

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 245 of 2008

Pavan Kumar Yadav, Son of Shri Ram Anjor Yadav, aged about 22 years, Resident of Purana Bazar, Rajhara, Police Station Rajhara, Tahsil Balod, District Durg (CG)

---- Applicant

Versus

State of Chhattisgarh, through the Police Station Rajhara, District Durg (CG)

-----Respondent

For Applicant : Shri Amit Kumar Sahu, Advocate

For State/Respondent : Shri Raghvendra Verma, GA

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

18/03/2019

Prosecution case in brief is that on 05.09.2004 at about 9 PM when complainant Chandresh Jain (PW-1) returned home after closing his shop, the accused/applicant along with two other persons gained an entry therein and took away the clothes, jewellery made of gold and silver and some cash amount also. This fact was informed to him by Negiram (PW-3) on phone. At about 3 AM when he came to his shop, the lock was found to be broken. Thereafter, he lodged the report (Ex.P-1). Subsequently the accused was arrested after he went to sale of the gold ring to the shop of his friend. On the memorandum of the accused/applicant (EX.P-5), the gold ring and two pairs of silver anklets were seized under Ex.P-4 which were identified by the complainant (PW-1) in the test identification parade conducted under Ex.P-3 in the presence of two witnesses PW-3 and PW-4. After completion of investigation *challan* was filed against the accused/applicant under Section 457 and 380 IPC.

2. On the basis of material available on record learned trial Court vide judgment dated 25.09.2007 convicted the accused/applicant

herein under Sections 457 and 380 IPC but acquitted the other two accused persons of all the charges levelled against them. On appeal being preferred, the findings recorded by the trial Court have been confirmed vide judgment impugned dated 18.03.2008. Hence, this revision.

3. Counsel for the accused/applicant submits that the findings recorded by both the Courts below in respect of the accused/applicant are not based on the proper appreciation of the evidence of the witnesses and, therefore, they are liable to be set aside.

4. State counsel however supports the judgment impugned.

5. This Court has seen the evidence available on record carefully. From the evidence of PW-1, PW-3 and PW-4 it emerges that the accused/applicant herein had barged into the shop of complainant (PW-1) and taken away several articles such as clothes, gold and silver jewellery as also the cash. Furthermore, on the memorandum of accused/applicant (Ex.P-5), two gold rings and two pairs of silver anklets were seized under Ex.P-5 which were duly identified by the complainant (PW-1) in the presence of two witnesses. Investigating Officer (PW-7) has also supported the case of the prosecution as a whole. There is no inconsistency in the evidence of the witnesses examined by the prosecution. Even the defence has utterly failed to prove the innocence of the accused/applicant by adducing any evidence worthy of credence. Thus looking to the evidence on record both the Courts below appear to have been fully justified in arriving at the conclusion holding the applicant guilty as described above. His conviction is, therefore, maintained.

6. As regards sentence, considering the fact that the incident had taken place in the year 2004 and being in detention for 129 days he

has already suffered a lot, no useful purpose would be served in again sending him to jail and thereby disturb his well settled family life. Accordingly, the sentence imposed on him is reduced to the period already undergone, in the interest of justice.

7. Revision thus succeed in part.

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi/Ajay