

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 368 of 2005**

- Santosh Kumar Kansari, S/o Ramchandra, aged about 19 years, R/o village Joda Pepal, Ambikapur, Surguja (C.G.)

----Applicant**Versus**

- State of Chhattisgarh Through : P.S. Lakhanpur, District Surguja (C.G.)

---- Respondent

For Applicant	:	Shri A.N. Pandey, Advocate.
For Respondent/State	:	Shri Wasim Miyan, P.L.

Hon'ble Smt. Justice Rajani Dubey**Order on Board****06/09/2019**

01. This criminal revision is directed against the order dated 24.08.2005 passed by 2nd Additional Sessions Judge, Ambikapur, District Surguja, in Criminal Appeal No.180/2005, whereby the judgment and order dated 29.07.2005 passed by Chief Judicial Magistrate, Ambikapur, District Surguja in Criminal Case No.1183/1999 convicting under Section 394/34 IPC and sentencing him to undergo R.I. for 3 years with fine of Rs.2,000/-, plus default stipulation, has been confirmed.

02. Brief facts of the case are that on 20.12.1999 at about 8.00 pm, when complainant Bhagirathi Kashyap was going on his motorcycle from Jashpur to Prem Nagar, the applicant along with co-accused persons following him on their red

colour motorcycle intercepted him near Kunwarpur dam and looted Rs.130/-, driving license as also his black colour motorcycle. Thereafter, the complainant lodged the FIR (Ex.P/1) against unknown persons for the offence punishable under Section 394 IPC. During investigation, the applicant and other co-accused persons were arrested, their memorandum statements were recorded, based on which, motorcycle of the complainant was seized from the house of other person whereas the driving license of the complainant was seized from the present applicant. After completion of investigation, the charge sheet has been filed against the applicant and co-accused persons under Section 394 IPC before the concerned jurisdictional Magistrate and charges were framed against the applicant and co-accused persons under Section 394/34 IPC.

03. So as to hold the accused persons guilty, the prosecution examined as many as 12 witnesses. Statements of the accused persons were also recorded under Section 313 of CrPC, in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

04. The learned trial Magistrate, after hearing the counsel for the respective parties and considering the material available on record, convicted the applicant under Section 394/34 IPC by judgment and order dated 29.07.2005. The applicant preferred an appeal against the judgment and order dated

29.07.2005, and the learned appellate Court, by the impugned judgment dated 24.08.2005 has confirmed the conviction and order of sentence as awarded by the learned trial Magistrate. Hence, the present revision petition by the applicant.

05. Learned counsel for the accused/applicant submits that the impugned judgment passed by the learned appellate Court is illegal and erroneous. The seizure witnesses have not supported the prosecution case and there is contradiction, omission and exaggeration in the statement of prosecution witnesses. Learned counsel for the applicant further submits that the applicant was not known to the complainant and in the FIR, no description of applicant as to how he looks, his height, colour etc. have been stated by the complainant. He also submits that at the time of test identification parade, the police was present there and prior to that the applicant and other co-accused persons were shown to the complainant which is clear from the evidence of complainant (PW/1) and as such the Test Identification Parate (in short 'the TIP') becomes doubtful and unreliable. He next submits that the ingredients of Section 394 IPC is completely missing in this case and no offence is made out against the applicant.

06. On the other hand, learned counsel for the State supporting the impugned judgment argued that the present is a case where robbery was committed by the applicant in a daring manner attacking the complainant. In such an incident, the witnesses hardly get an opportunity to describe

the description of accused in an elaborate manner and, therefore, minor contradictions in the FIR and statement of complainant PW/1 is required to be ignored.

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

08. The present is a case of causing hurt in committing robbery when the complainant was going on his way and the accused/applicant intercepted him and looted his belonging. The FIR (Ex.P/1) was lodged against unknown person as the applicant and other co-accused persons were not known to him and the same fact finds place in his evidence also. The conviction of the applicant rests mainly on evidence of complainant Bhagirathi Kashyap (PW/1) and Test Identification Parade (Ex.P/4). However, if the statement of complainant Bhagirathi Kashyap (PW/1) is seen, he has categorically stated that he had seen the applicant for the first time in police station. This witness, in para 15, has also stated that he identified the applicant and other co-accused persons as soon as the police showed them and thereafter the identification parade was conducted. He also stated that he recognized the accused persons who were shown in the police station. This witness, in para 22, has also stated that he does not know as to what was the relation of applicant Santosh with two other persons who had assaulted him. He has also stated that while lodging the report and taking his police statement, he has named the applicant Santosh, but if the same is not recorded

in FIR (Ex.P/1), he cannot tell the reason, but on the other hand, this witness clearly states that prior to incident the applicant was not known to him. In para 28, he went on to state that the accused persons who had looted his vehicle, the name of two of them was first heard in police station. When he reached the police station, the constable showed him the accused person kept in barrack whom he identified as Santosh and Pintu. As per the prosecution case itself the incident had taken place at 8.00 pm. The overall evidence of complainant Bhagirathi Kashyap (PW/1) clearly shows that at the time of Test Identification Parade, the police was present. Considering this aspect of the case, identification of the accused/applicant at the instance of Bhagirathi Kashyap (PW/1) becomes doubtful. This apart, seizure witness Nirmal Tirkey (PW/2), Upendra Ram (PW/3), Smt. Shyampati (PW/5) and Gaukaran (PW/6) have not supported the prosecution case and turned hostile. Thus, taking the totality of the case, the test identification parade of the applicant does not inspire confidence of the Court and, therefore, merely on the basis of such TIP it will not be safe for this Court to uphold the conviction of the accused/applicant.

09. On the basis of aforesaid analysis, this Court is of the considered opinion that the prosecution has utterly failed to prove guilt of the applicant beyond all reasonable doubt. The appellate Court was not justified in holding the applicant guilty under Section 394/34 IPC on the basis of evidence adduced by

the prosecution. Being so, the judgment impugned, insofar as it relates to the accused/applicant, is liable to be set aside and the applicant is entitled for acquittal of the charge under Section 394/34 IPC by extending him benefit of doubt.

10. In the result, the criminal revision is allowed. Conviction and sentence of the applicant under Section 394/34 IPCV are set aside. He is acquitted of the said charge by giving him benefit of doubt. The applicant is reported to be on bail. His bail bonds shall stand discharged.

Sd/-

(Rajani Dubey)
JUDGE

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