

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.838 of 2014**

1. Anish @ Khappar, S/o Abdul Wasim Aged About 21 Years R/O Navin Nagar, Charoda, Bhilai-3, PS Purani Bhilai, Distt. Durg C.G.
2. Sunil Nag S/o Ram Bachhan Nag Aged About 19 Years R/o Storepara Puraina, PS GRP Bhilai, Distt. Durg C.G.
3. Golu @ Khiromani Shikha S/o Raju Shikha Aged About 19 Years R/o Storepara Puraina, PS GRP Bhilai, Distt. Durg C.G.
4. Kaliram S/o Devisingh Jhal Aged About 21 Years R/O Storepara Puraina, PS GRP Bhilai, Distt. Durg C.G.

---- Appellants**Versus**

State Of Chhattisgarh Through PS Purani Bhilai, Distt. Durg C.G.

Shri CR Sahu, counsel for the appellants.
Smt. Shobha Kashyap, Dy. GA for the State.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Judgment****09/10/2015**

Challenge in this appeal is to the judgment of conviction and order of sentence dated 26.6.2014 passed by First Additional Sessions Judge, Durg in Session Trial No.54/14 whereby and whereunder the trial Judge after holding the appellants guilty for house breaking in the night in order to commit offence punishable with imprisonment by sharing common intention committed theft in dwelling house, convicted the appellants under Sections 457 and 380 read with Section 34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three years, three years and to pay fine of Rs.5,000/-, Rs.5000/-, in default of payment of fine, to further undergo RI for six months and six months respectively to each appellants.

2. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellants as aforementioned, thereby committed illegality.

3. As per the case of the prosecution, on 20.5.2013, complainant (PW-1) along with his family members left their house in a locked condition and thereafter when they returned early morning at 4.00 am, lock of their house was broken and on verification, it was found that golden ornaments, silver ornaments, one titan watch and some cash were stolen. Thereafter he enquired the matter and finally on 07.9.2013 he lodged First Information Report before Police of Old Bhilai, who registered Crime NO.380/13 under Section 457 and 380 of the IPC against unknown persons. During investigation, the appellants were taken into custody, their disclosure statement were recorded and thereafter on the basis of disclosure statements stolen articles were seized from the them. After completion of investigation, charge sheet was filed against four appellants for the offence under Sections 457 and 380/34 of the IPC and also against one co-accused Satish Kumar for the offence under Section 413 of the IPC. Court below framed charges accordingly. All the appellants and the co-accused denied the charges and pleaded for trial.

4. In order to prove the guilt of the accused, the prosecution has examined seven witness in all. Statement of the accused were recorded under Section 313 of the Code of Criminal Procedure, 1973 (for short 'the Code'), wherein they pleaded innocence and false implication in crime in question.

5. After providing opportunity of hearing to the parties, the learned trial Court acquitted co-accused Satish Kumar of the charges under

Section 413 of the IPC and convicted and sentenced the appellants as aforementioned.

6. Heard learned counsel for the parties and perused the judgment impugned and record of the trial Court.

7. Learned counsel for the appellants submits that as directed, he is not contesting the instant criminal appeal regarding judgment of conviction against all the four appellants for the offence under Section 457 and 380/34 of the IPC. Learned counsel further submits that as directed, he is also not assailing the fine sentence awarded by the trial Court. He is confining his argument regarding quantum of sentences passed against the appellants and also that the sentence if any passed by the trial Court be directed to run concurrently. Learned counsel for the appellants submits that all the appellants were of the age of 19-21 years at the time of the incident, there is no criminal past for the likewise offence or any other offence against the appellants. They are in jail since 11.9.2013 thereby served the sentence for 02 years and 28 days. They will not commit any offence in future. They be given opportunity to remain in the society without committing any offence in future and live peacefully.

8. Per contra, learned counsel for the State opposed the arguments advanced on behalf of the parties and submitted that though in the first information report, total value of the stolen ornaments and other substances was mentioned as Rs.35,000/-, but during investigation, ornaments of gold and silver stolen from the house of the complainant recovered for the total value of Rs.90,000/-. Looking to the value of the property stolen, the trial Court rightly sentenced the appellants for RI for three years, RI for three years to each of the appellants. Looking to the

offence committed by the appellant, it is appropriate that the trial Court has not directed to run the substantive jail sentences imposed upon the appellants concurrently. Hence, the instant criminal appeal may be dismissed.

9. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution before the trial Court.

10. The appellants are not contesting the instant criminal appeal on the judgment of conviction and also on the judgment of fine sentence awarded to all the appellants. Even otherwise, from the perusal of the entire evidence, in the considered view of this Court, there is no illegality or impropriety committed by the trial Court regarding conviction and fine sentence part. Consequently, both the convictions and fine sentence part do not warrant any interference and are affirmed likewise.

11. So far as quantum of substantive jail sentences are concerned, all the appellants were awarded jail sentence of RI for three years and RI for three years though there is no any appreciation as to why the trial Court has not directed regarding running the sentence concurrently. Looking to the age of the appellants and also considering that there is no any previous criminal history of likewise offence against the appellants, it would be appropriate to direct that substantive jail sentences imposed upon each of the appellants shall run concurrently.

12. As submitted, all the appellants were in the age group of 21 years and there were no any likewise criminal history against the appellants. Though the property recovered from the appellants are worth for Rs.89,090/-, looking to the above two facts they be given opportunity for the same.

13. One more aspect surfaced while hearing the instant criminal appeal is that all the appellants were granted bail and their sentences were suspended vide order dated 16.12.2014, whereby they were required to appear before the Registry of this Court on 19.03.15. It was informed by learned counsel for the appellants that the appellants have not furnished the bail bonds and an application for extension of time for furnishing the bail bonds was filed and on 21.8.2015, this Court ordered and extended the time for furnishing the bail bonds within a period of four weeks and held that the appellants shall be obliged to appear before the Registry of this Court on 05.10.15. On 05.10.15, the appellants have not appeared before the Registry. While hearing the matter today, learned counsel for the appellants made the statement at the Bar that till date the appellants have not furnished the bail bonds and are languishing in jail. Statement of the counsel at the Bar is recorded. Learned counsel for the appellants submits that as the appellants served the sentence for two years twenty eight days, looking to the fact that they have no any criminal past and also considering their age, they may be given opportunity and they may be sentenced for the period already undergone by them. No any submission is made regarding deposit of the fine amount either before the trial Court or before the jail authorities. Upon consideration of the above facts and statements regarding the fact that the appellants are still languishing in jail, in the considered view of this Court, judgment of conviction passed against the appellants for the offence under Section 457 and 380/34 of the IPC are hereby affirmed. Judgment of fine sentence passed against all the appellants in both the counts are also hereby affirmed. As per the submission of learned counsel for the appellants, the appellants are still languishing in jail. They are hereby sentenced for

the period already undergone by them. The authorities are directed to set them liberty forthwith after realizing the fine sentence as per para 21 of the judgment of trial Court. If the fine amount is not paid, then the authorities are directed to serve the default sentence to the appellants till realization of the fine amount.

14. If as per order dated 21.8.2015, the appellants furnished the bail bonds and released as per initial order dated 16.12.14 by the high Court after furnishing the bail bonds, then the trial Court is directed to serve the remaining part of the substantive jail sentence as per order of this Court. It is directed that period already undergone is for the both the substantive jail sentence as they are directed by this Court to run the sentences concurrently.

15. Appeal disposed of accordingly.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE