

(2019) 11 CHH CK 0050
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 780 Of 2001

Ganesh

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 20-11-2019

Acts Referred:

Indian Penal Code, 1860 — Section 392, 397, 457
Code Of Criminal Procedure, 1973 — Section 437A

Citation : (2019) 11 CHH CK 0050

Hon'ble Judges : Ram Prasanna Sharma, J

Bench : Single Bench

Advocate : Mirza Baeg, Aman Kesharwani, Afroj Khan

Final Decision : Partly Allowed

Judgement

1. This appeal is preferred against the judgment dated 8-8-2001 passed by 6th Additional Sessions Judge, Bilaspur (CG) in Session Trial No. 95 of 1996 wherein the said Court has convicted the appellant for the commission of offence under Sections 457 and 397 of IPC and sentenced him to undergo RI for five years and fine of Rs.500/- and RI for seven years respectively with default stipulations.

2. As per version of prosecution, in the intervening night of 29th and 30th of April 1994, complainant namely Hari Shankar was sleeping in his house and other members of family were also sleeping in his house situated at village Utwa. At about 12.00 pm in the night when the father of Harishankar namely Rikiram came out of his house to ease himself, three persons entered into his house with Tabbal, threatened the family members and got the key of the box in which some ornaments and cash were kept.. The said persons removed ornaments and Rs.150/- from the box and fled away from the place. The matter was reported at Police Station and investigated and after completion of trial, the trial Court convicted and sentenced the appellant as aforementioned.

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

i) There is no evidence that the appellant used any deadly weapon, or caused grievous hurt to any person or attempted to cause either death or grievous hurt to any person, therefore, offence under Section 397 of IPC is not made out and at the most it is a case under Section 392 of the IPC.

ii) There is material contradictions and omissions in the statements of the prosecution witnesses which is overlooked by the trial court, therefore, finding of the trial court is not sustainable.

iii) The trial court has not evaluated the entire evidence in its true perspective and same is liable to be set aside.

4. On the other hand, learned counsel for the respondent would submit that the finding of the trial Court is based on proper marshaling 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. To substantiate the charge, prosecution examined as many as seven witnesses. As per version of Harishankar and Rikiram, appellant was one of the persons who entered into their house and removed some ornaments and Rs.2700/- . After arrest of the accused persons, test identification parade was conducted and as per version of Samar Singh (PW/6), Rikhiram (PW/2) and Harishankar (PW/1) had identified the appellant as culprit of the incident. Version of this witness is unrebutted during cross examination, therefore, participation of the appellant in crime in question is established by sufficient evidence.

7. The question for consideration of this court is whether the act of the appellant falls within mischief of Section 397 of the IPC. As per Section 397 of IPC, 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, offender shall be liable to be punished under this Section.

8. In the present case, there is nothing on record that the appellant used deadly weapon against any of the witnesses. Again, there is no evidence that appellant caused grievous hurt or attempted to cause death to any person, therefore, in absence of evidence, the act of the appellant does not fall within ambit of Section 397 of the IPC. The act of the appellant falls within mischief of Sections 457 and 392 of the IPC.

9. In view of the above, conviction of the appellant is altered to Section 392 of IPC instead of Section 397 of IPC. Accordingly, the appellant is convicted under Sections 392 and 457 of the IPC. He is acquitted of the charge under Section 397 of IPC.

10. Heard on the point of sentence.

The appellant suffered jail term from 18-5-1994 to 3-3-1997, 30-9-2000 to 8-8-2001 and from 8-8-2001 to 4-3-2002 i.e., total he suffered jail term four

years, two months and ten days. Considering all the facts and circumstances of the case, this court is of the opinion that ends of justice would be served if the sentence of the appellant under Sections 457 and 392 of IPC is reduced to the period already undergone by him. The fine amount imposed by the trial court shall remain in tact. It is ordered accordingly.

11. With this modification, the appeal is partly allowed. He is reported to be on bail. His bail bonds shall continue for further period of six months in view of Section 437-A of Cr.P.C.