

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 44 of 2011

- Moti Lal Pando @ Moti S/o Bandhu Ram Pando, aged about 26 years, R/o Sonhatpara, Tokadand, P.S.-Raghunathnagar, Distt.-Surguja, C.G.

---- Appellant

Versus

- State Of Chhattisgarh Through P.S. Raghunathnagar, District Surguja (C.G.)

---- Respondent

For Appellant	:	None.
For Respondent	:	Mr. KK Dewangan, Dy. G.A.

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

26/07/2019

1. By the impugned judgment dated 28/08/2010 passed in S.T. No. 193/2008 by the learned Upper Session's Judge (FTC), Pratappur, District Surguja (C.G.), the Appellant has been convicted for offence punishable under Sections 458 & 397 of the Indian Penal Code and Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for 7 years and to pay fine of Rs. 500/-, rigorous imprisonment for 10 years and to pay fine of Rs. 500/- and rigorous imprisonment for 3 years and to pay fine of Rs. 500/- respectively, with default stipulations. All the sentences

to run concurrently.

2. According to prosecution story, Appellant Motilal along with other co accused armed with deadly weapons, came to the house of complainant Ramnandan and with the help of one neighbour namely Anandi Ram awoke the complainant who opened the door at the voice of Anandi Ram. Thereafter, accused Motilal assaulted his sons and demanded from him for a sum of Rs. 10,000/-. Due to fear and save his life, Ramnandan handed over total Rs. 8,500/- which he had kept. Upon this, Appellant Motilal warned him to give the rest amount lateron and also threatened to kill him in case if he would report this matter to police. Thereafter, the matter was reported by complainant vide **Ex.P-25**, on the basis of said report, initially offence under Section 458 & 380 of the IPC has been registered. During course of investigation, on the basis of memorandum statement of the Appellant, Rs. 200/- and 1 swarm gun has been seized from him vide **Ex. P-6**, other articles and some cash has been seized from other co-accused persons. After getting enquired, sanctioned from competent authority, charge-sheet has been filed against the Appellant as well as other co-accused persons namely Gulab @ Budhi Chekha, Bihari Lal Chekha, Lalji, Meghlal and Ramsagar. Other co-accused persons namely Ram Dayal, Lalsay, Rajesh and Dhanpal were declared absconded. Trial Court has framed the charges against the Appellant for the offence punishable under Section 458, 395 r/w 397 & 323 of the IPC and Section 25 & 27 of the Arms Act and

framed charges against Biharilal, Ramsagar and Lalji under Section 458, 395 r/w 397 & 323 of the IPC. To prove the guilt of the Appellant, the prosecution has examined as many as 12 witnesses. No defence witness has been examined. Statement of the Appellant under Section 313 of the Cr.P.C. was recorded, wherein he has pleaded their innocence and false implication in the matter.

3. After trial, the trial Court has acquitted co-accused Biharilal, Gulab, Ramsagar and Lalji from all the charges. Trial Court has also acquitted the Appellant for offence punishable under Section 323 of the IPC. However, Trial Court has convicted and sentenced the Appellant for rest of the offence as mentioned in paragraph one of this judgment. Hence, this appeal.
4. A certificate of incarceration dated 24.07.2019 sent by the Jail Superintendent, Central Jail, Ambikapur would mention that the Appellant has undergone the entire jail sentence imposed upon him by the Trial Court and already released on 26.01.2014.
5. Since no one appears for the Appellants today, I decide this appeal on merits.
6. I have heard Learned Counsel appearing for the State and perused the record to assess the correctness of the impugned judgment of conviction.
7. That, PW-5 Anandi Ram, neighbour of the complainant has

deposed that on the date of incident at about 12 PM, two persons entered inside his house, one was kept swarm gun and the another one was kept *Farsa*. They told him to knock the door of the complainant due to fear he did the same and thereafter they went to the house of complainant as stated by this witness. One of them was Appellant Motilal and 10-12 co-accused persons were also along with them. Thereafter, after knocking the door by Anandi Ram, complainant had opened the door all the assailants were demanded for Rs. 10,000/- from the complainant. They have assaulted him and also threatened him to kill. Due to fear, the complainant has given Rs. 8,000/- which he kept. This witness further deposed that they had told the appellant that they will come again for rest of the demanded amount and by saying this they were fled away from their. This witness further deposed that after 20-22 days they came again and told him again to knock the door of the complainant. He again did the same due to fear, the complainant had fled away from his house and came along with police officials. Thereafter all the assailants were fled away from the spot. PW-6 Ramnandan stated that on the date of incident at night Anandi Ram came to his house and told him to open the door, after opening the door he saw that 10-12 persons were standing laced with weapons and demanded Rs. 10,000/- from him. They have also threatened him and his son to kill. Due to fear he handed over Rs. 8,500/- to them which he kept. Thereafter, he reported the matter vide **Ex.P-25. PW-8** Bijendra

Kumar son of **PW-6** has also supported the above statements of his father and stated like him. **PW-6** Ramnandan has identified the Appellant in his Court statement. **PW-9** ASI Samar Say has deposed that while recording memorandum statement of the Appellant vide **Ex.P-5** he seized Rs. 200/- and one swarm gun from his possession vide **Ex. P-6**. Seizure witness Phool Say Singh also supported this fact in his Court statement. **PW-2** OP Singh has proved the sanctioned order vide **Ex. P-20** which was accorded from the Collector Surguja (C.G.).

8. From the above evidence available on record, it is clear that on the date of incident the Appellant laced with swarm gun along with other assailants had gone to the house of Complainant Ram Nandan and looted Rs. 8,500/- from him. It is also well established that from the possession of the Appellant the said swarm gun has been seized vide **Ex. P-6**. There is sufficient evidence available on record against the Appellant. Thus, the learned trial Court has rightly convicted the Appellant.
9. Consequently, the appeal has no merit and the same is liable to be and is hereby dismissed.

Sd/-
(Arvind Singh Chandel)
Judge