

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRR No. 10 of 2005**

1. Devendra Kumar Sen, aged about 18 years (as in challan) S/o Ramsanehi, Sachiv Gram Panchayat Topa Tahsil Bhatapara, CG.
2. Dwarika Sahu, aged about 25 years, (as in Challan) S/o Bhagwat,  
Both resident Cultivators of village Topa in the Police Station,  
Bhatapara (Gramin), District Raipur, CG.

---- **Applicants**

**Versus**

State of Chhattisgarh through Police Station Bhatapara (Gramin), the  
Collector, Raipur, CG.

--- **Respondent**

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For Applicants : Shri Deepak Jain, Advocate

For State/Respondent : Smt. M. Aasha, Panel Lawyer

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**Hon'ble Smt. Justice Vimla Singh Kapoor**

**Order On Board**

**14/01/2019**

The judgment dated 22.12.2004 passed by Additional Sessions Judge, Baloda Bazar in Criminal Appeal No. 35/2004 modifying the judgment dated 06.01.2004 passed by Judicial Magistrate First Class Baloda Bazar in Criminal Case No. 272/1994, is under challenge in this revision petition.

2. Facts of the case, in brief, are that on 22.04.1994 when complainant (PW-1) had gone to sell the dung cake leaving her minor son in the house and when she went back, the door of her house was found ajar. After she stepped into, the accused/applicant (Devendra Kumar) was found hiding himself therein. On being asked, he informed the complainant that he had come there for having the lemon fruit. It is alleged that the household articles were scattered and the gold and silver ornaments and cash of Rs. 1100/- were found missing therefrom. On the memorandum of the accused/applicants, the stolen property was seized from accused Dwarika under Ex. P-6 and P-7.

3. On *challan* being filed, learned trial Court proceeded with the matter and ultimately found the accused/applicant Devendra Kumar guilty

under Sections 454 and 380 whereas accused Dwarika Sahu was found guilty under section 414 IPC. The lower appellate Court by the judgment impugned maintained the conviction but reduced the sentence to RI for six months from that of one year under each section.

4. Conviction is not being assailed by the counsel for the applicants and his only submission is as regard sentence. He submits that looking to the detention period of the accused/applicants and considerable period elapsed from the date of incident, their sentence may be reduced to the period already undergone. State counsel however, supports the judgment impugned.

5. Evidence of the witnesses establishes the house tress-pass committed by accused Devendra in order to commit the offence of theft in the house of complainant. It is on the memorandum of the accused/applicants, stolen property was seized from accused Dwarika under Ex. P-6 and P-7. No paper and receipt could be produced by accused the applicants to show their ownership over the said property. Both the Courts below have thus been justified in convicting the accused/applicants as described above. No illegality is noticeable in the same. Accordingly, their conviction is maintained.

6. However, looking to fact that the accused/applicants have already remained in jail for 21 days and that the incident had taken place 25 years back, this Court feels it in the interest of justice to reduce the same to the period already undergone. Order accordingly.

7. Revision allowed in part.

Sd/-

**(Vimla Singh Kapoor)**

**Judge**