

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 62 of 2007

Subhash @ Gandhi S/o. Shri Janki Ram Shriwas, Aged about 32 years, R/o. Koma Khan, Police Station Bagbahra, District Mahasamund (C.G.)

Versus

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

With

Criminal Revision No. 63 of 2007

Rajeev Sharma, S/o. Ram Kishan Sharma, Aged about 38 years, R/o. Pradhanpara, Sambhalpur, District Sambhalpur (Orissa)

Versus

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

With

Criminal Revision No. 106 of 2007

Dayalu Yadav, S/o. Ramprasad Yadav, Aged about 40 years, R/o. Village Kauajhar, Tahsil and District Mahasamund (C.G.)

Versus

State of Chhattisgarh through Police Station Tumgaon, District Mahasamund (C.G.)

For the Applicants : Mrs. Indira Tripathi, Advocate in CRR
Nos. 62 of 2007 and 63 of 2007

For the Applicant :- Mr. Anurag Singh, Advocate in CRR
No. 106 of 2007

For the Respondent : Mr. Aman Kesharwani, P L

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board

06.03.2019

1. Since all the aforesaid revisions arise out of same judgment dated 13.02.2007, they are heard and decided by this common order.
2. By the judgment under challenge passed by the Additional Sessions Judge Mahasamund dated 13.02.2007, all the accused/applicants named above have been convicted and sentenced as described hereunder:

Accused	Conviction	Sentence
Subhash@ Gandhi	380 IPC	RI for 1 year with fine of Rs. 1000/- plus default stipulations
	457 IPC	RI for 2 years with fine of Rs.1500/- plus default stipulation
	120-B IPC	RI for 1 year with fine of Rs.1000/- plus stipulation
Rajeev Sharma	380 IPC	RI for 1 year with fine of Rs.1000/- plus default stipulation
	457 IPC	RI for 2 years with fine of Rs.1500/- plus default stipulation
	120-B IPC	RI for 1 year with fine of Rs.1000/- plus stipulation

Dayalu Yadav	380 IPC	RI for 1 year with fine of Rs.500/- plus default stipulation
	457 IPC	RI for 1 year with fine of Rs.1000/- plus default stipulation
	120-B IPC	RI for 1 year with fine of Rs.500/- plus stipulation

3. Facts of the case, in brief, are that in the intervening night of 13-14/10/2005 one idol of Lord Laxmana installed in Laxman Temple, Sirpur, Police Station Tumgaon was stolen by some unknown persons. FIR (Ex.P-15) was lodged by watchman of the temple Suraju Ram Yadav (PW-13). On the memorandum of co-accused Subhash stolen idol was seized from the possession of accused/applicant Rajeev Sharma under Ex.P-17 and other articles such as hammer, chisel, screwdriver and iron rod were seized under Ex. P-12 from accused/applicant Dayalu Yadav. After registration of offence and completion of investigation charge sheet was filed against the accused/applicants.

4. Learned Magistrate having perused the material before it convicted the accused/applicants under Sections 380,457,120-B IPC and sentenced them as mentioned above, which on appeal has been affirmed by the judgment impugned dated 13.02.2007. Hence, this revision.

5. Criminal Revision Nos. 62 of 2007 and 63 of 2007: In these two revisions counsel for the applicants does not press the conviction part of the judgment impugned. Her main submission is as regards the sentence imposed on the accused/applicants to be

reduced to the period already undergone as they have already remained in jail for some time and the incident had taken place many years ago.

6. Criminal Revision Nos. 106 of 2007: In this revision, counsel for the accused/applicant attacks the conviction of the accused/applicant under Section 380, 457 and 120-B IPC on the ground that the lower appellate Court has not appreciated the evidence of the witnesses prudently. He submits that though the seizure witnesses have not supported the case of the prosecution yet the Court below has held him guilty for the offences mentioned above, which is not proper. According to him, since there was no meeting of mind of the accused/applicant herein along with the other accused persons, and that there is no evidence to show sharing of common object in committing the theft of idol on their part, the ingredients of criminal conspiracy enshrined in section 120-B IPC are not attracted to the case of the prosecution. In support of his contention, he placed reliance on a Supreme Court decision in the matter of **Sushil Suri vs. CBI (AIR 2011 SC 1713)**.

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

8. On perusal of the evidence of the witnesses, it is apparent that idol of lord Laxmana was taken away from the temple where it was installed and subsequently it was seized under Ex.P-17 on the memorandum of accused Subhas (Ex.P-1). Other ancillary items kept in the temple were also seized on the disclosure statements of

other accused persons under Ex P-12, Ex P-16, and Ex P-17. Thus, looking to the material on record, and the seizure of idol and other articles like hammer, chisel and screwdriver etc. which were used by the accused/applicants in breaking open the lock and removing the idol, it can safely be inferred that by hatching a conspiracy for committing the offence alleged against them, they have executed their plan. Further, on the memorandum of none else but the accused/applicants themselves the idol of Laxmana and the aforementioned articles were seized under Ex.P-12, Ex.P 16 and Ex.P-17. The Courts below do not appear to have gone wrong in holding the accused/applicants guilty under Sections 457, 380 and 120-B IPC. Even the defence has not been in a position to offer any explanation as to how the idol and other articles seized on the memorandum of the accused/applicants came in their possession. In the midst of evidence collected by the prosecution, this Court has no hesitation to say that the conviction of the accused/applicants being based on proper appreciation of the evidence, requires any interference in these revision petitions. Being so, their conviction is hereby maintained.

9. As regards sentence, keeping in view the fact that the incident had taken place in the year 2005 and thereby about 14 years have already rolled by since then and further taking into consideration the fact that the accused Dayalu has already completed about 6 months of RI as against RI for 1 year; accused Subhas remained in jail for 6 months and 7 days against RI for 2 years; and accused Rajeev remained in jail for about 1 year and 4 months as against the RI for 2 years imposed by the trial Court, at this stage, this

Court does not see any logic in again dispatching them to jail and thereby put their already settled family life at stake. Being so, this Court thinks it proper and in the interest of justice to reduce the sentence imposed on them to the period already undergone. Order accordingly. Needless to say that the sentence of fine will remain as it is.

10. With the above, the revision stands allowed in part.

Sd/-
(Vimla Singh Kapoor)
JUDGE

Jyotishi/santosh