

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 196 of 2005

Vinod Toppo son of Shri Admon Toppo, aged about 28 years,
occupation - Labour (Khalasi) R/o Budadand, PS Bagicha,
District Jashpur, CG

--- Applicant

Versus

State of Chhattisgarh through Police Station Bagicha, District
Jashpur, CG

--- Respondent

For Applicant	-	Shri Sanjay Agrawal, Adv.
For Respondent	-	Smt. M. Asha, PL

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

10.12.2018:

By this revision petition the applicant has assailed the judgment dated 29.04.2005 passed by Additional Sessions Judge Jashpur in Criminal Appeal No. 08/2005 modifying the judgment dated 26.02.2005 passed by JMFC Jashpur in Criminal Case No. 226/2001 convicting the accused/applicant under Section 379 IPC. Learned lower appellate Court has however reduced the sentence of RI for two years to RI for six months but kept the fine sentence as it is.

2. Facts of the case in short are that on 06.02.2001 at about 6.30 PM complainant Roopdhar (PW-1) had gone to the house of one Jagdish Ram on his bicycle and when he started talking with said Jagdish by keeping the bicycle outside the house, the accused/applicant took it away. On suspicion, he along with Jagdish

Ram went to the house of accused/applicant but he was not found there. After some time, one Ignesh Tirki told him to have seen the accused/applicant going on a bicycle. On lodgment of the report (Ex.P-1), investigation began and on the memorandum of the accused/applicant (Ex.P-4) a bicycle, the receipt of which was being possessed by the complainant (PW-1) was seized under Ex. P-5. Statement of PW-3 namely KP Gupta who recorded the memorandum of the accused and made seizure based on that, has been supported by Upendra (PW-2). On completion of investigation, *challan* was filed against the accused/applicant under Section 379 IPC.

3. After examining the material available on record and the evidence of the witnesses the trial Court convicted the accused/applicant under Section 379 IPC and imposed the sentence of RI for two years with fine. The finding of conviction recorded by the trial Court has subsequently been confirmed by the lower Appellate Court by the judgment impugned but the sentence has been reduced to the extent indicated above, and it is that which is under challenge in this revision.

4. There is a certificate dated 18.11.2017 issued by the Gram Panchayat, Raikera which shows that the accused/applicant herein died on 16.11.2007 i.e. during the pendency of this revision. However, this Court has to decide the case on its own merits, in view of the order passed by the Constitution Bench of Supreme Court in the matter of **Pranab Kumar Mitra v. State of WB** reported in **AIR 1959 SC 144**.

5. Counsel for the accused/applicant submits that the conviction and sentence recorded by the lower appellate Court are contrary to the evidence on record and therefore the same is required to be set aside.

6. State counsel however supports the judgment under assail and submits that the Courts below have recorded the well reasoned finding while writing the judgment impugned and therefore, no interference there-with is needed by this Court.

7. Having heard counsel for the parties and perused the evidence of the witnesses - in particular PW-1, PW-2 and PW-3 and considering the fact that on the memorandum of the accused/applicant Ex. P-4, the bicycle was seized under Ex. P-5 and that the accused/applicant could not produce the receipt thereof, this Court does not see any illegality or infirmity in the judgment impugned. Accordingly, the findings so recorded are hereby maintained.

8. Revision therefore being without any substance is liable to be dismissed and it is dismissed as such.

Sd/-

(Vimla Singh Kapoor)

Judge