

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 09-12-2019

Delivered on 17-12-2019

CRA No. 1240 of 2019

- Maheshwar @ D. K. S/o Late Ganesh Kumar Tandan Aged About 27 Years R/o Village Bhathagaon, Thana-City Kotwali, Baloda Bazar, District- Balodabazar-Bhatapara, Chhattisgarh.

---- Appellant

Versus

- State of Chhattisgarh Through Thana City Kotwali, Balodabazar, District- Balodabazar-Bhatapara, Chhattisgarh.

---- Respondent

For Appellant : Mr. Samir Singh, Advocate.

For respondent/State : Mrs. Smita Jha, PL.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 30-5-2019 passed by the Sessions Judge, Baloda Bazar, CG in Sessions Trial No. 12 of 2019 wherein the said Court convicted the appellant under Section 392 of the IPC and sentenced him to undergo rigorous imprisonment

for three years and to pay fine of Rs.3000/- with default stipulations.

2. In the present case, date of incident is 4-9-2018. As per version of prosecution, on the said date of incident appellant came and threatened the complainant Sunil Kumar for dire consequences and committed robbery of Rs.2000/- from his possession. The matter was reported and one knife and Rs.560/- were seized from the appellant on his discovery statement. After completion of trial, the trial Court convicted and sentenced him as aforementioned.

3. Learned counsel for the appellant would submit as under:

- i) Statement of the prosecution witnesses is contradictory to each other and they have not identified the appellant, therefore, finding of the trial court is not liable to be sustained.
- ii) The trial court has not considered material omissions and contradictions in the statements of the prosecution witnesses, therefore, finding of the trial court is liable to be set aside.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshalling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. From the statement of Sunil Kumar (PW/1), it is established that the appellant threatened him and removed Rs.2000/- from his possession. Dr.Anjali Sharma (PW/2) conducted identification parade in which appellant was identified by the complainant Sunil Kumar as culprit. Identification is also supported by version of PW/3 Kesav Yadav. From the evidence of Asst. Sub Inspector J.P. Patel (PW/5) it is established that on discovery statement of the appellant, Rs.560/- and one knife were seized from him. All the witnesses have been subjected to searching cross examination but nothing could be elicited in favour of defence.

7. Looking to the direct evidence, the trial court recorded commission of robbery against complainant Sunil Kumar and after re-assessing the entire evidence, this court has no reason to take a contrary view what is taken by the trial court. Conviction of the appellant for offence under Section 392 of IPC is hereby affirmed. From the record it appears that the appellant is in jail since 5-9-2018 and he has already completed one year and three months of

jail term. In view of this court, ends of justice would be served if the sentence imposed by the trial court is reduced to the period already undergone by him. Fine amount imposed by the trial court shall remain intact. It is ordered accordingly. The appellant be set at liberty forthwith, if not required in any other case.

8. With the aforesaid modification the appeal is partly allowed.

Sd/-

(Ram Prasanna Sharma)
Judge

Raju