

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 540 of 2008

Chetan Sahu, S/o Bharat Sahu, aged about 25 years, R/o Village-Pasid, Police Station: Tumgaon, Tehsil & District: Mahasamund, (C.G.)

--- Applicant

Versus

State of Chhattisgarh Through: the District Magistrate, Mahasamund, Police Station: Tumgaon, Tehsil and District- Mahasamund (C.G.)

--- Respondent

For Applicant	-	Shri T.R. Chandrakar, Advocate.
For Respondent/State	-	Shri I. Lakhra, G.A.

Order on Board by Hon'ble Smt. Vimla Singh Kapoor, J.

01.02.2019

Judgement under challenge in this revision petition is dated 01.08.2008 passed by Sessions Judge, Mahasamund in Criminal Appeal No. 63/2008 confirming the findings recorded by learned JMFC, Mahasamund whereby the accused/applicant was held guilty under Section 457 IPC and sentenced to undergo RI for one year and pay fine of Rs. 400 plus default stipulation.

2. FIR Ex.P-1 was lodged by Kishnawati (PW-1) to the effect that on 01.11.2006 in the night when she was sleeping in her house, the accused/applicant entered therein. On hearing certain noisy activities inside, the complainant got up and saw the accused/applicant getting out. When the accused/applicant was getting out of the house, PW-2 - the mother-in-law of PW-1 caught

hold of him but he somehow managed to run away. After completion of investigation, the police filed the charge-sheet against him u/s 457 IPC which culminated in framing of charge by the Court below under the said section.

3. Learned Magistrate having perused the material on record found the accused/applicant guilty under section 457 IPC. Learned lower appellate court has also affirmed the findings recorded by learned Magistrate in toto by the judgment impugned. Hence, this revision petition.

4. Learned counsel for the accused/applicant submits that he does not want to press this revision as far as conviction part of the judgment impugned is concerned. He, however, submits that looking to the fact that the incident had taken place in the year 2006 and that the accused/applicant has already remained in detention for a period of 21 days, it would be in the interest of justice to reduce the sentence imposed on him to the period already undergone.

5. State Counsel, however, supporting the judgment impugned submits that the findings recorded by both the courts below are based on due appreciation of the evidence on record and, therefore, no interference is necessary in the same.

6. PW-1 - the lodger of the report and one of the inmates of the house at the relevant time has stated that on the fateful day when she got up on noticing some noisy scene, the accused/ applicant was preparing himself to get out. She has further stated that on

account of being a moon lit night she had identified the person getting out of the house to be accused/applicant. Likewise, PW-2 - Sukhwati Bai, the mother-in-law of PW-1 has also corroborated the testimony of PW-1 stating that while the accused/applicant was trying to flee away, she had caught hold of him but he somehow succeeded in his pursuit of running away. PW-3 - the husband of PW-1 has also supported the version of PW-2. Thus, there is ample evidence to show that it is the accused/applicant who committed lurking house trespass in the house of the complainant and, therefore, the trial Court as well as the Lower Appellate Court have arrived at the correct conclusion holding the accused/applicant guilty u/s 457 IPC. Conviction, therefore, does not suffer from any illegality or infirmity and being so it is hereby maintained.

7. As regards sentence, considering the fact that the incident had taken place in the year 2006 leading to the passage of 13 long years there-from and also keeping in mind the detention period of the accused/applicant which in this case comes to 21 days, this Court doesn't see any reason in unsettling his already settled family life by sending him to jail again. Therefore, it appears to be just and proper and also in the interest of justice to reduce the sentence imposed on him to the period already undergone. Order accordingly.

8. Revision allowed in part.

Sd/-

(Vimla Singh Kapoor)
Judge