

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 483 of 2007**

Ramkhilawan @ Haddi S/o Sukhu Marar, aged about 35 years, R/o. Nandai Chowk, Rajnandgaon, Tahsil & District Rajnandgaon, Chhattisgarh.

---- **Applicant** (in jail)

Versus

State of Chhattisgarh through police station Ghumaka, district Rajnandgaon, Chhattisgarh.

--- **Respondent**

For the Applicant	:	Shri Durgesh Goyal, Advocate.
For the Respondent/ State	:	Shri Neeraj Sharma, Deputy Government Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

ORDER

21.11.2016

1. This revision petition has been preferred against the judgment of conviction and order of sentence dated 07.09.2007, passed by the Learned Sessions Judge, Rajnandgaon, Chhattisgarh, in Criminal Appeal No. 52 of 2007, whereby and whereunder the applicant and other accused person were convicted under Sections 457, 380/ 34 of the IPC and sentenced to undergo RI for two years and to pay fine of Rs.500/- on each count, in default of payment of fine, to further undergo RI for one month, respectively.

2. The case of the prosecution, in brief, is that on 12.7.2006, at about 11:30 pm, a theft took place in the residence of complainant – Maniklal (PW-3). In that incident, without his consent, ornaments of gold and silver and also cash were taken away from the possession of the complainant. On his information, First Information Report (Ex. P/4) was lodged against

unknown person. The investigation was carried out and the applicant was interrogated on 19.12.2006, whereby he gave a statement on memorandum vide Ex. P/1C. At his instance, on the same day, jeweleries of gold and silver were recovered vide Ex. P/2 and identified by complainant Maniklal (PW-3) in the Test Identification Parade conducted vide Ex. P/3. Spot map was prepared vide Ex. P/6. Seizure of articles were made vide Ex. P/7 from the possession of the accused. On completion of the investigation, the charge-sheet was filed against the applicant and other accused person. The applicant and other were charged under Sections 457, 380/ 34 of the IPC to which they denied. On completion of trial, judgment of the trial Court was passed on 16.7.2007 by which the applicant was convicted and sentenced under Sections 457, 380/ 34 of the IPC as mentioned above. The other accused person was also convicted and sentenced in similar manner. An appeal was preferred by the applicant and other accused which was decided by the Sessions Court, Rajnandgaon in which the conviction and sentence of the applicant was upheld but the conviction and sentence of co-accused Shanker @ Jairam was set aside. Hence, this revision by the applicant.

3. The grounds of revision are that the judgment of the trial court and the lower court is perverse, contrary to the evidence on record and the provisions of law. Hence, the conviction against the applicant is bad and illegal. Learned counsel for the applicant prayed that the revision be allowed and the judgment of conviction and sentence passed against the applicant be set aside.

4. Learned counsel for the applicant submitted that the applicant has already undergone substantial period in custody. Looking to the nature of incident and the period elapsed after the incident, the sentence awarded to

the applicant may be modified to the period already undergone by him. It is submitted that the applicant does not want to insist on the grounds of acquittal.

5. In revision matters, this court does not interfere with the findings and orders of the court below unless it is called for interference on the grounds of illegality or perversity of the judgment. The evidence led before the trial Court is considered and thereupon finding is arrived at. Consideration may be made to the prayer for modification of the sentence awarded to the applicant.

6. Maniklal (PW-3), complainant, who has stated that on the date of incident, at about 11:30 pm, the jewelery of gold, silver and cash were taken away by the unknown person. He lodged a report (Ex. P/4) in police station. There is no denial to this statement in his cross-examination which establishes that on the date of incident the complainant was in possession of the articles already mentioned in FIR (Ex. P/4) and they were removed from his possession without his consent, with dishonest intention. Sub-Inspector, D.R. Gaddharv (PW-5) has stated that he recorded FIR (Ex. P/4) and prepared the spot map vide Ex. P/6, which confirm the statement of Maniklal (PW-3).

