

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 385 of 2010

Bhagwat Kaushik S/o. Ramji Kaushik, Aged about 22 years,
Occupation Labour, R/o. Village Hathieva, Thana Kawardha,
District Kabirdham (C.G.)

---- Applicant

Versus

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

---- Respondent

For Applicant : Mrs. Indira Tripathi, Advocate.

For Respondent : Mr. Raghvendra Verma, P.L.

Hon'ble Smt. Justice Vimla Singh Kapoor

06.03.2019

By the judgment under challenge passed on 30.07.2010 by Additional Sessions Judge Kabirdham, Kawardha in Criminal Appeal No. 10/2009, modifying the judgment of conviction and order of sentence dated 05.03.2009 passed by the Chief Judicial Magistrate, Kabirdham (Kawardha) in Criminal Case No. 556/2006, convicting the accused/applicant under Section 380 IPC and sentencing him to undergo RI for 6 months and to pay fine of Rs. 500 plus default stipulation.

2. Facts of the case, in short, is that the complainant lodged an FIR (Ex.P-1) on 13.03.2006 wherein it is alleged that in his

absence some unknown person committed theft in his house and stolen household articles like videocon TV, DDH Dish Antenna, CD player and one HP motor pump. Thereafter, an offence was registered and investigation was done and on suspicion the applicant was arrested and on the memorandum statement of Gautamdas Vaishnav (Ex.P-4) one videocon TV under Ex.P-5, DDH Dish and one iron rod under Ex.P.-5A was seized. After registration of offence and completion of investigation the charge sheet was filed against the accused/applicant.

3. Having taken note of the material on record the Trial Court convicted and sentenced the Applicant under Section 457 and 380 IPC which subsequently has been modified by the lower appellate Court by the judgment impugned. Hence, this revision.

4. Conviction is not being pressed on merit and the sole prayer made by the counsel for the applicant is confined to reduction of sentence imposed on the accused/applicant to the period already undergone on account of the fact that the case is quite old and the accused/applicant has already remained in jail for some time.

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

6. Heard learned counsel for the parties and perused the judgment impugned and the evidence available on record carefully.

7. After considering the prosecution's evidence, it is apparent that a burglary took place in the home of complainant and videocon TV, DDH Dish Antenna, CD player and one HP motor pump were stolen from there. On the memorandum statement of Gautamdas Vaishnav (Ex.P-4) one videocon TV under Ex.P-5, DDH Dish and one iron rod under Ex.P.-5A was seized. The recovery of videocon TV, DDH Dish and one iron rod was made on the basis of memorandum of Gautamdas Vaishnav under Section 27 of the Evidence Act. In overall view of the matter, conviction of the accused/applicant under Section 380 IPC being based on the evidence collected by the prosecution does not suffer from any illegality or infirmity and it is maintained accordingly.

8. As regards sentence, keeping in view the fact that the incident had taken place in the year 2006, that the accused/applicant has already remained in jail for a period of about 12 days and further that by now he must be leading a well settled life saddled with innumerable responsibilities, this Court thinks it proper to reduce the sentence imposed on him to the period already undergone. However, the sentence of fine under section 380 IPC is enhanced from Rs. 500/- to Rs. 1000/-. Let this amount be deposited in the Court below within a period of 4 months from today or else they may not derive the benefit of this order.

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

Sd/-

(Vimla Singh Kapoor)

JUDGE

Santosh