

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 485 of 2004**

- Rohit Kumar, son of Ghasiram, aged about 20 years, Occupation Student, Resident of Thakurdiya, P.S. and Tahsil Kharsiya, District Raigarh (C.G.)

**----Applicant****Versus**

- State of Chhattisgarh Through - District Magistrate, Raigarh (C.G.)

**---- Respondent**

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| For Applicant        | : | Shri Vivek Bhakta, Advocate. |
| For State/Respondent | : | Shri Rahul Tamaskar, P.L.    |

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**Hon'ble Shri Justice Pritinker Diwaker****Order On Board****10/05/2017**

01. The present Revision petition is directed against the judgment and order dated 03.09.2004 passed by the II Additional Sessions Judge, Raigarh, in Cr.A. No.29/2004 affirming the conviction of the applicant under Sections 457 and 380 IPC, however, his jail sentence reduced to one year from two years maintaining fine amount imposed by the trial Magistrate vide judgment and order dated 15.01.2004 passed by Judicial Magistrate First Class, Raigarh in Criminal Case No.493/2002.

02. Brief facts of the case are that on 02.02.2002 FIR (Ex.P/1) was lodged by Sadhram (PW/1), Peon posted in Adim Jaati Seva Sahakari

Samiti, Kharsiya alleging in it that the lock of godown where paddies were kept was found to be broken. Upon verification, three bags of paddy were found to be missing. After sunset, the missing paddies were transported in rikshwa by accused/appellant Rohit. Based on this, FIR for the offence under Sections 457 and 380 was registered against the applicant.

03. After investigation, charge sheet was filed against the applicant under Sections 457 and 380 IPC & accordingly the charges were framed against him by the trial Court.

04. So as to hold the applicant guilty, the prosecution examined as many as 07 witnesses. Statement of the applicant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

05. Vide judgment and order dated 15.01.2004 the trial Magistrate has convicted the applicant under Sections 457 and 380 IPC. The judgment of the trial Court has been partially affirmed by the appellate Court vide impugned judgment dated 03.09.2004 reducing the jail sentence from two years to one year maintaining fine amount, hence this revision.

06. Counsel for the applicant submits as under :-

- That the applicant is a poor person and it appears that on account of his poor financial condition he might have committed the offence.
- That the applicant has already undergone jail sentence for about 25 days, the incident took place about 15 years back, at the relevant time

the applicant was a student aged about 20 years, no useful purpose would be served in sending him back to jail and he be sentenced to the period already undergone by him.

07. 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 and no leniency is required to be shown to the applicant.

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

09. Close scrutiny of the evidence makes it clear that on 02.02.2000 it is the applicant who had stolen paddies from Govt. godown. Sadhram (PW/1), Budhwa (PW/2), Sitaram Sahu (PW/3) and Girdharilal Gawel (PW/4) have duly supported the prosecution case. That apart, extra-judicial confession has also been made by the applicant before PW/4, which has been duly proved by this witness. 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.

10. 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.

11. Considering the overall facts and circumstances of the case, in particular the fact that the incident occurred 15 years ago, the applicant has already remained in jail for about 25 days, at the relevant time he

was a student aged about 20 years, 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.2000/- with default stipulation.

12. 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.2000/- within six months from today, failing which he shall have to undergo SI for two months.

Sd/

**(Pritinker Diwaker)**

**JUDGE**