



2025:CGHC:38468

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
CRA No. 694 of 2004

Vinod Shah S/o Keshri Shah aged about 26 years Occupation Supervisor in Bhilai Steel Plant R/o Jamula Housing Board Bhilai District Durg C.G.

---- Appellant

Versus

State of Chhattisgarh through the Police Station: Purani Bhilai- 3 District : Durg (CG).

---- Respondent

For Appellant : Mr. Shikhar Bakhtiyar, Advocate.

For Respondent-State : Ms. Upasana Mehta, Dy. GA.

Hon'ble Shri Arvind Kumar Verma, Judge
Judgment on Board

04.08.2025

1. This criminal appeal has been preferred by appellant against the judgment of conviction and order of sentence dated 05/05/2004 passed in S.T. No.231/2003 by learned 2nd Additional Session Judge, Durg, (CG), whereby appellant stands convicted and sentence as under:

Conviction	Sentence



Under Section 341 of the IPC.	Simple imprisonment for one month.
U/s 394 of the IPC	Rigorous imprisonment for 07 years.
U/s 397 of the IPC	Rigorous imprisonment for 07 years.

All sentence run concurrently

2. The prosecution case, in brief, is this that on 23/02/03 at about 07.00 pm in the evening, present appellant alongwith other co-accused persons have looted/snatched Hero Honda motor-cycle bearing registration No.CG-07/F-5021 from Bharat Dewangan (complainant), when he was coming from Patan to Jarwal alongwith Jitendra Dewangan & wife Bhumika Dewangan. The accused persons have threatened the victims and also looted some money from them on the point of knife and pistol. Based on report lodged by complainant, FIR was registered against three unknown persons for offence punishable under Section 392 of IPC. During investigation, appellant was arrested and alleged motor-cycle has been recovered from his possession. Based on his memorandum, other co-accused persons were also arrested for the aforementioned crime/offence.
3. On completion of investigation, challan/charge sheet was filed against the appellants and based upon which, trial Court framed the charges against them.
4. Prosecution in order to prove its case examined total 07 witnesses. Statement of appellant (accused) was also recorded



under Section 313 of CrPC in which he denied all incriminating evidence appearing against him, pleaded innocence and false implication. However, no evidence was adduced by him in his defence.

5. After hearing learned counsel for the parties and appreciating the evidence available on record, the trial Court vide impugned judgment convicted and sentenced the accused/appellant in the manner as described in Para-1 of this judgment. Hence this appeal.
6. Learned counsel for the appellant contended that impugned judgment is per se illegal and contrary to the evidence available on record as it has passed only on the basis of surmises and conjunctures. There is no any ioto of evidence available in charge-sheet against appellant. There are many contradictions and omissions in the statements of the prosecution witnesses, which was not considered properly by learned trial court. Prosecution witnesses are relative of the complainant/victim, therefore, their evidence is not reliable. Independent witness of memorandum and seizure has been turned hostile and he has not supported the case of prosecution. Prosecution has failed to prove the case against appellant beyond all such reasonable doubts, hence, conviction of appellant is not sustainable and liable to be interfered with.

Alternatively, it is argued that if the Court finds that alleged incident has been committed by the appellant, then considering



the fact that alleged incident was taken place in the year 2003 and appellant has already served about 02 years, 03 months and 20 days of jail sentence, sentence awarded to appellant be reduced to the period already undergone by him.

7. Per contra, learned State Counsel supported the impugned judgment and submits that the impugned judgment passed by the trial Court is based on proper appreciation of material and evidence available on record and the same requires no interference.
8. Heard learned counsel for the respective parties and perused the recorded placed on record.
9. For ready reference, Section 397 of IPC reads 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.

