

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 51 of 2008

Uday Kumar son of Shri Akalu Das, aged about 33 years,
caste – Panika, Resident of village Dharampur, Kanhapara, PS
Sitapur, District Sarguja, CG

--- Applicant

Versus

State of Chhattisgarh through District Magistrate, Ambikapur,
(Sarguja), CG

--- Respondent

For Applicant	-	Shri Rahul Mishra, Advocate.
For Respondent	-	Shri Gary Mukhopadhyaya, GA

Order on Board by Hon'ble Smt. Vimla Singh Kapoor, J.

14.11.2018:

By this revision petition the applicant has assailed the judgment dated 10.01.2008 passed by Additional Sessions Judge, Ambikapur in Criminal Appeal No. 23/2007 affirming the judgment dated 28.02.2007 passed by Judicial Magistrate First Class, Ambikapur in Criminal Case No. 841/2005 convicting the accused/applicant under Section 380 IPC and sentencing him to undergo rigorous imprisonment for six months and pay fine of Rs. 300/-, in default of payment of fine to undergo further rigorous imprisonment for 15 days.

2. Facts of the case in short are that on 24.06.2003 the applicant committed theft of the oxen belonging to complainant Anil Kumar (PW-1) and that when he along with Jamuna Das (PW-

2), Brijmohan Prasad Gupta (PW-3) and Manikchand Gupta (PW-5) started search operation, his oxen were found tied in the cattle shed of the accused/applicant. Thereafter, the report Ex. P-1 was lodged, seizure of the oxen was effected under Ex. P-3 and after completion of investigation, challan was laid u/s 380 IPC followed by framing of charge.

3. After examining the material available on record and the evidence of the witnesses the trial Court convicted the accused/applicant under Section 380 IPC and imposed the sentence as described above. The findings recorded by the trial Court have subsequently been confirmed by the lower Appellate Court by the judgment impugned and it is that which is under challenge in this revision.

4. Counsel for the accused/applicant submits that he is not pressing this revision as far as conviction part of the judgment challenged therein is concerned, and would confine his argument to its sentence part only. He submits that as the incident had taken place in the year 2003, that he has already remained in jail for 38 days and also deposited the amount of fine, the sentence imposed on him may be reduced to the period already undergone.

5. On the other hand, counsel for the respondent/State supports the judgment impugned as a whole.

6. Heard counsel for the parties and perused the evidence on record.

7. Having heard counsel for the parties and perused the material available on record including the evidence of PW-1, PW-2, PW-3 and PW-5 who in the same tune have stated that during search, the oxen belonging to PW-1 were found tied in the cattle-shed of the accused/applicant. Furthermore, seizure memo Ex. P-3 also supports the case of the prosecution. This apart, the accused/applicant himself has admitted in his statement recorded under Section 313 CrPC that he had tied the oxen belonging to PW-1 in his own cattle-shed. In this view of the matter, the Courts below have been fully justified in convicting the accused/applicant under Section 380 CrPC. This finding does not suffer from any legal flaw and is maintained as such.

8. As regards sentence, keeping in mind the fact that the incident had taken place in the year 2003 thereby leading to passage of 15 long years since thereafter, that the applicant has already remained in jail for 38 days and also deposited the amount of fine, this Court thinks it just and proper and in the interest of justice to reduce the same to the period already undergone. Order accordingly.

9. Revision thus allowed in part.

Sd/-

(Vimla Singh Kapoor)
Judge