

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.235 of 2013

Order Reserved on : 7.12.2018

Order Passed on : 5.3.2019

Dilip Kumar Banjara @ Dilipchand, S/o Sadhelal Banjara, aged about 24 years, R/o Village Bodhipara, Police Station Mungeli, District Mungeli, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through Police Station Chakarbhattha, District Bilaspur, Chhattisgarh

--- Respondent

For Applicant	:	Ms. A. Lakra, Advocate
For Respondent/State	:	Ms. Smita Ghai, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. The instant revision has been preferred against the judgment dated 25.2.2013 passed by the 6th Additional Sessions Judge, Bilaspur in Criminal Appeal No.271 of 2012 arising out of the judgment dated 1.10.2012 passed by the Judicial Magistrate First Class, Bilha, District Bilaspur in Criminal Case No.1218 of 2011, whereby, while affirming the judgment of the Trial Court, the Appellate Court affirmed the judgment of conviction under Section 420 of the Indian Penal Code against the Applicant, but modified the sentence imposed by the Trial Court and sentenced the Applicant to the period already undergone by him with imposition of fine of Rs.3,000/- upon him with default stipulation.

2. Case of the prosecution, in brief, is that for the recruitment of security guard, a physical test of high jump, long jump, 800-metre race, 100-metre race and shot put throw was supposed to be held at Sakri Battalion, Bilaspur between 28.4.2010 and 7.5.2010. Present Applicant Dilip participated in long jump, 800-metre race and shot put throw. On the date of incident, i.e., 6.5.2010, allegedly, at the time of doing high jump, when the name of present Applicant was called for performing high jump, allegedly, co-accused Mukesh appeared in place of the present Applicant. On being compared from the photograph pasted on the admission card, the look and appearance of Mukesh seemed to be different from the present Applicant. On being inquired from co-accused Mukesh, he replied that on being asked by the present Applicant, who is his uncle, he appeared and performed in the high jump test in place of the present Applicant. Subedar Seema Bhaskar (PW8) made a report of this incident. On the basis of said report, offence has been registered against the present Applicant and co-accused Mukesh. On completion of investigation, charge-sheet has been filed before the Judicial Magistrate First Class. The Trial Court framed charges against the present Applicant under Section 420 of the Indian Penal Code and against co-accused Mukesh under Sections 419 and 420 of the Indian Penal Code. Total 8 witnesses have been examined in support of the case of the prosecution. In the statement recorded under Section 313 of the Code of Criminal Procedure, the Applicant and the co-accused denied the allegations. After trial, the Judicial Magistrate First Class convicted co-accused Mukesh for the offence under Sections 419 and 420 of the Indian Penal Code and for the offence under Section 419 of the Indian Penal Code sentenced him with rigorous imprisonment for 2

years and fine of Rs.2,000/- with default stipulation and for the offence under Section 420 of the Indian Penal Code sentenced him with rigorous imprisonment for 3 years and fine of Rs.3,000/- with default stipulation. The present Applicant was also convicted for the offence under Section 420 of the Indian Penal Code and sentenced with rigorous imprisonment for 3 years and fine of Rs.3,000/- with default stipulation. An appeal was preferred by the present Applicant. The Appellate Court affirmed the conviction of the Applicant under Section 420 of the Indian Penal Code, but reduced his sentence as mentioned in the first paragraph of this order. Hence, this revision by the Applicant.

3. Learned Counsel appearing for the Applicant submitted that from the evidence on record, it is clear that the Applicant participated in long jump, 100-metre race and shot put throw. The performance result along with the signature of the Applicant which is a part of record shows that for the event of 800-metre race and high jump neither the performance result is recorded nor the signature of the performing candidate is obtained which shows that these two events never took place. She further submitted that as per the prosecution story itself, more than 1000 people were present at the time of incident, but police has not made any independent witness in support of its case. All the prosecution witnesses are interested witnesses and they have contradicted their statements. Therefore, the evidence adduced by the prosecution itself shows that no offence against the Applicant is proved beyond reasonable doubt. In spite of that, both the Courts below have convicted him.

4. Learned Counsel appearing for the State supported the impugned

judgment.

5. I have heard Learned Counsel appearing for the parties and perused the record with due care.
6. Subedar Seema Bhaskar (PW8), in her Court statement, has categorically stated that at the time of high jump, in place of the present Applicant, co-accused Mukesh appeared and performed in the high jump test. On being compared from the photograph of the Applicant, the photograph was found to be different. On being inquired from co-accused Mukesh, he told that on being asked by the Applicant, he appeared for performing in high jump test. Her above statement is duly corroborated by Avinash Sharma (PW5) and Kamla Pusham (PW3). All the above three witnesses were firm during their cross-examination. The above statements of the above three witnesses have not been rebutted during their cross-examination. Therefore, if no entry or signature of the participant is available in the column of high jump of the performance result, it does not adversely affect the case of the prosecution. There is nothing on record to show that there was any enmity between these three witnesses and the present Applicant. Therefore, these three witnesses cannot be held to be interested witnesses and their statements cannot be discarded only on this ground. Therefore, the finding of conviction of the Applicant arrived at by both the Courts below is commensurate to the evidence available and, therefore, the same does not warrant any interference by this Court.
7. As regards the sentence, the Appellate Court has already reduced the jail sentence of the Applicant to the period already undergone

by him, which is just and proper. The fine sentence of Rs.3,000/- is also just and proper.

8. Consequently, the instant revision is dismissed.
9. Records of the Courts below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE