

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 210 of 2005

Order reserved on : 18-09-2018

Order passed on : 28-11-2018

Jiwan S/o. Ram Dayal Lodhi, Aged about 26 years, R/o. Parasbod,
P.S. Dhumka, District Rajnandgaon (C.G.)

---- **Applicant**

Versus

State Of Chhattisgarh, Through the District Magistrate
Rajnandgaon (C.G.)

---- **Respondent**

With

Criminal Revision No. 225 of 2005

Durga Prasad Soni, S/o. Kishan Prasad Soni, Aged about 30
years, R/o. Nehru Nagar, Sadak No. 12/15, Laxmi Jewellers,
Supela Bhilai, District Durg (C.G.)

---- **Applicant**

Versus

State Of Chhattisgarh, Through the District Magistrate
Rajnandgaon (C.G.)

---- **Respondent**

For Applicants : Mr. Dev Ashish Biswas and
Mr. Ravi Bhagat Advocates
For Respondent : Ms.M. Asha, P.L.

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Judgment

1. Having arisen out of the same judgment dated 04.05.2005 passed in Criminal Appeal No. 116 of 2004, these two revisions are disposed of by this common order.
2. Facts of the case, in short, are that on 14.07.1995 at about 7.00 AM complainant Babulal and his wife had gone to the field and their son to school, and that when Khomlal returned home at about 12.00 noon, he found the tape recorder missing from his house. This was informed to his parents after they also got back from the field. It was ultimately noticed by the complainant (PW-1) that the lock of his house was broken and the tape recorder as also numbers of silver ornaments worth Rs. 750/- were also missing. The total items missing from the house were worth Rs. 1000/-. Thereafter, report Ex.P-1 was made and after investigation the challan was filed.
3. After examining the material available on record and the evidence of the witnesses the trial Court convicted accused/applicant Jiwan under Sections 380 and 454 whereas accused/applicant Durga Prasad Soni was convicted under Section 411 IPC. 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. Learned counsel appearing for the accused/applicants submit that they are not pressing this revision on merit and confining their argument to the sentence part thereof only.

According to them, as the incident had taken place in the year 1995 and that they have already remained in jail for a period of about one month, no useful purpose would be served in again sending them to jail, and therefore, the sentence imposed upon them may be reduced to the period already undergone.

5. State counsel however, supports the findings recorded by the both the Courts below.

6. Heard learned counsel for the parties, perused the judgment impugned and the evidence available on record carefully.

7. Though there is prayer only in respect of sentence part of the judgment impugned, this Court is required to deal with the conviction part thereof as well on merit.

8. Having gone through the evidence on record it becomes apparent that on the disclosure statement of Jiwanlal (Ex.P-4) duly supported by Chherku (PW-3), Police seized one tape recorder under Ex.P-5 from him. Similarly, silver ornaments were seized from the possession of accused Durga Prasad Soni under Ex.P-6 which were duly identified by Choupi Bai (PW-6). The identification of the said ornaments has duly been supported by PW-5, PW-10 and PW-12 also. Thus, the allegation made against accused Jiwanlal that he committed a house trespass and also took away a tape recorder and the ornaments from the house of PW-1 duly get substantiated and that way, the Courts below have not committed any error in convicting him under Sections 380 and 454 IPC. Likewise, the allegation against

accused/applicant Durga Prasad Soni that he dishonestly received the ornaments knowing the same to have been stolen from the house of PW-1, are also proved from the evidence of the witnesses examined by the prosecution. Courts below have thus been fully justified in holding him guilty under Section 411 IPC. The findings recorded by both the Courts below in respect of the accused/applicants in both the aforesaid revisions are based on proper appreciation of evidence on record as far as conviction part is concerned. No illegality is there warranting interference with the same. Conviction of the two is therefore maintained.

9. As regards sentence, keeping in view the fact that the incident had taken place about 23 years back, that the applicants have already remained in detention for about one month and by now they must be leading a well settled life bearing the burden of their responsibilities, this Court is of the opinion that it would be in the interest of justice to reduce the sentence to the period already undergone by them. Order accordingly.

10. Resultantly, the revisions are hereby allowed in part with the modification in the judgment impugned as above.

Sd/-

(Vimla Singh Kapoor)
JUDGE

Jyotishi/Santosh