

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 74 of 2005**

1. Ugesh Kumar Dhruv S/o Late Shanta Kumar, aged about 25 years, R/o Kantakurdih, Tahsil nagri, Distt. Dhamtari (C.G.).
2. Vedram Dhruv S/o Late Shanta Kumar, aged about 21 years, R/o Kantakurdih, Tahsil Nagri, Distt. Dhamtari (C.G.).

----Applicants**Versus**

State of Chhattisgarh, Through P.S. Mandir Hasaud, District- Raipur (C.G.).

---- Respondent

For Applicants	:	Ms. Fouzia Mirza, Advocate
For Respondent	:	Mr. UKS Chandel, PL

Hon'ble Shri Justice Arvind Singh Chandel**Order on Board****24/01/2018**

1. This revision has been preferred under Section 397 read with Section 401 of the Code of Criminal Procedure against the judgment dated 02/02/2005 passed in Criminal Appeal No. 326/2004 by the Sessions Judge, Raipur, whereby, the Sessions Judge has affirmed the judgment dated 18/10/2004 passed in Criminal Case No. 715/1999 by the Judicial Magistrate First Class, Raipur convicting and sentencing the deceased-accused/applicant- Shanta Kumar as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 457 of IPC	RI for 1 year and fine of Rs. 200 with default stipulation.
Under Section 380 of IPC	RI for 1 year and fine of Rs. 200 with default stipulation.

2. During pendency of this revision, applicant- Shanta Kumar has died.

Present applicants are Lrs of deceased/applicant-Shanta Kumar.

3. Case of the prosecution, in brief, is that on 08/10/1999, at about 1:15 a.m., complainant- Bhuneshwar lodged a report against unknown persons alleging that at about 6-7 p.m, he along with his wife had gone to attend spiritual program which was about 2 Kms away from their campus. When they reached to their house, they saw that the locks of veranda as well as of the room were broken. They entered in the house and found that two Attachies carrying Rs. 15564/-, some clothes and bunch of keys around 20-25 keys, were stolen. During Investigation, memorandum statement of the applicant was recorded vide Ex-P-5 & Ex-P-7. On the basis of memorandum statement, one bag of polythene carrying Rs. 6200/-, which were in 100 rupees denomination, in stapled condition and a bunch of keys having 25-27 keys, was recovered from the applicant vide Ex.P-6. One brief case, in which Rs. 1400/- cash and stolen clothes was kept, was found at some distance from the spot of incident vide Ex.P-9. A suit case and some clothes were also seized at some distance from the spot Vide Ex.P-10 .
4. After investigation, a charge-sheet was filed against two accused persons namely- Shanta Kumar and Ishwar. After trial, Ishwar was acquitted of the charges and Shanta Kumar was convicted and sentenced as mentioned in paragraph 1 of this judgment. Against which, an appeal was preferred by Shanta Kumar, which was also dismissed. Hence, this revision.
5. Learned counsel appearing for the applicant has argued that only cash of Rs. 6200/- was recovered from the applicant which was in 100 rupees

denomination and in stapled condition, however, In the FIR, there is only mention of stolen of amount in Rs. 500/- denominations and Rs. 100/- denomination, that too not in stapled condition. It has been argued that memorandum witnesses have not supported the case of the prosecution and on the basis of memorandum Ex.P-7, Rs. 3400/- from Mohammad Rauf (PW2) and Rs. 500/- (containing 4 notes of Rs. 50 denomination) from M.R. Verma (PW3) were seized, which itself is contrary to the case of the prosecution. She further argued that as per statement of complainant- Bhuneshwar, bunch of keys had already recovered near the place of occurrence, therefore, the same bunch of keys seized from the basis of memorandum of accused/applicant- Shanta Kumar is not acceptable. There is nothing on record to show the guilt of the accused/applicant.

