

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 216 of 2010

Dipesh Kumar Mishra, Aged about 25 years, S/o. Umesh Kumar Mishra, R/o. Ward No. 3, Baigapara, Sakti, District Janjgir Champa (C.G.)

---- Applicant

Versus

State of Chhattisgarh through the District Magistrate Janjgir Champa (C.G.)

---- Respondent

For Applicant : Mr. Parag Kotecha, Advocate.

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

Hon'ble Smt. Justice Vimla Singh Kapoor

25.03.2019

By the judgment under challenge passed on 07.04.2010 by Additional Sessions Judge Sakti, Sessions Division Janjgir Champa in unnumbered Criminal Appeal, the findings recorded by the learned Judicial Magistrate First Class Sakti, convicting the accused/applicant under Sections 457 and 380 IPC and sentencing him to undergo RI for 1 year and to pay fine of Rs. 500 u/s 457 IPC and RI for 1 year and to pay fine of Rs. 500 u/s 380 IPC plus default stipulation have been affirmed.

2. Facts of the case, in short, is that on 30.11.2009 FIR (Ex.P-4) was lodged by PW-5 in Police Station Sakti, wherein it is alleged

that in the night of 30.11.2009, a burglary took place in the shop of Suraj Yadav, situated at Ranisagar, ward No. 9 at Sakti and a fridge of samsung company worth of Rs. 8,500/- and one DVD of philips company worth of Rs.3750 were stolen by the applicants was informed by one Sonu to the complainant. On the memorandum statement of Deepesh (Ex.P-6) one fridge was seized under Ex.P-8 and a DVD was seized under Ex.P-9 from Hirendra Kumar. After registration of offence and completion of investigation the charge sheet was filed against the accused/applicant.

3. Learned Magistrate having perused the material before it convicted the accused/applicant under Section 457 and 380 IPC and sentenced him as above, which on appeal has been affirmed 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 shop of complainant and one fridge and a DVD were stolen from there. On the memorandum statement of accused Deepesh fridge was seized under Ex.P-8 and a DVD was seized from Hirendra under Ex.P-9. The recovery of fridge and DVD was made on the basis of memorandum of accused Deepesh under Section 27 of the Evidence Act. In overall view of the matter, conviction of the accused/applicant under Section 457 and 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 2009, that the accused/applicant has already remained in jail for a period of about 4 months 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. Order accordingly.

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

Sd/-

(Vimla Singh Kapoor)

JUDGE