10. Section 397 of IPC does not make any act or offences, it only provides minimum punishment for some offences under circumstances ie ‘when at the time of committing robbery or dacoity, deadly weapons is used or grievous hurt is caused or attempt to cause death or grievous hurt is made’; what is



essential to satisfy the word "uses" for the purpose of Section 397 of IP.C. is the robbery being committed by an offender who used the deadly weapon to be create a terror in the mind of victim, therefore, Section 397 of IPC only provides for enhancement of the term of punishment in certain cases, when the offender uses deadly weapons or causes grievous hurt to any person. It is well established principle of law that Section 397 of IPC cannot be applied constructively, it relates only to the offender who actually uses the deadly weapons himself or caused grievous hurt or attempt to cause death or grievous hurt at the time of committing the dacoity.

11. PW-1/Bharat Dewangan (complainant) in his court evidence has stated that on the date of alleged incident, when he was coming from Patan to Jarwal alongwith his relatives Jitendra Dewangan & Bhumika Dewangan, on the way, accused/Vinod Shah alongwith two other co-accused persons intercepted them and snatched/looted the motor-cycle and sum of Rs.2300/- from the complainant and Rs.1200/- from Jitendra Dewangan on the point of knife and pistol and, thereafter, fled away from the spot. In his cross-examination, he (PW-1) admitted that due to dark at the time of alleged incident, he had not recognized the accused persons clearly/explicitly. Before the police station on the instruction the Police, he recognized the present appellant.
12. PW-2/Jitendra Dewangan (victim) in his Court evidence has stated that on the date of alleged incident, when he was coming



from Patan to Jarwal alongwith Bhumika Dewangan and Bharat Dewangan (complainant) on motor-cycle, on the way, three accused persons have intercepted them and snatched/looted the motor-cycle alongwith sum of Rs.1200/- from him (PW-2) and Rs.2,000/- from the complainant on the point of knife and pistol and, thereafter, fled away from the spot. He (PW-2) further stated that due to dark at the time of alleged incident, he could not recognized the accused persons.

13. As per evidence of PW-3/Sunil David (Sub-Inspector, Crime Branch) & PW-4/B. R. Singh (Assistant Sub-Inspector), on the instance of present appellant/accused, alleged motor-cycle has been recovered from the quarter/house of the Housing Board.
14. With regard to the incident, though it is alleged that on the date of incident, accused persons have threatened and snatched/looted some money from the victims on the point of knife & pistol, but there is no any documents/material produced by the prosecution which shows that alleged weapons have been seized from the present appellant. There is no previous enmity between the parties. It is also not proved that appellant has showed the knife or pistol to the victims at the time of alleged incident. However, prosecution has proved that appellant was involved in the alleged loot/crime as in Test Identification Parade (Ex. P-2) made before PW-7/Naib Tahsildar, Durg, out of the 10 persons (including co-accused Jitendra @ Raju Bihari), appellant/accused has been identified by the victims (Bharat



Dewangan & Jitendra Dewangan).

15. In view of above discussion/observation, this Court is of the considered view that learned trial Court erred in convicting the appellant/accused under Sections 341 & 397 of IPC, however, he only be convicted under Section 394 of IPC.

16. As regards quantum of sentence, considering the fact that incident took place in the year 2003, i.e, more than 21 years have elapsed, appellant has already served about 02 years, 03 months and 20 days of jail sentence, age of appellant at the time of incident was 26 years and presently he is more than 47 years of age, this Court is of the opinion that no useful purpose would be served in sending the appellant to jail at this point of time for undergoing remaining period of sentence and ends of justice would be met if the sentence awarded to appellant is reduced to the period already undergone by him.

17. Accordingly, appeal is allowed in part and appellant is acquitted from the offence under Sections 341 & 397 of IPC. However, conviction of appellant under Section 394 of IPC is hereby maintained and sentence imposed upon him under said Section is hereby modified and reduced to the period already undergone by him.

18. Record of case be sent back forthwith with a copy of this order for information and necessary action/compliance.

Sd/-
(Arvind Kumar Verma)
JUDGE

J/-