

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.365 of 2016

Judgment Reserved on : 22.9.2021

Judgment Delivered on : 18.10.2021

1. Vicky Singh @ Criminal, son of Labh Singh, aged about 19 years, resident of Sangram Chowk, Camp 1, Gudiya Kirana Stores, Bhilai, District Durg, Chhattisgarh
2. Rocky @ Surendra Singh, son of Rajkumar, aged about 20 years, resident of Arjun Nagar, Camp 1, Rickshaw Colony, Bhilai, Police Station Chhawani, District Durg, Chhattisgarh

---- Appellants

versus

State of Chhattisgarh through Station House Officer, Police Station Chhawani, District Durg, Chhattisgarh

--- Respondent

Criminal Appeal No.779 of 2016

1. Shubham Sahu, son of Ranjit Sahu, aged about 19 years,
 2. Chandan Singh Mangeda, son of Lt. Shri Jaswindar Singh, aged about 24 years
- Both residents of Arjun Nagar, Camp 1, Rickshaw Colony, P.S. Chhawani, Bhilai, District Durg, Chhattisgarh

---- Appellants

versus

State of Chhattisgarh through District Magistrate, Durg, District Durg, Chhattisgarh

--- Respondent

For Respective Appellants : Shri Sakib Ahmad and Shri Goutam Khetrapal,
Advocates

For Respondent/State : Shri H.S. Ahluwalia, Dy. Advocate General

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. Since both the appeals arise out of a common judgment, they are decided together.

2. Both the appeals have been preferred against judgment dated 13.1.2016 passed by the 4th Additional Sessions Judge, Durg in Sessions Trial No.174 of 2014, whereby the Appellants have been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
<u>All the Appellants</u>	
Under Section 395/397 of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.500 with default stipulation
<u>Appellant Chandan Singh Mangeda (Additional Convictions)</u>	
Under Section 25(1B) of the Arms Act	Rigorous Imprisonment for 1 year and fine of Rs.500 with default stipulation
Under Section 27 of the Arms Act	Rigorous Imprisonment for 3 years and fine of Rs.500 with default stipulation
The jail sentences are directed to run concurrently	

3. According to the case of prosecution, on 9.7.2014 at about 6 p.m., victim Uday Singh (PW7) was returning from Ramnagar after taking cash of Rs.5,000 from Digvijay (PW3). At that time, on the way, the Appellants and one juvenile accused, total 5 accused persons looted the cash of Rs.5,000 from the victim and at the time of commission of the offence, one of the accused persons assaulted the victim by a knife as a result of which he sustained an injury on his abdomen. The incident was informed by some children to the father of the victim, namely, Virendra Singh (PW4). Virendra Singh (PW4) went to the spot, but some people had taken the victim to Sector 9 Hospital, Bhilai for treatment. Then he also went to the hospital. On being asked by him, the victim told about the incident. Thereafter, Virendra Singh (PW4) reported the incident on the basis

of which Dehati Nalishi (Ex.P4) was recorded. Ms. Madhu Harsh, Additional Tahsildar (PW2) recorded dying declaration (Ex.P3) of the victim in the hospital. During the course of investigation, statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On the basis of disclosure statements of the Appellants, out of the looted cash, amount of Rs.1,000 was recovered from Appellant Chandan Singh Mangeda and Rs.500 each was recovered from rest of the Appellants. Thus, total amount of Rs.2,500 was recovered. From Appellant Chandan Singh Mangeda, the weapon of offence, i.e., the knife was also recovered vide Ex.P13. On completion of the investigation, a charge-sheet was filed. The Trial Court framed charges.

4. To bring home the offence, the prosecution examined as many as 14 witnesses. Statements of the Appellants were also recorded under Section 313 of the Cr.P.C. in which they denied the guilt, pleaded innocence and false implication. No witness has been examined in their defence.
5. On completion of the trial, the Trial Court convicted and sentenced the Appellants as mentioned in 2nd paragraph of this judgment. Hence, these appeals.
6. Learned Counsel appearing for the respective Appellants jointly submitted that without there being clinching and sufficient evidence on record, the Trial Court has wrongly convicted the Appellants. Referring to the statement of victim Uday Singh (PW7), it was argued that as stated by the victim, after commission of the loot

when he stepped down from his bicycle to take his money back from the Appellants, the assault was caused to him. Therefore, the offence under Section 397 of the Indian Penal Code is not made out and the Trial Court has wrongly convicted the Appellants thereunder. As regards the offence under Section 395 of the Indian Penal Code, it was argued that there are material contradictions and omissions in the statement of the victim and, therefore, his testimony is not reliable. In the alternative, it was argued that even if the entire statement of the victim is taken as it is, it appears that the assault was caused by Appellant Chandan Singh Mangeda after commission of the loot and at the time of the assault Appellant Shubham Sahu had caught hands of the victim and in that assault there was no overt act on the part of Appellants Vicky and Rocky. Since Appellant Shubham Sahu is in jail since 11.7.2014, Appellant Chandan Singh Mangeda has already suffered jail sentence of about 5 years and 1 month and Appellants Vicky and Rocky have already suffered jail sentence of 2 years and 2 months and the Appellants have no criminal antecedent and they are facing the *lis* since 2014, they may be sentenced to the period already undergone by them.

