

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 355 of 2008**

- Satish Das @ Rinku @ Michael, S/o Firtu Das, aged about 23 years, R/o Club Para, Mahasamund, District - Mahasamund (C.G.)

----Applicant**Versus**

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

---- Respondent

For Applicant : Smt. Indira Tripathi, Advocate.
 For State/Respondent: Shri Vivek Sharma, G.A.

Hon'ble Smt. Justice Rajani Dubey**Order On Board****07/12/2018**

01. The present Revision petition is directed against the judgment and order dated 16.05.2008 passed by I Additional Sessions Judge, Mahasamund, in Cr.A. No.37/2008 affirming the judgment and order dated 27.02.2008 passed by Chief Judicial Magistrate, Mahasamund in Criminal Case No.212/2006 convicting the applicant under Sections 380 and 457 IPC and sentencing him to undergo R.I. for 3-3 years with fine of Rs.100/- - Rs.100/-, plus default stipulation.

02. Brief facts of the case are that complainant Balkrishna Patel (PW/1) lodged a report (Ex.P/1) in police station Mahasamund alleging in it that on 12.02.2006 he had gone to his relatives' house and on 13.02.2006 when he returned to

his house, he found the back door of his house opened, pipe of gas connected was lying outside of the house and cylinder was missing. Thereafter, he searched the cylinder nearby his house and when he did not find it, he lodged the report. Based on this report, offence under Sections 457 and 380 IPC was registered against the unknown person. During investigation, memorandum of the applicant was recorded vide Ex.P/3. On the basis of disclosure statement made by the applicant, two cylinders were seized vide Ex.P/5.

03. After filing of the charge sheet, the trial Court framed the charge under Sections 457 and 380 against the applicant and under Sections 457 and 380 read with section 34 IPC against two other co-accused persons.

04. So as to hold the accused persons guilty, the prosecution examined as many as 08 witnesses. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

05. Vide judgment and order dated 27.02.2008 the trial Magistrate while acquitting two co-accused, has convicted the applicant under Sections 380 and 457 IPC. The judgment of the trial Court has been duly affirmed by the appellate Court vide impugned judgment dated 16.05.2008, hence this revision.

06. Learned counsel for the applicant submits that the applicant has been falsely implicated in the crime in question and the impugned judgment passed by the appellate Court being contrary to the law is not sustainable. He further submits that both the Courts below have failed to appreciate the evidence properly and conclusion drawn in holding the applicant guilty of the offence under Sections 457 and 380 IPC is contrary to the evidence on record. It is next submitted that the cylinder was not recovered from his house and the witnesses to seizure have not supported the prosecution case. It has also been submitted that the learned Courts below have committed error in its finding that the applicant has committed criminal trespass in night and stolen the gas cylinder from the house of the applicant. Lastly, it has been submitted that the finding of the learned trial judge is erroneous and looking to the allegation and also inordinate delay in memorandum and no any identification of the theft article, conviction of the applicant cannot be sustained.

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.

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

09. Vinod Sharma (PW/2) is the Assistant Sub Inspector. He has stated that he has recorded memorandum of the applicant

vide Ex.P/4, based on which one cylinder was seized from Nayapara Nursery and proved his signature thereon. This witness, in para 6, has stated that seizure witness Devendra Sharma (PW/7) had come to police station, may be for his personal work. He also went on to state that 9-10 cases of theft of cylinder and golden ornaments were also registered against PW/7.

10. Devendra Sharma (PW/7) and Prakash Nand (PW/8) - Constable, are the witnesses to memorandum (Ex.P/4) and seizure (Ex.P/5). Devendra Sharma (PW/7) has stated that no proceeding with regard to memorandum (Ex.P/4) was carried out before him. Though, this witness admits his signature on seizure memo (Ex.P/5) but then denied such proceeding. Prakash Nand (PW/8) has stated that the applicant himself brought the cylinder in the police station and he had not gone with the applicant to the spot.

13. Close scrutiny of the evidence makes it clear that only on the memorandum of the applicant (Ex.P/4) and seizure (Ex.P/5), he has been convicted. The independent witness to seizure PW/7 and PW/8 have not supported the prosecution case, though they have admitted their signature. It has also come in the evidence of Vinod Sharma (PW/2)- A.S.I., who conducted investigation, that seizure witness PW/7 had come to the police station, may be for his personal work, on whom 9-10 cases of theft of cylinder and golden ornaments were already registered. In this case, the evidence of PW/7 also creates suspicion. That

apart, the cylinder has been seized from Nayapara Nursery and not from the house of the applicant. Thus from the evidence available on record it is clear that the prosecution has not succeeded in proving its case beyond reasonable doubt that it is the appellant who had committed theft in the house of complainant (PW/1) and lurking house-trespass by night in order to commit offence. Considering the entire evidence adduced by the prosecution, this Court finds it difficult to uphold the conviction of the accused/application under Sections 380 and 457 IPC.

14. In the result, the revision is allowed. The impugned judgment dated 16.05.2008 is hereby set aside. The accused/applicant is on bail. His bail bonds shall stand discharged.

Sd/-

(Rajani Dubey)
JUDGE

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