

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 440 of 2004**

- Devlal Dhruv, son of Shri Shyam Dhruv, aged about 26 years,
r/o village Muratrai, Thana Rajim, District Raipur (C.G) ---
Applicant

Versus

- State of Chhattisgarh, through District Magistrate, Raipur
Respondent

For the applicant	:	Mr. Hemant Kesarwani & Mr. Suresh Tandon, Advocates
For the State	:	Mr. Sangharsh Pandey, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****10.07.2017**

1. This revision is against the order dated 27.08.2004 passed by the learned XI Additional Sessions Judge (FTC), Raipur, in Criminal Appeal No.121 of 2014 whereby the order of conviction and sentence dated 28.04.2004 passed by the JMFC, Raipur in Criminal Case No.1670 of 2002 is affirmed.

The conviction and sentence of the applicant are as follows:

U/s 457 IPC	R.I., for 1 year and fine of Rs.500/-, in default of payment of fine, additional R.I., for 3 months
U/s 380 IPC	R.I., for 1 year and fine of Rs.500/-, in default of payment of fine, additional R.I., for 3 months

2. As per the prosecution case, on 06.07.2002 a report was made by complainant Gyan Chand that he has received the payment of Rs.30,335/- from one Manikant in three bundles

of Rs.100/- denomination and he counted the notes and after taking out Rs.335/-, put the seal of his company on the bundles and the remaining Rs.30,000/- was kept in the table drawer of his house. Thereafter, as usual, he closed his office at 9.30 p.m (in the night) and left for his house. On the next day when he came to open his office, he found that the lock was not found on the shutter and the shutter was broken. When he went inside the office it was found that the drawer of office table was opened and Rs.30,000/- kept in drawer was missing. The complainant made a report wherein suspicion was raised over his old servant namely the applicant. Thereafter, the applicant accused was arrested and on his memorandum and at his instance, the amount which was kept below the ground near a shrub was recovered. After investigation, the charge sheet has been filed and during the trial, accused has abjured the guilt.

3. After the investigation, the charge sheet was filed; the trial commenced and during the trial, the accused abjured the guilt. The prosecution on its behalf had examined complainant Gyan Chand Thathiya as P.W.1; Manikant Momaya as P.W.2 who had given the amount to complainant and Chitranjan Sahu (P.W.3) who was also witness to the memorandum as also the investigating officer Albert Kujur (P.W.5). The trial Court after evaluating the evidence on record has convicted and sentenced the accused as aforesaid.
4. The said order was subject of challenge before the appellate Court. The appellate Court too affirmed the order of conviction. Hence, this revision.

5. Learned counsel for the applicant would submit that the instant revision is of the year 2002 and almost 15 years have elapsed and since then the applicant is visiting the Court to mark his presence from time to time and further the conviction is based on interested witnesses, therefore, the appellant may be acquitted of the charges.
6. Per contra, learned State Counsel opposes the argument and submits that the order of the Court below is well merited which do not require any interference.
7. Perused the statement of complainant P.W.1. He stated that on 05.07.2002 he received the payment of Rs.30,335/- from Manikant (P.W.2) and after receiving the same, he put the seal of his company over such bundle of notes and kept in the office drawer and after closing the office in the night at about 9.30 p.m., left for his home. Thereafter, when he came to the office on 06.07.2000 at about 2.00 p.m., he found that the shutter was opened and after entering into the shop he found that the amount which was kept in the table drawyer was missing as the key was kept in another drawer, therefore, he initially lodged the report raising suspicion over the old servant i.e., present applicant Devlal. The report FIR was marked as Ex.P-5. Subsequently the applicant was arrested and during interrogation, the memorandum was recorded wherein the applicant stated that he had stolen the amount and out of that Rs.1500/- was taken out and the rest of the amount was kept below the ground at a shrub near a railway line. After recording such memorandum, at the instance of the applicant the place was searched and after excavating the ground, 3 packets of

Rs.100/- denomination were recovered which was bearing the seal of complainant's Company C.P. Coal, therefore, the amount of Rs.28,500/- was recovered. The said amount was seized vide Ex.P-3.

8. The seizure witness has categorically stated that the recovery was made from the present applicant at his instance after excavating from the field. Therefore, the fact that money which was recovered at the instance of the present applicant that too was kept below the field cannot be ignored and the bundle of notes which was recovered also contains the seal of C.P. Coal Company. Consequently taking into the evidence as a whole, I am of the opinion that the learned courts below have not committed any illegality in convicting the accused u/s 457 & 380 IPC.
9. Now coming to the part of sentence, it appears that the incident took place way back in the year 2002 and almost 15 years have elapsed and no purpose will be served to again sent him to jail. Thus considering the nature of allegations and recovery of stolen amount, in the opinion of this court, ends of justice will be sub-served if the sentence is held to be undergone. Therefore, with respect to the offence u/s 457 & 380 IPC, the sentence of appellant is converted to fine by enhancing the same already imposed. Consequently the fine amount of Rs.500/- already imposed by the court below is enhanced to Rs.7500/- on each account thereby the total fine amount comes to Rs.15,000/- on both the counts. It is directed that the accused shall pay a total fine of Rs.15,000/- on both the counts within a period of 60 days from the date of passing of this order. In absence of payment of fine, the

accused shall suffer the original sentence imposed by the trial Court and affirmed by the appellate Court.

10. Accordingly, the revision is allowed in part.

**Sd/-
GOUTAM BHADURI
JUDGE**

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