



IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA

ON THE 30th OF AUGUST, 2024

CRIMINAL APPEAL No. 578 of 2017

BHARU

Versus

THE STATE OF MADHYA PRADESH

.....
Appearance:

Ms. Sonali Gupta - Advocate for the appellant.

Shri Kamal Kumar Tiwari - Govt. Advocate for the respondent/State.

.....
WITH

CRIMINAL APPEAL No. 596 of 2017

PRAKASH

Versus

THE STATE OF MADHYA PRADESH

.....
Appearance:

Ms. Sonali Gupta - Advocate for the appellant.

Shri Kamal Kumar Tiwari - Govt. Advocate for the
respondent/State.

.....
ORDER

Per. Justice Prakash Chandra Gupta

These criminal appeals are filed u/S 374 of Cr.P.C., being aggrieved by the judgment dated 31.01.2017 passed by ASJ, Jhabua [M.P.] in Sessions Trial No.13/2015, whereby the learned trial Court has convicted the



appellants u/s 394 of IPC and sentenced to Life Imprisonment and fine of Rs.10,000/- to each with default stipulation.

2. Prosecution story before the trial Court was that on 14.10.2014, at around 03:00 AM, when the complainant Mohanlal was sleeping in his room, his son Krishna Kumar was sleeping in another room alongwith his wife Sonu Rathore. At that time, four unknown persons entered in his house by breaking in. The aforesaid unknown persons had shown a revolver/katta and robbed 5 Kg of silver ornaments and cash of Rs.80,000/- from almirah. Meanwhile, the complainant alongwith his family members came out of the house and started crying for help. Hearing the cries, neighbours came out then unknown persons locked the door of the house from inside. Uncle of complainant, Radhakrishna fired gun in air, in response to which the assailants fired their gun as well. Thereafter, the accused persons started to flee away from the back door of the house. Complainant party caught hold 02 assailants and 02 assailants succeeded to flee away. While fleeing away, they had pelted stone upon the complainant party because of which Radhakrishna (PW-4) and Deepesh had sustained injuries. Complainant party took the two accused persons caught by them along with the robbed articles. At 04:00 AM, on the same day, FIR (Ex.P-1) was lodged at P/S Ranapur, Jhabua at the instance of Mohanlal. Both the assailants were appellants Bharu Katara and Prakash Bhabhor, who were arrested by Police vide arrest memo (Ex.P-2 and P-3).

3. On the same day, at around 05:10 PM, 2.980 Kg of silver ornament was seized from appellant Prakash vide seizure memo (Ex.P-6). Cash of Rs.50,400/- was seized from appellant Bharu vide seizure memo (Ex.P-7).



Appellants Prakash and Bharu's memorandum statement u/S 27 of the Indian Evidence Act was recorded. On the same day, at 06:30 AM, S.I. Janak Singh Rawat (PW-7) inspected the place of incident and prepared the spot map (Ex.P-8). On the same day, a hammer and an iron rod used to break the door of the house of the complainant were recovered from the spot vide seizure memo (Ex.P-9). Dr. G.S. Chauhan (PW-6) examined injured persons Radhakrishna (PW-4) and Deepesh and issued MLC Report (Ex.P-10 and 13 respectively). Statement of the witnesses was recorded u/S 161 of Cr.P.C. After completion of investigation, charge-sheet was filed before CJM, Jhabua. The case was committed before Sessions Judge and the same was made over to the learned trial Court. Learned trial Court framed charges u/S 394 and in alternate S.395 of IPC. Statement of 07 prosecution witnesses was recorded. On completion of prosecution witness, the appellants/accused persons were examined u/S 313 of Cr.P.C. The appellants had taken defence that they are innocent and have falsely been implicated in the case. However, no witness was examined by the appellants in their defence.

4. After hearing both the parties, the learned trial Court acquitted the appellants u/S 395 of IPC but convicted them u/S 394 of IPC as stated above.

5. The appeal has been filed on several grounds but during the course of argument, learned counsel for appellants did not press this appeal on merit and does not assail the finding part of the judgment. He confines his argument on the point of sentence only and prays that the appellants have already undergone incarceration for more than 10 years. It is also submitted that there is no minimum sentence provided u/S 394 of IPC. It is also submitted that at the time of the incident, the appellants Bharu and Prakash



were aged around 24 and 23 respectively and now 37 and 38 years. Therefore, it is prayed that the sentence awarded upon the appellants be reduced to the period they have already undergone.

6. Learned counsel for the State, on the other hand, supports the impugned judgment and prayed for dismissal of this appeal.

