

**HIGH COURT OF MADHYA PRADESH, BENCH AT  
INDORE  
(SINGLE BENCH : HON'BLE SHRI JUSTICE J.P.GUPTA)**

**Criminal Appeal No.2053/2018**

Radhu  
Vs.  
State of Madhya Pradesh

**Criminal Appeal No.2096/2018**

Khapriya  
Vs.  
State of Madhya Pradesh

**Criminal Appeal No.3712/2018**

Jor Singh  
Vs.  
State of Madhya Pradesh

**Criminal Appeal No.3713/2018**

Dinesh  
Vs.  
State of Madhya Pradesh

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Shri Mohd. Rafik Sheikh, Advocate for the appellants.  
Shri Koustubh Pathak, G.A. for the respondent-State.

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Whether approved for reporting : (Yes / No).

**J U D G M E N T  
(31/07/2018)**

1. This judgment shall govern the disposal of the aforesaid four appeals as they arise out of common judgment of conviction and sentence.
2. The appellants have preferred these appeals against the judgment dated 14<sup>th</sup> February 2018, passed by Additional Sessions Judge,

Jobat, District Alirajpur in Sessions Trial No.146/2014, whereby each of the appellants have been convicted under Sections 392 of the Indian Penal Code and sentenced to R.I. for ten years along with fine of Rs.5,000/-. In default of payment of fine, each of the appellant has further been sentenced to imprisonment for four months.

3. In short, the prosecution case is that on 10.5.2012 complainant Pankesh has lodged a report at Police Chowki Barjhar to the effect that on 8.10.2012 he along with his cousin Mukesh were going of their motorcycles towards their house at village Dewda, when they reached near Ringol Sukha Sagon, at about 11 PM four persons on two motorcycles stopped them and accused Dinesh placed country-made pistol on their chest and accused Khapriya snatched silver bracelet and silver ornament wore by him on the waist at that time at after threatening them to life they fled away from the spot. On the basis of information, FIR Ex.P/10 was registered at Police Station Chandra Shekhar Azad Nagar vide crime no.86/2012 for the offence under section 392 of the I.P.C. During investigation, spot map was prepared, statements of witnesses were recorded. Accused Dinesh was arrested on 11.5.2012. On the memo of accused under section 27 of the Evidence Act, a silver bracelet and a motorcycle bearing Chasis No.MD2-DSJ2ZZ UPL-5382 were recovered. Accused Jor Singh was arrested on 31.10.2012 and on his information 6 notes of Rs.500/- were recovered. Accused Khapriya and Radhu were found absconded. However, later, accused Khapriya was arrested and on his information silver ornament wore on waist was recovered. After investigation, charge-sheet was filed in the Court of JMFC Jobat. Thereafter, accused Radho was arrested on 6.9.2015 and on his information Rs.2,000/- cash and one silver ornament was recovered and separate charge-sheet was filed in the Court of JMFC Jobat. On committal, the case was tried by the court of A.S.J. Alirajpur.

4. During trial charge for the offence under section 392 of the I.P.C. was framed and read over to the appellants. The appellants abjured the guilt and claimed to be tried. The defence of the appellants was that they are innocent and have been falsely implicated. After completion of trial, the trial court after appreciating the evidence on record held the appellants guilty of the offence under section 392 of the I.P.C. and convicted and sentenced them by the common judgment, as mentioned above.
5. Being aggrieved by their conviction and sentence, the appellants/accused have filed these appeals before this Court.
6. The findings of the learned trial court are mainly based on the testimonies of victim Pankesh, PW2 and Mukesh PW3. On behalf of the appellants, findings of the trial court have been assailed on the ground that they have not supported the prosecution story as they have neither identified the stolen property nor identified the appellants accused persons as culprits before the trial court. In the absence of identification of the accused persons and the alleged recovery of stolen property from the possession of the appellants, they cannot be held guilty for commission of the alleged offence. In such circumstances, the findings of the learned trial court are not sustainable and the appellants are entitled to be acquitted of the charges levelled against them.
7. On the other hand, Shri Pathak, learned Government Advocate, submitted that the evidence adduced by the prosecution was sufficient to bring home the charges against the accused persons. The trial court has committed no error in relying upon the evidence that has come on record. He supported and justified the judgment of conviction and sentence passed by the trial court and prayed for dismissal of the appeals.
8. Heard the submissions made by the learned counsel for the par-

ties, perused the impugned judgment and the evidence on record carefully. In the considered opinion of this court, the testimony of victim Pankesh, PW2 and Mukesh, PW3, is insignificant. During trial, the aforesaid witnesses have neither identified the appellants as culprits of the offence nor identified the property as stolen property which was allegedly recovered on the instance of the accused persons. There is no other material to connect the present appellants with the crime. The trial court without appreciating the evidence on record, in a mechanical manner convicted and sentenced the appellants.

9. In view of the aforesaid infirmity in the prosecution evidence, merely on the basis of recovery of ornaments and cash, the appellants cannot be convicted for commission of the offence punishable under section 392 of the I.P.C. Hence, in view of this Court, the prosecution has failed to prove the charge against the appellants beyond reasonable doubt.
10. In view of the foregoing discussions and findings, in the considered opinion of this Court, conviction of the appellants for the offence under section 392-A of the I.P.C. is not sustainable. Hence, this appeal is allowed. The conviction of the appellants under section 392 of the I.P.C. and sentence of imprisonment as imposed by the trial court is set aside. They are acquitted of the charge. In these cases, appellants are in jail. They be released forthwith if not required in any other offence.
11. A copy of this judgment be sent to the concerned trial court and jail authorities for information and necessary action.

**(J.P.GUPTA)**  
**JUDGE**