6. Per contra, learned State counsel appearing on behalf of the State has supported the impugned judgment and submitted that the prosecution has proved its case beyond reasonable doubt.
7. I have heard counsel for the parties and perused the record minutely.
8. Bhuneshwar Prashad (PW1) has stated that on 07/10/1999 at about 6-7 p.m., he along with his wife had gone to attend one spiritual program. At about 11:45 p.m, when they returned, they saw that the locks of veranda as well as of the room were broken. One attachi and one suit case (Safari) in which Rs. 15,564/- cash, a bunch of keys, one book and some clothes were stolen. He further stated that he immediately went to Police Station, Mandir Hasod and lodged a report vide Ex.P.1. In para 11 of his cross-examination, he admitted that one suitcase was found behind his

house in bushes and second one was found in a damaged house at some distance from his house in which Rs. 1400/- and bunch of keys were kept. In para 15, he further admitted that Shanta Kumar was his driver who was getting Rs. 5000/- monthly payment.

9. Mohammad Rauf (PW2) has stated that before 15 days from 07/10/1999, Shanta Kumar along with Nand Kumar had come to him and purchased one-one Almira costing of Rs. 1700/- each from him. He further stated that on 08/10/1999, Shanta Kumar had given him Rs. 3400/- which were in 100 rupees note denomination, later on which was seized by police vide Ex.P-3.
10. M.R. Verma (PW3) has stated that on 08/10/1999, accused/applicant- Shanta Kumar had given Rs. 500/- to him, which he had taken as a loan from him earlier. Later on which was seized by police vide Ex.P.-4. He further stated that there was 3 notes of 100 denomination and 4 notes of 50 denomination.
11. Natesh Agrawal (PW5) and Girija Shankar Verma (PW12) are the witnesses before whom it is alleged that memorandum statement of accused/applicant- Shanta Kumar was recorded and recovery was made. Both have supported the case of the prosecution and stated that the cash and bunch of keys were seized from a Badi in front of house of Shanta Kumar.
12. Though, some other witnesses have also been examined, but they are not material in this case.
13. From minute perusal of the above evidence, It is made clear that from the house of Bhuneshwar Prashad (PW1), bunch of keys, one Attache, one

suit-case carrying Rs. 15,564/- and some clothes were stolen. It is also clear that one suit-case was found behind the house of complainant- Bhuneshwar in bushes and another suit-case, carrying Rs. 1400/- and a bunch of keys, was found in a damaged house at some distance from the house of the complainant. As per the prosecution story, vide Ex.P-6 on 16/10/1999, a polythene bag containing Rs. 6200/- and a bunch of keys was seized from deceased/accused- Shanta Kumar, but as per the statement of Bhuneshwar (PW1), both suit-cases with bunch of keys and Rs. 1400/- have already found previously. Therefore, in these circumstances, recovery of said bunch of keys on 16/10/1999 from the possession of Shanta Kumar is not acceptable.

14. As per FIR, total cash of Rs. 15564/- was stolen, in which note of Rs. 500/- denomination, 100/- denomination and Rs. 64/- were in change. As per the statement of Bhuneshwar (PW1), in the said cash of Rs. 15,564/-, 5 notes of Rs. 500/- denomination, 130 notes of Rs. 100/- denomination, 6 notes of Rs. 10/- denomination and 2 notes of Rs. 2 denomination were there. The rupees seized from the accused/applicant- Shanta Kumar was of 100 rupees denomination and in stapled condition. The fact, that the cash/notes stolen were in stapled condition, was neither mentioned in FIR nor the in the court statement of Bhuneshwar (PW1). Vide seizure memo Ex.P-4, Rs. 500/-, seized from M.R. Verma (PW-3), about which it has been alleged that the same was given by Shanta Kumar on 08/10/1999, were also in Rs. 50/- denomination, however, in the FIR and also in the Court statement of Bhuneshwar (PW1), this fact is not mentioned.

15. From the above, it is clear that the bunch of keys which was stolen, had already been seized from an open place and there is no conclusive evidence that the notes seized from the M.R. Verma (PW3) and Mohmaad Rauf (PW2), which were given by Shanta Kumar, were that of stolen notes.
16. In these circumstances, the offence under Sections 457 and 380 of IPC is not proved beyond reasonable doubt against deceased/applicant- Shanta Kumar.
17. In the result, the revision is allowed. Accused/applicant- Shanta Kumar is acquitted of the charges framed against him.

Sd/-
(Arvind Singh Chandel)
Judge