

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 579 of 2009

1. Mulchand @ Nan Guddu, S/o Devlal, aged about 19 years, R/o Bharidand (Bargawan), P.S. Marwahi, District Bilaspur (CG)
2. Virendra @ Sonu S/o Gendlal, aged about 19 years, Caste Choudhary (Harijan), R/o Bargawan, P.S. Marwahi, District Bilaspur (CG)

---- Applicants

Versus

State Of Chhattisgarh, through Arakshi Kendra - Pendra Chowki - Kotmi, District Bilaspur (CG)

---- Respondent

WITH

CRR No. 604 of 2009

1. Sanjay Das @ Lallu, S/o Rohit Das, aged about 20 years,
 2. Krishan Kumar @ Pappu, S/o Gaya Das, aged about 30 years,
- Both are by Caste – Choudhary (Harijan), R/o Bargawan, P.S. Marwahi, District Bilaspur (CG)

---- Applicants

Versus

State of Chhattisgarh, through Arakshi Kendra - Pendra Chowki - Kotmi, District Bilaspur (CG)

---- Respondent

For Applicants : Mr. Goutam Khetrupal, Advocate

For State/Respondent : Mr. Aman Kesharwani, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

08.05.2019

Having arisen out of the same judgment dated 13.11.2009 passed in Criminal Appeal No.29/2009 affirming the judgment dated 14.10.2009 passed by learned JMFC, Pendra Road in Criminal Case No.165/2009 convicting the accused/applicants under Section 394/34 IPC and sentencing each of them to undergo RI for 3 years with fine of Rs.100/-, these two revisions are being disposed off by this common order.

2. Case as put-forth by the prosecution in brief is that on 17.05.2009 at 11:15 PM when Mohammad Jafar (PW-1) and Mohammad Rafiq (PW-2) were going to their village on motorcycle, the accused/applicants who had put mask on their faces, stopped them on the way, opened assault with clubs and after showing sword and revolver, looted their mobile phones, cash of Rs.4680/- and Rs.2100/- carried by them. They are also said to have looted an amount of Rs.2500/- from one Shyamlal (PW-5). After an un-numbered report being registered at the instance of trio, investigation was set in motion and after arresting and effecting seizure of the articles used in commission of the offence as also the ones which were subjected to loot, the charge-sheet was filed against them under Section 394/34 IPC.

3. Learned trial Court held the accused/applicants guilty under the said Section and imposed the sentence as mentioned above vide judgment dated 14.10.2009 which eventually came to be affirmed by judgment under challenge in these revision petitions.

4. Counsel for the accused/applicants submits that the findings recorded by both the Courts below are based on no evidence and, therefore, the accused/applicants deserve acquittal. He also submits that even the identification of the accused or that of the articles subjected to loot has not been resorted to and for this reason also the conviction of the accused/applicants is liable to be brushed aside. State counsel however lends full support to the judgment under challenge and submits that being a well reasoned verdict, no interference is necessary therewith.

5. PW-1 and PW-2 – the victims to loot have clearly stated that on the date of incident, the accused/applicants waylaid them in the forest, started assaulting them with club and further on the point of sword and revolver decamped with their motorcycle and the cash amount as well. Shyamlal (PW-5) another prey to the rampagous act of the accused/applicants has

also corroborated the testimony of PW-2 and describing the incident as to the manner in which the accused/applicants had pounced on them in the thick forest that too in the dead of night. On the memorandums of the accused/applicants Moolchand, motorcycle was seized under Ex.P-14 from the forest. On the memorandum of accused – Krishna Kumar Ex.P-4 one club, one sword and a cash of Rs.500/- was also seized under Ex. P-12. The seizure of aforesaid articles has also been supported by Aslam Javed (PW-3) and Mohammad Arif (PW-4). All the witnesses have thus fully supported the case of the prosecution and there is nothing for this Court to disbelieve the same. Prosecution is, therefore, has succeeded in establishing the involvement of the accused/applicant in the crime in question. So also, both the Courts below have been justified in convicting the accused/applicants on the basis of the evidence collected by the prosecution. Their conviction under Section 394/34 IPC thus does not suffer from any illegality or infirmity and, therefore, the same stands affirmed.

6. As regards sentence, keeping in mind the fact that the incident had taken place in the year 2009 and the accused/applicants have already remained in jail for about 5 and a half month, this Court is of the opinion that interest of justice would be met if the sentence imposed on them is reduced to the period already undergone by enhancing the fine amount. Order accordingly. The fine imposed by the Court below is enhanced to Rs. 3,000/- each from that of Rs. 100/- to be deposited in the trial Court within a period of four months from today. Failure in making such deposit will not make this order available to the applicants.

7. Revisions are thus allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge

