

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on 24/07/2019****Order delivered on 27/09/2019****CRR No. 806 of 2008**

- Veer Singh S/o Gulal Devasar, Aged about 24 years, R/o Bazar Paragraph, Bagbahra, District-Mahasamund (C.G.).

---- Applicant**Versus**

- State of Chhattisgarh, through Police Station Bagbahra, District-Mahsamund (C.G.)

---- Respondent

For Appellant	:	Mr. Vivek Mishra on behalf of Mr. Manoj Paranjpe, Advocate.
For Respondent/State	:	Mr. Wasim Miyan, PL.

Hon'ble Smt. Justice Rajani Dubey**C.A.V. Order****27.09.2019**

1. The present revision arises out of the impugned judgment of conviction and order of sentence dated 10/12/2008 passed by the learned First Additional Sessions Judge, Mahasamund, in Cr. Appeal No. 53/2008 whereby, the learned appellate Court below has confirmed the conviction and sentence of the accused/applicant as awarded by the learned Judicial Magistrate First Class, Mahasamund, vide its judgment dated 31/03/2008 in Criminal Case No. 505/2007 for the offence under Sections 457 and 380 of IPC and sentenced him to undergo R.I. for three years with fine of Rs. 500/- and R.I. for three years with fine of Rs. 500/- respectively, plus default stipulation.

2. Brief facts of the case are that complainant Narendra Jain lodged FIR on 02.08.2003 against unknown persons alleging therein that in the intervening night of 1-2/08/2003 an unknown person has entered his shop and stolen the gold and silver ornaments. During the investigation, on the basis of memorandum of the applicant he has been made accused. After

completion of investigation, charge sheet was filed and charges were framed against accused/applicant under Sections 457 and 380 of IPC.

3. So as to hold the accused/applicant guilty, the prosecution has examined as many as 11 witnesses. Statement of the accused/applicant was also recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing 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 31.03.2008, learned Judicial Magistrate has convicted and sentenced the accused/applicant for the offence under Sections 457 and 380 of IPC and sentenced him to undergo R.I. for three years and to pay fine of Rs. 500/- and R.I. for three years and to fine of Rs. 500/- respectively in default of fine six-six months of simple imprisonment. This order was appealed by the applicant and in the appeal, learned Appellate Court has confirmed the conviction and sentence of the appellant. Hence, the present revision.

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

6. Counsel for the applicant submits that applicant has not committed any offence, both the Courts have failed to appreciate the very fact that there is no evidence on record, which shows that the present applicant had stolen the gold & silver ornaments from the shop of the complainant. There is no eye witness on record, who had seen the present applicant while committing an offence of theft. He further submits that there is no evidence on record which shows that the articles seized from the applicant were the same, which was being stolen from the shop of the complainant, even proper identification has not been conducted. There is no solid evidence on record which shows that the applicant has committed an offence of theft. He also submits that the learned trial Courts have failed to appreciate the submission of Investigating Officer who has specifically mentioned that no human being can entered through ventilation measuring 12x10 inches. Lastly, he submitted that the applicant has remained in jail for more than 66 days he is 33 years old and incidence took place in the year 2008 and thereby more than 11 years have rolled since then. Therefore, it would be appropriate in the interest of justice, that sentence imposed upon him may be reduced to the period already undergone by him. In support of his argument, he placed reliance on the

judgment dated 18.10.1968 passed by Allahabad High Court in Criminal Appeal No. 2567/1964.

7. Learned counsel for the State submitting the impugned judgment submits that both the Courts below were fully justified in convicting and sentencing the applicant.

8. Having gone through the material on record and the evidence of the witnesses Narendra Kumar Jain (PW-1), Kamal Kishore Jain (PW-2), Naveen Kumar (PW-3), Banshi Lal (PW-4), Shyam Lal (PW-5), Mahesh Kumar Harpal (PW-7), Vishnu Agrawal (PW-8), S.K. Sarkar (PW-9), Krashna Mahanand (PW-10), and K. L. Nand (PW-11), established the involvement of the accused/applicant in the crime in question stands proved beyond reasonable doubt. This Court does not see any illegality in the findings recorded by both the Courts below as regards conviction of the appellants under Sections 457 and 380 of IPC being so they are hereby maintained.

9. As regards sentence, keeping in view the facts that incident had taken place in the year 2008, and further that the appellant had already remained in jail for more than 66 days, therefore, his sentence is liable to be reduced to the period already undergone by him.

10. In view of the above consideration, the revision is partly allowed. While maintaining the conviction of the appellant, he is sentenced to the period already undergone by him. The applicant is on bail. His bail bond shall stand discharged.

**Sd/-
(Rajani Dubey)
JUDGE**