

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 531 of 2019

Johan Patel

Applicant

Versus

State Of Chhattisgarh

Respondent

Post for pronouncement of the judgment on 20.11.2019

Sd/-

JUDGE

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on : 20.08.2019****Judgment Delivered on :20/11/2019****CRR No. 531 of 2019**

- Johan Patel S/o Itwari Ram Patel Aged About 23 Years R/o Hathitikra, Chowki- Naila, Police Station- Janjgir, District- Janjgir- Champa, Chhattisgarh.

---- Petitioner**Versus**

- State Of Chhattisgarh Through The District- Magistrate, District- Janjgir- Champa, Chhattisgarh.

---- Respondent

For Applicant	: Shri R.K.Rathi and Shri Vikas Shrivastava, Advocates
For Respondent /State	: Shri Anil Tripathi, PL

Hon'ble Smt. Justice Rajani Dubey**C A V Order****20/11/2019**

Present revision arises out of the impugned judgment and order dated 26.02.2019 passed by the Sessions Judge, District Janjgir-Champa in Cr.A. No. 6/19 by which the order dated 15.01.2019 passed by the Judicial Magistrate First Class in Criminal Case NO. 695/2018 whereby the conviction of the applicant under Section 458 has been converted to that under Section 452 IPC. However, the trial court has maintained the conviction and sentence under Section 392/34 IPC.

2. Brief facts of the case are that on 26.02.2018, report was lodged by the complainant Umesh alleging that he is an agent of Writer Cash Collection Company and used to collect cash from Govt. Foreign-country made liquor shop, Bamnidih and then deposit the same in the Writer Safeguard Company Cash Van. On 25.02.2018, after collecting cash of Rs. 1,18,320/-, when he was waiting for the van, at about 3.30 a.m. two person came in a motorbike, entered the room and by snatching the bag containing cash of Rs. 1,18,320/-, ran away. It is alleged that mobile of one of the accused fell down on the spot and from which the applicant and co-accused were identified. After completion of investigation, charge sheet was filed and charges were framed against the applicant and co-accused under Sections 458 and 392/34 IPC.

3. So as to prove the guilt of the appicant, prosecution has examined 17 witnesses. Statement of the accused was recorded under Section 313 Cr.P.C. in which he denied the charges levelled against him and pleaded his innocence and false implication.

4. After hearing the parties, by impugned judgment of conviction and order of sentence, Judicial Magistrate First Class, Janjgir-Champa has convicted and sentenced the applicant and the co-accused under Section 458 and 392/34 IPC and sentenced to undergo RI for 15 days u/s. 458 and to undergo RI for one year and fine of Rs. 1,000/- u/s. 392/34 IPC. This order was appealed by the applicant. Learned appellate court modified the conviction under Section 458 to that of 452 IPC and 392/34 IPC however, the sentence has been maintained. Hence, the present revision.

5. Counsel for the applicant submits that the impugned judgment dated 26.02.2019 is bad in law, perverse, erroneous and contrary to the evidence, facts and circumstances of the case and therefore liable to be set aside. He submits that the courts below have failed appreciate that the incident is of road accident which has been given the colour of loot. He submits that the courts below have failed to appreciate that there are contradictory statements of the complainant Umesh Yadav (PW-2), Dilharan (PW-3) and Komal Yadav (PW-4) which cannot be relied upon. The Test Identification Parade conducted by the prosecution is highly doubtful and suspicious. The courts below have failed to prove the memorandum as well as the seizure Ex.P-9 and that the witnesses have also not supported the prosecution case. It is further submitted that the courts below have failed to appreciate that the prosecution has not been able to prove that cash so collected by the complainant from the liquor shop and therefore the judgment of conviction and sentence is liable to be set aside. Reliance has been placed in the matter of Laxman Balram Vs. State of M.P. (1998 (2) MPLJ 431) and State of Punjab Vs. Gurnam Singh (1984 (Supp.) SCC 502).

6. ON the other hand, counsel for the State supported the impugned judgment of conviction and order of sentence.

7. Heard counsel for the parties and perused the material available on record.

8. Complainant Umesh Yadav (PW-2) has stated in his examination-in-chief about the incident. Dilharan (PW-3) has also given similar statement as has been stated by the complainant.

Shashikant Shriwas (PW-5) and Parmeshwar (PW-6) have stated that they have been informed by the complainant about the incident.

Defence of the applicant is that the complainant Umesh and his friends have falsely implicated him in the present case and that Umesh himself has snatched the mobile and on being abused by them, a false report of loot has been lodged by the complainant. Counsel for the applicant submits that the applicant is serving in Army and that he came to his village to spend holidays.

9. In the present case, the complainant reported the matter at police station that Rs. 1,20,000/- has been looted and that the said amount belongs to which/what shop and that it has not been verified and investigated by the Investigating Officer. It has been admitted by the Investigating Officer in para 26 of his statement that from the mobile phone, they reached to the applicant/accused persons. In para 37, he admitted that he did not enquire about the Van drier or other staff of the bank. In para 39 of his statement, he has admitted that he has also not enquired from any of the liquor shops nor has seized any documents. The memorandum and seizure witnesses have not supported the prosecution case and turned hostile. Complainant Umesh Yadav (PW-2) has stated in para 25 that he was asked by the applicant about the mobile phone which was snatched by one of his friends. Further he has stated in para 7 that one mobile was seized from his possession by the police vide Ex.P-5 and as per the Investigating Officer, it belongs to the accused.

10. Thus, after going through the statement of the witnesses and the material on record, I find that the charges against the applicant

cannot be proved beyond all reasonable doubt as no specific evidence is there against him. It is settled position of law that suspicion however strong cannot be a substitute for proof. It is therefore, expedient to award benefit of doubt to the applicant. In consequence to qualitative and quantitative discussion and in view of the fact that before the trial Court the prosecution has not proved the charges against the applicant beyond reasonable doubt, in the considered opinion of this Court, the present Revision succeeds. He is acquitted of the charges levelled against him.

Sd/-

(Rajani Dubey)
Judge