7. On the relevant date, M.R. Bhagat, SHO of Police Station Dhumka, stated that in presence of the witnesses', applicant - Ramkhilawan gave his memorandum statement vide Ex. P/1 and at his instance, the jeweleries of gold and silver were seized vide Ex. P/2 from his possession. This statement is totally unchallenged in his cross-examination. The independent

witness Indralram (PW-1) to the memorandum (Ex.P/1) and seizure (Ex.P/2) has turned hostile and not supported the prosecution case. The other witness of memorandum and seizure has not been examined. The statement of the Investigating Officer M.R. Bhagat (PW-4) has not been challenged by the defence. The Investigating Officer himself recorded the statement made by the accused person and the articles were seized at the instance of the accused. Hence, this kind of procedure adopted by the Investigating Officer itself proves that the investigation was done by him and the statement was recorded and the recovery was done in his presence. There is no reason to disbelieve the statement of M.R. Bhagat (PW-4). The recovery of the articles was established by the prosecution. The findings of the trial Court are correct and are rightly upheld by the lower appellate court.

8. The articles, which were seized from the possession of the applicant, were identified vide Ex. P/3. Test identification parade was conducted by the Executive Magistrate S. K. Tandon (PW-2) vide Ex. P/3. He has stated that on the date of identification, the seized articles of gold and silver jewelry were mixed with similar articles, whereafter complainant Maniklal was called to identify his property. In the identification, the complainant identified his articles and picked out the articles which belonged to him. It is stated by this witness that the complainant made a correct identification. In cross-examination, this statement has remained unrebutted. The questions which have been asked to this witness and answered by him have no relevance with the identification procedure and further he denied the adverse suggestion given by the defence.

9. There is evidence on record that complainant – Maniklal (PW-3) was in possession of the articles i.e. gold and silver ornaments alongwith cash on the date of incident, which were taken away from his possession and the commission of offence of theft from his house is proved by the evidence on record.

10. At the instance of the applicant, the articles gold and silver jewelery were recovered from his possession and the recovery has been proved by the seizure memo (Ex. P/7). Further, in the test identification parade, the articles were identified by the complainant as the articles which were in his possession before the incident of theft. This clearly makes out a case against the applicant and the presumption under Section 114 of the Indian Evidence Act comes into play, leading to a presumption that the applicant either committed theft of the articles or he received the stolen goods.

11. Looking to the evidence and the answer given by the applicant in his examination under Section 313 of Cr.P.C. it is clear that the applicant has made no claim to the seized articles. Now the question is which of the presumption shall be applicable in the case against the applicant.

12. In this case, the incident of theft took place on 12.7.2006. The applicant was apprehended and interrogated on 19.12.2006 i.e. after passing of almost six months from the date of incident. The other statements made regarding the incident and commission of offence cannot be considered as an evidence looking to the bar under Sections 25 and 26 of the Evidence Act. Hence, it is only the recovery part of the statement which has been admitted in evidence can be taken into consideration. Apart

from that, there is no other evidence nor statement of any witness to arrive at a specific finding that the applicant is a thief and he is the person who committed the theft on the date of incident. Looking to the period passed in between, it would be a safer course to arrive at a finding that the applicant who was found in possession of the articles of theft is a receiver of the stolen goods and this becomes a lesser offence than the offence under Sections 457 and 380 of the IPC. For these reasons, the conviction of the applicant under Sections 457 and 380 of the IPC is not sustainable and his conviction needs to be altered.

13. Hence, the revision is partly allowed. The impugned judgment of conviction and sentence is set aside and the applicant is now convicted under Section 411 of the IPC. As this conviction is for a lesser offence, the period of custody already undergone by the applicant is taken into consideration. As per the record, the applicant was arrested on 19.12.2006 and he was released on bail by order of this court on 5.11.2007. Therefore, the applicant remained in jail for 10 months and 18 days, which can be regarded as sufficient punishment for the offence under Section 411 of the IPC. Hence, for the offence under Section 411 of the IPC, the applicant is sentenced with imprisonment of custody already undergone by him and with sentence of fine of Rs.5,000/- which, as informed, has already been paid. Hence, now, there is no need to pay any amount as fine. Thus, this revision is disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge