

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 694 of 1999**

- Bhagoli S/o Kantu Kewat aged about 33 years, Dashrangpur, P.S. Kawardha, District-Rajnandgaon, M.P. (Now C.G.).

---- Appellant**Versus**

- State of M.P (Now Chhattisgarh).

---- Respondent

For Appellant	:	Ms. Savita Tiwari, Advocate and Ms. Meenu Banarji, Advocate Legal Aid.
For Respondent/State	:	Ms. Subha Shrivastava, PL.

Hon'ble Smt. Justice Rajani Dubey**Order On Board****19/07/2021**

1. The present appeal arises out of the impugned judgment of conviction and order of sentence dated 09.01.1999 passed by the learned Additional Sessions Judge, Bemetara, in S.T. No. 70/1986 whereby, the learned Additional Sessions Judge, Bemetara convicted the appellant and sentenced him as under :-

S. No.	Conviction	Sentence
1.	U/s 395, 397, 34 of IPC	R.I. for 7 years and fine of Rs. 500/- in default of fine additional R.I. for 2 months.

2. Brief facts of the case are that on 24.03.1986 at about 1:30 am, three persons entered the house of one Jugraj Jain Seth slapped Ramadhar, he shouted and then putting cloth on his mouth, when he tried to resist, one of the accused beat him on his stomach. Thereafter, they asked the sons of the owner for the keys of locker and after committing robbery fled away from the spot. Thereafter, report was lodged at police station Saaja against the appellants. However, accused B. Abudas, Radhelal, Smt. Nageshwari Bai and Sheo Prasad have been charged under Section 412 for receiving stolen property

but they have been acquitted. The allegation against these appellants was that during the robbery, Ramadhar died. Subsequently, appellants were arrested and recoveries and seizure of the stolen articles were effected.

3. So as to hold the accused/appellants guilty, the prosecution has examined as many as 25 witnesses. Statements of the accused/applicants were also recorded under Section 313 of the Cr.P.C. in which they denied the charges leveled against them and pleaded innocence and false implication in the case.

4. After hearing the parties, vide impugned judgment of conviction and order of sentence dated 09.01.1999 passed by the learned Additional Sessions Judge, Bemetara has convicted and sentenced the appellants for the offence under Sections 395, 397, 34 of IPC and sentenced them to undergo R.I. for 7 years and fine of Rs. 500/- in default of fine additional R.I. for 2 moths. Hence, the present appeal.

5. Heard learned counsel for the parties and perused the material on record including the impugned judgment.

6. It is stated that appellant No. 2 has died and appellants No. 1 and 4 have already served the sentence as awarded by the trial Court and therefore the present appeal is with regard to the appellant Bhagoli. Counsel for the appellants submits that he is not pressing the appeal so far as it relates to the conviction part of the judgment and would confine his argument to the sentence part thereof only. According to him, the incident is said to have taken place in the year 1986, and thereby more than 35 years have rolled by since then. Appellant is aged about more than 65 years; has already remained in jail for more than six years, and no useful purpose would be served in again sending him to jail, therefore, in the interest of justice, it would be appropriate if the sentence imposed upon him may be reduced to the period already undergone by him.

7. Learned counsel for the State has no objection to this preposition.

8. Having gone through the material on record and the evidence of the witnesses Wahal Singh (PW-1), Jeetu @ Jitendra (PW-2), Dr. R. K. Tamrakar (PW-3), Suraj Bai (PW-4), Janki Bai (PW-5), Ramadhar Sharma (PW-6), B. P. Maithil (PW-7), Dayaram (PW-8), Raju @ Chhamman (PW-

9), Dauwa Singh (PW-10), Ganesh Das (PW-11), M.D. Deewan (PW-12), Deepak Kumar (PW-13), Kalicharan Shukla (PW-14), Naseer Khan (PW-15), S.K. Sao (PW-16), Thakur Sharan (PW-17), S.M. Salauddin (PW-18), Shriram Mishra (PW-19), Omprakash Tawari (PW-20), Dr. Manthlal Gupta (PW-21), Banshigir (PW-22), Arun Jain (PW-23), Phutku (PW-24) and J.P. Mishra (PW-25), it can be established the involvement of the accused/applicant in the crime in question stands proved beyond reasonable doubt that he is a part of robbery gang, but Section 397 of IPC provides as under :

397. Robbery, or dacoity, with attempt to cause death or grievous hurt.- If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

9. It is clear from evidence of prosecution witnesses and as per seizure memo Ex. P-31 & P-32 only silver ornaments have been seized from the appellant and there has not been seized any deadly weapon from the appellant, therefore, Section 397 of IPC has not been proved and only Section 395 of IPC has been proved against the appellant.

9. As regards sentence, keeping in view the facts that incident had taken place in the year 1986, and further that the appellant had already remained in jail for more than six years and no deadly weapon has been seized from the appellant, I am of the view that ends of justice would be served, his sentence is liable to be reduced to the period already undergone by him.

10. In view of the above consideration, the appeal is partly allowed. While maintaining the conviction of the appellant, he is sentenced to the period already undergone by him.

Sd/-
(Rajani Dubey)
JUDGE