7. We have heard learned counsel for the parties and perused the records.

8. Complainant Mohanlal (PW-1), his son Krishna Kumar (PW-2), daughter-in-law Sonu Rathore (PW-3) and injured Radhakrishna (PW-4) are the eye-witnesses of the incident. Mohanlal (PW-1) stated that at the time of the incident, he was sleeping in a room of his house and Krishna Kumar (PW-2) alongwith his wife Sonu Rathore (PW-3) was sleeping in a different room of the same house. The unknown persons entered in the house by breaking the door. The witness alongwith his family members came out of the house and raised alarm. They had also broken the lock of almirah by hammer and had robbed 5 Kg of silver ornaments and cash of Rs.50,000/-. Hearing the alarm raised by the complainant, around 100 – 150 people came out. Then the robbers tried to flee away from place of incident by the back door alongwith the robbed property. Two robbers were caught hold by the complainant party but remaining two managed to flee away. The robbers caught by the complainant party were taken to the Police Station alongwith the robbed property. Statement of the witness is further supported by Krishna Kumar (PW-2), Sonu Rathore (PW-3) and Radhakrishna (PW-4).

9. S.I. Janak Singh (PW-7) deposed that on 14.10.2014, complainant party had come to report the incident of robbery alongwith two robbers caught hold by them. Then he had lodged FIR (Ex.P-1) at the instance of



complainant. This witness further submitted that on the same day, he had arrested the appellants Bharu and Prakash and prepared arrest memo (Ex.P-2 and 3). He also stated that he prepared memorandum statement of the appellants (Ex.P-5 and 4), at the instance of appellants. On the same day, he seized 2.98 Kgs of Silver Ornaments from possession of appellant Prakash and cash of Rs.50,400/- from possession of appellant Bharu vide seizure memo (Ex.P-6 and 7). Aforementioned statement of the witness is supported by Mohanlal (PW-1) and Radhakrishna (PW-4).

10. S.I. Janak Singh (PW-7) stated that on 14.10.2014, he inspected the place of incident and prepared spot map (Ex.P-8) at the instance of the complainant. Statement of the witness is further supported by Mohanlal (PW-1). S.I. Janak Singh (PW-7) deposed that on the date of the incident, he seized a hammer and an iron rod from the spot and prepared seizure memo (Ex.P-9). His statement is supported by Krishna Kumar (PW-2) and Ramesh Chandra (PW-5).

11. S.I. Janak Singh (PW-7) stated that he had sent the injured person namely Radha Krishna (PW-5) and Deepesh for medical examination alongwith requisition memo (Ex.P-12 and 13). Dr. G.S Chauhan (PW-6) stated that on 14.10.2014, at 06:25 AM, he examined Radhakrishna and found an abrasion on his left forearm which was simple in nature. He also stated that on the same day, at 06:35 AM, he examined injured Deepesh and one contusion was found on his left palm which was simple in nature. He also submitted that injuries of both the injured persons were caused by hard and blunt object within 03 hours of examination. Accordingly, he issued MLC report (Ex.P-10 and 11).



12. On the aforesaid discussion, it appears that complainant Mohanlal (PW-1) has fully supported the case of prosecution in his statement. His statement is further supported by other eye-witnesses Krishna Kumar (PW-2), Sonu Rathore (PW-3) and Radhakrishna (PW-4). As per statement of eye-witnesses, both the appellants were caught by the complainant party at the spot and were taken to Police Station. Robbed property was recovered on the same day from possession of the appellants. The robbers while fleeing away had pelted stones upon complainant party in which Deepesh and Radhakrishna had sustained injuries which is supported by Dr. G.S Chauhan (PW-6). There is nothing contrary in the cross-examination, which may hamper their testimony. Therefore, their statement is reliable and it is clear that at the time of the incident, the appellants had committed alleged offence. Therefore, the learned trial Court has rightly convicted the appellants u/S 394 of the IPC.

13. As far as the submission of the learned counsel for the appellants pertains to sentencing the appellants upto the period of sentence already undergone by them is concerned, it is pertinent to reproduce S.394 of IPC, which runs as under:-

“394. If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with (imprisonment for life), or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.”

14. From the bare perusal of the aforementioned provision, it is apparent that the punishment for the offence is imprisonment for life or with Rigorous Imprisonment for a term, which may extend to 10 years and also liable to



fine. Therefore, it is apparent that there is no minimum sentence provided u/S 394 of IPC.

15. On perusal of the records, it appears that the appellants are in custody since 14.10.2014. Therefore, the appellants completed incarceration of around 09 years 10 months. Looking to the facts and circumstances of the case, coupled with the age of the appellants, we are in considered view that the period already undergone by the appellants in incarceration will meet the ends of justice.

16. Therefore, the criminal appeals are **partly allowed**. The conviction is affirmed and the jail sentence is reduced to the period already undergone by them.

17. The criminal appeals are **disposed of**, accordingly.

18. A copy of this judgment be delivered to the appellants by concerning jail authority as well as to the learned trial Court alongwith the records for necessary compliance.

(VIVEK RUSIA)
JUDGE

(PRAKASH CHANDRA GUPTA)
JUDGE