

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 681 of 2017

Order Reserved on : 17.07.2019

Order Delivered on : 31.07.2019

- Jagga Singh, Aged About 30 Years, S/o Geli Singh, R/o Gandhi Nagar Ward, Jagdalpur Police Station Bodhghat, District Bastar, Chhattisgarh

---- Applicant

Versus

- State of Chhattisgarh, Through District Magistrate Bastar, District Bastar, Chhattisgarh

---- Respondent

For Applicant	:	Shri Vivek Shrivastava, Adv.
For Respondent/State	:	Shri Wasim Miyan, PL

Hon'ble Smt. Justice Rajani Dubey

C.A.V. ORDER

The present revision arises out of the impugned order dated 02.06.2017 passed by the Learned Session Judge Bastar at Jagdalpur, in Criminal Appeal No. 02/2017, whereby the learned appellate Court below has affirmed the conviction and sentence of the accused/applicant as awarded by the learned Chief Judicial Magistrate, Jagdalpur, vide its judgment dated 16.12.2016 in Cr. Case No. 295/2010 for the offence under Section 394 of the IPC, and sentenced him to undergo RI for three years along with fine of Rs. 1000/- with default stipulation.

2. Brief facts of the case are that on 05.05.2010, complainant Harishchandra was going to Jagdalpur from Raykot on his jeep bearing

registration number CG-17/ZD 0209, when he reached near Pandripani Chowk, at about 2.00 p.m. the applicant stopped his jeep and demanded Rs.20/-, when complainant refused to give the money the applicant looted Rs.1200/- and assaulted him. FIR was lodged by the complainant against the applicant at police station-Fajerpur. After filing of charge-sheet, charges were framed against the accused/applicant under Section 394 of the IPC.

3. So as to prove the guilt of the accused/applicant, the prosecution has examined 06 witnesses. Statement of the accused/applicant was also recorded under Section 313 of the Cr.P.C. in which he denied the charges leveled against him and pleaded innocence and false implication in the case.

4. After hearing the parties, vide impugned order dated 16.12.2016, learned Judicial Magistrate First Class has convicted the accused/applicant under Section 394 of the IPC, and sentenced him to undergo RI for three years along with fine of Rs. 1000/-, plus default stipulation. This order was appealed by the applicant and in the appeal, learned appellate Court has confirmed the conviction and sentence of the applicant. Hence, the present revision.

5. Heard counsel for the parties and perused the material on record including the impugned order.

6. Counsel for the applicant submits that the order passed by both the Courts below are contrary to law and looking into the facts and circumstances of the case that the order passed by the learned trial Court suffers from material illegality and findings recorded by the trial Court are perverse. The learned lower Appellate Court also committed

serious error of law by confirming the judgment of the trial Court despite no clinching evidence available against the applicant. There are major contradictions and omissions in the statement of the prosecution witnesses and, therefore, the impugned order conviction is liable to be set aside. In alternate, he submits that he is not pressing this revision as far as it relates to the conviction part of the order and would confine his argument to the sentence part thereof only. According to him, the incident is said to have taken place in the year 2010 and thereby more than 10 years have rolled by since then, he is aged about more than 45 years, the applicant has already remained in jail for about ten months and no useful purpose would be served in again sending him to jail. Therefore, it would be in the interest of justice if the sentence imposed on him may be reduced to the period already undergone by him.

7. Learned State counsel has no objection to this proposition.

8. Having gone through the material on record and the evidence of the witnesses including Harishchandra Kashyap (PW-1), Chandu Vishwakarma(PW-2), Dr. Govind Singh (PW-3), Ramdev Sethiya (PW-4), Dr. Sanat Singh (PW-5) and Shyamlal Nishad(PW-6)establishes the involvement of the accused/applicant in the crime in question, this Court does not see any illegality in the findings recorded by both the Court below as regards conviction of the applicant under Section 394 of the IPC, being so, is hereby maintained.

9. As regards sentence, keeping in view the fact that the incident had taken place in the year 2010 and further that the applicant has already remained in jail for about ten months, the revision is partly allowed. Conviction part of the impugned order is maintained. Applicant

is reported to have remained in jail for a period of more than ten months, his sentence is reduced to the period already undergone by him.

10. The applicant is reported to be in jail. He be set at liberty forthwith, if not required in any other case.

11. Revision thus partly succeeds.

Sd/-
(Rajani Dubey)
JUDGE