

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Arising out of judgment dated 10/9/2004 passed by the
Additional Sessions Judge, Balod in Cr.A.No. 412/2003****CRR No. 516 of 2004**

- Vishnu Ram S/o Uday Ram, aged about 30 years, R/o Village Devari, P.S. Gurur, District Durg, Chhattisgarh.

----Applicant**Versus**

- State Of Chhattisgarh

---- Respondent

For Applicant	Shri Praveen Dhurandhar, Advocate.
For State	Shri Wasim Miyan, P.L.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****26/03/2018**

1. The applicant stands convicted for committing offence under Sections 457 and 380 IPC and has been sentenced to undergo R.I. for 2 years and R.I. for one year respectively with fine of Rs. 1,000/- and 500/- respectively, in default to undergo additional S.I. for 6 months.
2. The applicant committed lurking house trespass for committing theft in the house of PW-1 Avan Kumar, during intervening night of 10th and 11th September, 2001. He committed theft of golden neckless and silver anklet by removing the same from

the person of PW-2 Chandra Kumari, who happens to be the sister of PW-1. Both these witnesses awake, however, by that time the accused had run away from the place of occurrence. Avan Kumar PW-1 informed the incident to the villagers who immediately assembled there and a search was carried in the village during which the applicant was found to be returning from agricultural field, therefore, he was subjected to interrogation as to how he is returning from the agricultural field at such late hours. The villagers witnessed that the body of the applicant was carrying impression of Blueish Lime which was the colour of the Lime Paint applied on the walls of the house of PW-1. Suspecting that the applicant has committed theft by committing lurking house trespass, he was inquired about the same to which the applicant admitted to have committed theft.

3. The matter was reported to the Police and during investigation the applicant gave his memorandum statement vide Ex. P-5. On the basis of which seizure of neckless and anklet was made vide Ex. P-4. The ornaments were concealed by the applicant under the Heap of Straw in his house. The ornaments were subjected to identification and was correctly identified by PW-2 Chandra Kumari.
4. Based on the memorandum and seizure as well as the statement of witnesses namely PW-1 Avan Kumar, PW-2 Chandra Kumari, PW-3 Rohit Kumar, PW-4 Deendayal, PW-5

Ameer Chand and PW-7 Gulendra Kumar, the trial Court convicted the applicant for the offence as afore-stated and the same has been affirmed by the appellate Court.

5. Shri Praveen Dhurandhar, learned counsel for the applicant would submit that the prosecution case is highly improbable inasmuch as theft is not possible from the person of PW-2 who was sleeping in her house at the time of occurrence. He would further submit that at the time of identification of ornaments Police personnel were present and other similar ornaments were not mixed with the stolen property. The identification is doubtful, therefore, since such ornaments are usually found in all households, the applicant deserves to be acquitted.
6. Learned State counsel would support the impugned judgment on submission that there is concurrent finding recording guilt of the applicant, therefore, no interference is required to be made.
7. The evidence of Extra Judicial Confession has proved by PW-3 Rohit Kumar, PW-4 Deendayal, PW-5 Ameer Chand and PW-7 Gulendra Kumar is very natural and spontaneous. The Extra Judicial Confession has been made by the applicant immediately after the incident, therefore, there is no time gap to falsely implicate the applicant.
8. Moreover, the applicant has not offered any explanation in his accused statement that the Extra Judicial Confession was

extracted from him under threat or duress or by giving beating. Moreover, the recovery of the ornaments has also been made immediately on the next day and the memorandum statement of the applicant pursuant to which the recovery has been made, has been duly proved by PW-4 Deendayal.

9. With this quality of evidence, the discrepancy or defect in identification would not affect the prosecution case for the reason that once there is evidence of Extra Judicial Confession and memorandum statement it was for the applicant to have explained the same, however, he failed to do so in his accused statement.

10. Considering the quality of evidence on record, I am unable to find out any perversity in the impugned judgment rendered by the Courts below. Accordingly, the conviction of the applicant under Sections 457 and 380 IPC is affirmed.

11. At this stage, learned counsel would submit that accused may be released by reducing the sentence to the period already undergone. It is to be seen that incident occurred on 10th/11th September, 2001, thus, more than 16 years have elapsed after the incident. The applicant remained in Jail for about 18 days during trial and for about 39 days after the appellate Judgment, thus, he has remained in Jail for about 57 days.

12. Considering the value of the ornaments, the time elapsed since after the incident and for the fact he has already

undergone for about 57 days of imprisonment, as also for the reason that both the offence do not provide for any minimum sentence, it appears to be a case where the sentence should be reduced to the period already undergone.

13. It is ordered accordingly.

14. Resultantly, the revision is allowed in part. While maintaining applicant's conviction under Sections 457 and 380 IPC, the sentence for both the offence is reduced to the period already undergone in substantive jail sentence. The fine amount imposed on the applicant shall remain unaffected.

Sd/-

Judge
Prashant Kumar Mishra

Akhilesh