

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 05 of 2005**

1. Mohan Singh S/o Madho Singh, aged about 53 years, R/o
Village Sambalpur, PS Daundilohara, District Durg,

---- Applicant

Versus

1. The State of Chhattisgarh

---- Respondent

For Applicant	:	Smt. C.K. Navrang, Advocate
For Respondent/State	:	Shri Ravindra Agrawal, PL

Order on Board by Pritinker Diwaker, J

03/05/2017

This revision petition has been filed by the applicant against the judgment and order dated 11.10.2004 passed by Additional Sessions Judge, Balod, District Durg in Criminal Appeal No. 280/2003 affirming the judgment and order dated 31.5.2003 passed by Judicial Magistrate First Class, Balod in Criminal Case No. 565/2000 convicting the applicant for the offence punishable under Section 457 IPC and sentencing him to undergo RI for one year with fine of Rs. 1000/- plus default stipulation.

2. Case of the prosecution in brief is that in the intervening night of 24/25.1.2000 accused/applicant entered the grocery shop of Gour Kumar (PW-1) by breaking open the door. This was seen by Bahukram Koresia (PW-2) who then caught hold of the applicant, made an inquiry from him as to why he did so, and called the police. On hearing commotion, the villagers had also gathered there. Thereafter, FIR Ex. P-1 was lodged by Gour Kumar (PW-1)

against the accused/applicant for the offence punishable under Section 457 IPC, followed by charge-sheet and framing of charge under that section.

3. In order to hold the accused/applicant guilty, the prosecution examined as many as five witnesses. Statement of the accused/applicant was also recorded under Section 313 of the Code of Criminal Procedure where he denied his guilt and pleaded innocence and false implication in the case.

4. The trial Court, after considering the material available before it, convicted the accused/applicant under Section 457 IPC which has subsequently been affirmed by the lower appellate Court in appeal. Hence this revision.

5. Counsel for the applicant submits that the applicant has been falsely implicated in the case on account of some old dispute between the complainant and himself which is evident from the statements of the defence witnesses. She submits that as the applicant has remained in jail for three months and ten days and the incident had taken place about 17 years back, the sentence imposed on him may be reduced to the period already undergone in case conviction is not going to be interfered with.

6. Counsel for the respondent/State however supports the judgment impugned and submits that the findings recorded by both the Courts below are strictly in accordance with law and there is no infirmity in the same.

7. Heard counsel for the parties and perused the documents on record.

8. Gou Kumar (PW-1) – the owner of the grocery shop has stated that on 24.1.2000 when he returned home after closing the shop, accused/applicant broke open the door and entered in the shop. According to this witness, information to this effect was given to him by some villager in the midnight. According to him, when he went to the shop, the lock was found broken, and then the report was lodged. Bahukram Koresia (PW-2) is the witness who while going to answer the call of nature, saw the accused/applicant entering the shop of the complainant after breaking open the lock with the help of iron rod. He is also stated to have caught hold of the accused, made an inquiry from him and called the police. Dr. S.L. Uikey (PW-3) who medically examined the accused/applicant and found some injuries on his body. Chandra Kumar Koresia (PW-4) and Jairam (PW-5) are the witnesses who assisted the villagers in catching hold of the accused/applicant.

9. Perusal of the evidence of the witnesses thus goes to show that in the intervening night of 24/25.1.2000 the accused/applicant broke open the lock and entered the grocery shop of the complainant (PW-1). There is one eyewitness to the incident also namely Bahukram Koresia (PW-2) who upon seeing the applicant breaking open the lock and entering the shop of the complainant, called the police. In view of all this, conviction of the applicant under Section 457 IPC is hereby maintained. However, looking to the fact that the applicant has already remained in jail for a period of 3 months and 10 days, that the incident had taken place about 17 years back, that no minimum jail sentence is provided for the

offence alleged and further that according to the complainant himself no loss has been caused to his property, this Court deems it proper to reduce his sentence to the period already undergone. Order accordingly.

10. Revision thus allowed in part to the extent indicated above.

Sd/-
(Pritinker Diwaker)
Judge

Jyotishi