

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 455 of 2004**

- Rohit Kumar Kosta S/o Banshi Lal Kosta, aged about 28 years, R/o Purana Bazar Rajhara, P.S. Rajhara, Tahsil Balod District Durg (C.G.)

----Applicant**Versus**

- State of Chhattisgarh

---- Respondent

For Applicant	:	Shri P. Dhurandhar, Advocate.
For State/Respondent	:	Shri Rahul Tamaskar, P.L.

Hon'ble Shri Justice Pritinker Diwaker**Order On Board****22/11/2017**

01. The present Revision petition is directed against the judgment and order dated 02.09.2004 passed by the Additional Sessions Judge, Balod, District Durg, in Cr.A. No.198/2001 affirming the judgment and order dated 10.10.2001 passed by Judicial Magistrate First Class, Balod in Criminal Case No.22/2000 convicting the applicant under Sections 457 and 380 IPC and sentencing him to undergo R.I. for one year with fine of Rs.500/- and R.I. for one year with fine of Rs.300/- respectively, plus default stipulation.

02. As per the prosecution case, on 29.07.1997, a theft was committed in the shop of complainant Desh Kumar (PW/1). On the next morning when the shop was opened, eight saris, five full pants, eight biscuit packets, nine packets of bidi, three packets of cigarette, two packets of match box, one cloth roll, full pant school dress,

umbrella and Rs.151/- were found missing. Along with the accused/complainant, one Loman and Mahesh were also arrested and FIR (Ex.P/1) under Sections 857 and 380/34 of IPC was registered against them.

03. After investigation, charge sheet was filed against applicant, co-accused Loman and Mahesh, however, at the time of framing charges, co-accused Loman admitted his guilt and accordingly he was sentenced to undergo R.I. for one year. The trial Magistrate framed the charges against applicant Rohit and co-accused Mahesh under Sections 457 and 380 of IPC.

04. So as to hold the applicant and co-accused Mahesh guilty, the prosecution examined as many as 07 witnesses. Statements of the applicant and co-accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

05. Vide judgment and order dated 10.10.2001 the trial Magistrate has convicted the applicant under Sections 457 and 380 IPC. The judgment of the trial Magistrate has been affirmed by the appellate Court vide impugned judgment dated 02.09.2004, hence this revision.

06. Co-accused Mahesh has not preferred any appeal assailing the order of the Magistrate.

07. Counsel for the applicant submits that he is not pressing this revision on merit and would confine his argument to the sentence part only thereby the applicant has remained in jail for about 19 days, the incident took place about 16 years back, the applicant has no criminal antecedent, no useful purpose would be served in sending him back to

jail and he be sentenced to the period already undergone by him.

08. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the conviction of the applicant is in accordance with law and there is no infirmity in the same.

09. Heard learned counsel for the parties and perused the material available on record.

10. Deshkumar (PW/1) is complainant in whose shop the theft was committed. While supporting the prosecution case, he has stated that articles of his shop were subjected to theft. He states that FIR (Ex.P/1) was lodged by him and co-accused Loman and Mahesh have admitted their guilt. Kanshi Ram (PW/2) is father of PW/1, who was sleeping in the room adjacent to the shop. It is this witness who first came to know about the commission of offence and immediately thereafter he called PW/1. He has stated that co-accused Mahesh while admitting the guilt had informed the villagers that applicant Rohit and co-accused Loman were also there with him. Babulal (PW/3) is villager and witness to confession made by the accused persons. Dhanesh Kumar (PW/4) and Kailash are the witnesses to memorandum (Ex.P/3) and seizure (Ex.P/2). Rajaram (PW/6) - Head Constable assisted in the investigation. Dashrath Singh Thakur (PW/7) is the Investigating Officer who has duly supported the prosecution case.

11. Close scrutiny of the evidence makes it clear that on 29.07.1997 it is the applicant who had committed theft in the shop of PW/1. Complainant PW/1, PW/2 and PW/3 have duly supported the prosecution case. That apart, extra-judicial confession has also been made by co-accused Loman and Mahesh before these witnesses, which

has been duly proved. While framing the charges, co-accused Loman had admitted his guilt and was sentenced to undergo R.I. for one year. Considering all these aspects of the case, both the Courts below have arrived at a conclusion that the prosecution has successfully proved its case beyond the shadow of all reasonable doubt and held him guilty under Sections 457 & 380 of IPC. This Court finds no reason to interfere with the said findings and therefore, the same is hereby affirmed.

12. The only question which arises for consideration by this Court is as to what would be the appropriate sentence to be imposed upon the applicant.

13. Considering the overall facts and circumstances of the case, in particular the fact that the incident occurred 16 years ago, the applicant has already remained in jail for about 19 days, has no criminal antecedent, this Court is of the opinion that no useful purpose would be served in sending him back to jail at this stage and the ends of justice would be served if he is sentenced to the period already suffered by him and is directed to pay additional fine of Rs.3000/- with default stipulation.

14. In the result, the appeal is partly allowed. While maintaining conviction of the applicant under Sections 457 & 380 of IPC, his jail sentence is reduced to the period already undergone by him. However, he is directed to pay an additional fine of Rs.3000/- within six months from today, failing which he shall have to undergo RI for three months.

Sd/-

(Pritinker Diwaker)
JUDGE