weapon, therefore, it is established that at the time of commission of robbery, the offender uses deadly weapon.

9. The trial court has elaborately discussed the entire evidence and after reassessing the evidence, this Court has no reason to record contrary finding. Commission of offence by the appellant is offence punishable under Section 394 read with Section 397 & 34 of IPC for which the trial court awarded the appellant with imprisonment for 10 years. Conviction of the appellants is hereby affirmed.

Heard on the point of sentence

10. The trial court awarded R.I. for 10 years which cannot be termed as harsh, disproportionate or unreasonable looking to the gravity of offence because as per Section 397 of IPC, the minimum sentence which can be imposed is 7 years, therefore, the same is not liable to be interfered with. The sentence part is also not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.
11. It is reported that the appellant has suffered full jail sentence and has been released from jail after getting benefit of remission, therefore, no further order of arrest etc. is required.

Sd/-
(Ram Prasanna Sharma)
Judge