

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 439 of 2004

- Joli @ Mahendra Kumar, S/o. Mansai aged 40 years, Resident of Village Pachpedi, P.S.Masturi, District Bilaspur (CG)

---- Applicant

Versus

- State Of Chhattisgarh, through police station Masturi, O.P. Pachpedi, district Bilaspur (CG)

---- Respondent

For Applicant	: Shri M.K.Baeg, Advocate
For Respondent	: Shri Adil Minhaj, P.L.

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

03/05/2017

This revision arises out of judgment and order dated 27.08.2004 passed by 8th additional Sessions Judge (FTC) Bilaspur in Cr.A. No. 293/2002 affirming the judgment and order dated 07.10.2002 passed by ACJM Bilaspur in Criminal Case No. 216/2002 convicting the applicant under Section 456 IPC and sentencing him to undergo RI for four months with fine of Rs. 200/- with default stipulation.

2. As per prosecution case, on 13.04.96, when complainant Dewan Singh was sleeping in the courtyard, at about 3.45 a.m. accused/applicant after unbolting the house was entering the house, which was seen by his wife Bhagwati Bai (PW-2). With the help of other family members accused/applicant was caught at the spot itself however he escaped from the custody. FIR Ex.P1 was lodged by

Dewan singh (PW-1) based on which offence under Section 457 IPC was registered against the applicant. After filing of the charge sheet, trial judge framed charge against the accused/respondent under Section 457 IPC.

3. In support of its case, the prosecution has examined as many as eight witnesses. Statement of the accused was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the charges leveled against him and pleaded false implication in the case.

4. After hearing counsel for the parties, by judgment and order dated 7.10.2002 the Court below has though acquitted the applicant under Section 457 but convicted him under Section 456 IPC and sentencing him to undergo RI for four months and fine of Rs. 200/- with default stipulation which was affirmed by the appellate court. Hence this revision.

5. Contention of the counsel for the applicant is that

i) the applicant has been falsely implicated in the crime in question.

ii) on account of previous animosity complainant and his family members have falsely implicated the applicant.

iii) the incident had taken place in the year 1996 i.e. about 21 years back, applicant has already remained in jail for about 14 days and therefore the sentence be reduced to the period already undergone by him.

6. On the other hand counsel for the State has supported the impugned judgment. It has been argued by the State counsel that the applicant entered the house of complainant with an intention to commit

theft but unfortunately the family members of the complainant woke up, he was caught however, unfortunately he escaped from the custody. He further submits that number of criminal cases are registered against the applicant and the proceedings under sections 107,116(3) Cr.P.C. have also been drawn and therefore no leniency be shown to him. He has produced the copy of report submitted by PS Masturi.

7. I have heard counsel for the parties and perused the material available on record including the judgment impugned.

8. Dewan Singh P.W-1 is the complainant who lodged the FIR has stated that on 12.04.96 when he was sleeping in the courtyard, at about 3.45 a.m. accused/applicant after unbolting the door was entering the house which was seen by his wife Bhagwati Bai (PW-2) and with the help of other family members accused/applicant was caught at the spot itself however he escaped from the custody. He has further stated that when the complainant asked him as to who is there, he replied that he is Jolie @ Mahendra and as the police is chasing him he entered the house. He has stated that the accused/applicant was carrying torch in his hand and when his son went out to see as to whether the police was there, he found no one and by that time, accused/applicant fled away from the spot. Bhagwati Bai (PW-2) wife of complainant (PW-1) has supported the prosecution case. Rasila (PW-3) and Ravi Shankar (PW-4) daughter-in-law and son have almost made similar statement as has been made by complainant (PW-1). Firanta (PW-7) has also supported the prosecution case. Santosh Yadav (PW-8) is the Investigating Officer who has done the investigation.

9. Close scrutiny of the evidence makes it clear that on the date of incident, when the complainant was sleeping in the courtyard along with his wife, accused/appellant after unbolting the door entered inside and the eyewitnesses have also supported the prosecution case. After considering the entire evidence available on record and that number of criminal cases are pending against the applicant, this court is of the firm view that the finding recorded by the trial Court convicting the accused/applicant under Section 456 IPC which have been duly affirmed by the lower appellate Court by judgment impugned, is fully justified and no interference is warranted therewith. The revision fails and is accordingly dismissed. Applicant is on bail. He be taken into custody to serve the remaining sentence.

Sd/-

Pritinker Diwaker
Judge