

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 730 of 2008

- Poonam Suryavanshi, S/o Jageshwar Suryavanshi, aged about 20 years, R/o Village Bitkuli, Police Station – Bilha, District – Bilaspur, C.G.

---- Applicant

Versus

- State of Chhattisgarh, Through Police Station, Tarbahar, Bilaspur, C.G.

---- Respondent

For Applicant	:	Shri Rajesh Kumar Sharma, Adv.
For Respondent/State	:	Shri Suryakant Mishra, PL

Hon'ble Smt. Justice Rajani Dubey

Order On Board

27.02.2019

The present revision arises out of the impugned order and judgment of conviction and order of sentence dated 21.10.2008 passed by the Sessions Judge, Bilaspur in Cr. Appeal No. 91/2008 whereby the learned appellate Court below has confirmed the conviction and sentence of the accused/applicants as awarded by the learned Judicial Magistrate first Class, Bilaspur, vide its judgment dated 30.09.2008 in Cr. Case No. 2478/2007 for the offence under Section 457 of the IPC and sentenced him to undergo RI for six months and to pay fine of Rs. 200/- and under Section 380 of the IPC and sentenced him to undergo RI for six months and to pay fine of Rs. 200/-, plus default stipulations.

2. Brief facts of the case are that the complainant Krishna Kumar Mishra was the security incharge in the Indian Specialty Fats Limited Factory, Sirgitty, Bilaspur, and on the date of incident i.e. 21.09.2007 at

about 9.00 p.m., when the complainant Krishna Kumar, Ahmed Sheikh and Mahendra Yadav were doing their service, in the night at about 3.00 a.m., the applicant/accused and other co-accused namely Arjun Suryavanshi, they both jumped the boundary wall of the factory and entered in refinery plant and committed theft of the induction motor three phase 5 H.P., total 2 Motor worth Rs. 14,000/-. The complainant and his friend caught hold of the applicant and lodged an FIR against them. After completion of investigation, charges were framed against the accused/applicant under Sections 457 and 380 IPC.

3. So as to prove the guilt of the accused/applicant, the prosecution has examined 4 witnesses. Statement of the accused/applicant was also recorded under Section 313 of the Cr.P.C. in which he denied the charges leveled against him and pleaded innocence and false implication in the case.

4. After hearing the parties, vide impugned judgment of conviction and order of sentence dated 30.09.2008, learned Magistrate has convicted the accused/applicant for the offence under Section 457 of the IPC and sentenced him to undergo RI for six months and to pay fine of Rs. 200/- and under Section 380 of the IPC and sentenced him to undergo RI for six months and to pay fine of Rs. 200/-. This order was appealed by the applicant and in the appeal, learned appellate Court has confirmed the conviction and sentence of the applicant. Hence, the present revision.

5. Heard counsel for the parties and perused the material on record including the impugned judgment.

6. Counsel for the applicant submits that he is not pressing this

revision as far as it relates to the conviction part of the judgment and would confine his argument to the sentence part thereof only. According to him, the incident is said to have taken place in the year 2007 and thereby more than 11 years have rolled by since then, he is aged more than 40 years, the applicant has already remained in jail for about two months and no useful purpose would be served in again sending him to jail. Therefore, it would be in the interest of justice if the sentence imposed on him may be reduced to the period already undergone by him.

7. Learned State counsel has no objection to this proposition.

8. Having gone through the material on record and the evidence of the witnesses including Ishtkhar Ahmed (PW-1) and Krishna Kumar (PW-3) by whom the appellant was caught red handed, established the involvement of the accused/applicant in the crime in question, this Court does not see any illegality in the findings recorded by both the Court below as regards conviction of the applicant under Sections 457 and 380 of the IPC, being so they are hereby maintained.

9. As regards sentence, keeping in view the fact that the incident had taken place in the year 2007 and further that the applicant has already remained in jail for about two months, the revision is partly allowed. Conviction part of the impugned judgment is maintained. Applicant is reported to have remained in jail for a period of two months, his sentence is reduced to the period already undergone by him.

10. Revision thus partly succeeds.

Sd/-
(Rajani Dubey)
Judge