7. On the contrary, Learned Counsel appearing for the State opposed the submissions put-forth on behalf of the Appellants and supported the impugned judgment.
8. I have heard Learned Counsel appearing for the parties and perused the entire material available on record including the statements made by the witnesses before the Trial Court.

9. Virendra Singh (PW4), father of the victim deposed that on the date of incident, i.e., 9.7.2014 in the morning hours, he had asked the victim to go and collect cash of Rs.5,000 from his relative Digvijay (PW3). Digvijay (PW3) has supported the above statement of Virendra Singh (PW4) and stated that on the date of incident in the evening, the victim had come to him and collected cash of Rs.5,000 from him and returned. Victim Uday Singh (PW7) also corroborated the above statements of Virendra Singh (PW4) and Digvijay (PW3). The above statements of these three witnesses are not duly rebutted during their cross-examination. Thus, it is well established that before commission of the incident, the victim was in possession of cash of Rs.5,000.
10. With regard to the incident, victim Uday Singh (PW7) deposed that after collecting cash of Rs.5,000 from Digvijay (PW3), he was returning home. When he reached near a temple, at that time, the Appellants stopped him and demanded money from him. Thereafter, they snatched the cash of Rs.5,000 from him. He further deposed that thereafter for taking his money back from them, he stepped down from his bicycle. Then Appellant Chandan Singh Mangeda assaulted him by a knife and ran away from there. At that time, Appellant Shubham Sahu had caught his hands. Thereafter, some boys lifted him up and took to Sector 9 Hospital, Bhilai. Supporting the above statement of the victim, his father Virendra Singh (PW4) deposed that he also rushed to the hospital where he was told about the incident by the victim. Thereafter, he lodged the report (Ex.P4). Though there are some contradictions

and omissions in the statement of the victim, they are not material. From the statements of Dr. D.P. Sarkar (PW5) and Dr. Parag Gupta (PW14) and from perusal of the medical report (Ex.P7), it is also well established that the victim had suffered a stab injury on his abdomen whose nature was grievous.

11. With regard to the seizure of the looted money and the weapon of offence, i.e., the knife, though Jitendra Singh (PW9) and Amit Kumar (PW10) have not supported the entire case of the prosecution regarding recording of the disclosure statements of the Appellants and seizures of the looted money and the weapon of offence, i.e., the knife, Inspector Alexander Kiro (PW12) has supported the entire case of the prosecution in this regard. There is nothing in his cross-examination to disbelieve his statement in this regard.
12. On a minute examination of the above evidence, it is clear that at the time of incident, victim Uday Singh (PW7) was in possession of cash of Rs.5,000 which he had collected from Digvijay (PW3) and was returning home thereafter. From the evidence adduced by the prosecution, it is well established that when the victim reached near the temple while returning, the Appellants demanded money from him and thereafter snatched the cash of Rs.5,000 from him. There is no evidence on record to show that at the time of snatching of the cash from the victim, any of the Appellants had used any deadly weapon or caused any grievous hurt or attempted to cause death or grievous hurt to the victim or any other person. Rather, when the victim stepped down from his bicycle for taking his money back

from the Appellants, at that time, Appellant Chandan Singh Mangeda assaulted him by a knife and ran away from there. Therefore, in my considered view, the offence under Section 397 of the Indian Penal Code is not made out. Thus, the conviction of all the Appellants under Section 397 of the Indian Penal Code is set aside. The conviction of the Appellants under Section 395 of the Indian Penal Code is upheld. The additional convictions of Appellant Chandan Singh Mangeda under Sections 25(1B) and 27 of the Arms Act are also upheld.

13. As regards the sentence, considering the totality of the facts and circumstances of the case, particularly the facts that the main assailant was Appellant Chandan Singh Mangeda, who has already suffered jail sentence of about 5 years and 1 month, Appellant Shubham Sahu is in jail since 11.7.2014 and Appellants Vicky and Rocky have already suffered jail sentence of about 2 years and 2 months and there was no overt act on the part of Appellants Vicky and Rocky and none of the Appellants has criminal antecedent, they are facing the *lis* since 2014, the jail sentences of all the Appellants are reduced to the period already undergone by them. The fine sentences imposed upon them by the Trial Court are affirmed.
14. Consequently, both the appeals are allowed to the extent indicated above.

Sd/-
(Arvind Singh Chandel)
JUDGE