
(2018) 04 CHH CK 0133
In the Chhattisgarh High Court
Case No : Criminal Appeal No.27 of 2007

Manoj Rajput

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 12-04-2018

Acts Referred:

Indian Penal Code, 1860 — Section 398, 390, 392

Citation : (2018) 04 CHH CK 0133

Hon'ble Judges : RAM PRASANNA SHARMA, J

Bench : Single Bench

Advocate : YC Sharma, Bhaskar Payashi

Final Decision : Allowed

Judgement

1. This appeal is directed against the judgment of conviction and order of sentence dated 23.11.2006 passed by Second Additional Sessions Judge,

Raipur (CG) in Sessions Trial No.465/2002, wherein the said Court convicted the appellant under Section 398 of the Indian Penal Code and sentenced

him to undergo rigorous imprisonment for seven years.

2. In the present case, name of the victim is Smt. Sadhna Sahu (PW-3) . As per the version of this witness, appellant demanded Rs.5000/- from her

and at the time of demanding money he made the victim under fear of instant hurt by showing knife and extorted Rs.4000/- from her. Version of

Sadhna Sahu (PW-3) is supported by the version of Shyam Prakash Sahu (PW-4), husband of Sadhna. All the witnesses have been subjected to

searching cross-examination but nothing could be elicited in favour of the defence. Version of the victim is supported by prompt FIR (Ex-P/3) lodged

by Shyam Prakash Sahu (PW-4), wherein name of the appellant is clearly mentioned.

3. From the evidence adduced by the prosecution, it is established that the appellant extorted Rs.4000/- from the possession of Sadhna Sahu and at the time of extorting the amount he made her under the fear of instant hurt.

4. Now the point for consideration is as to what was the offence committed by the appellant. Robbery is defined under Section 390IPC which reads

as thus: "390. Robbery" In all robbery there is either theft or extortion.

When theft is robbery.- Theft is robbery if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting

to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful

restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

5. In the present case, the appellant has committed theft and in order to commit theft he made the victim under fear of instant hurt. The trial Court

convicted the appellant under Section 398 IPC but this Section speaks about attempt to commit robbery with deadly weapons, i.e. at the time of

committing robbery, the offender is armed with deadly weapon. In the present case, the offence is not attempt, but it is committed and the act of the

appellant falls under the definition of robbery which is punishable under Section 392 IPC. Hence conviction of the appellant under Section 398 IPC is

not sustainable. He is convicted under Section 392 IPC instead of Section 398 IPC.

6. The appellant remained in jail during trial from 30.8.2002 to 18.10.2002 and after his conviction he suffered the jail sentence from 23.11.2006 to

22.5.2007 that comes out nearly 8 months. The incident took place in the year 2002. Looking to the totality of the facts, period already undergone

would be sufficient sentence.

7. Consequently, the appeal is allowed in part. The appellant is acquitted of the charges under Section 398 IPC but convicted under Section 392 IPC

and he is sentenced to the period already undergone by him.

8. With the above modifications, the appeal is allowed in part.