

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 685 of 2008

Heeralal @ Heeru, S/o. Manaram @ Manharan Sahu, aged about 21 years, R/o Village Fagundah, P.S. Gurur, District Durg (C.G.)

---- Applicant

Versus

The State of Chhattisgarh through Police Station Gurur, District Durg (C.G.)

--- Respondent

For Applicant : Shri Avinash Chandra Sahu, Advocate

For State/Respondent : Shri Aman Kesharwani, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

11/02/2019

By the judgment impugned dated 19.09.2008 passed by Additional Sessions Judge, Balod, District Durg, findings recorded by the learned Judicial Magistrate First Class on 09.05.2007 convicting the accused/applicant under Section 457 IPC and sentencing him to undergo simple imprisonment for 5 months and pay fine of Rs.500/-, have been affirmed.

2. It is alleged that in the night of 02.09.2004 when complainant - Gendlal Jangade (PW-1) had come out to answer the call of nature, he saw the accused/applicant removing the necklace from the neck of his sister (PW-2) who was sleeping in the veranda along-with his other family members. On seeing this, the complainant raised an alarm but in the meanwhile the accused/applicant left the spot. This led to filing of FIR (Ex.P-1) against the accused/applicant under Section 457 IPC. After completion of investigation, the Police filed the *Challan* resulting in his trial and conviction accordingly. Learned Magistrate vide its judgment dated 09.05.2007 found the accused/ applicant guilty under Section 457 IPC and imposed the sentence as referred to above. Learned lower Appellate

Court also affirmed the findings recorded by learned Magistrate as a whole vide judgment under challenge in this revision petition.

3. Counsel for the accused/applicant does not assail the conviction part of the judgment impugned and looking to the case being quite old and the detention period of the accused/applicant which comes to 41 days, his sole request is for reduction of sentence to the period already undergone. State counsel however supports the findings recorded by both the Courts below being based on proper appreciation of the facts and evidence on record.

4. This Court has gone through the evidence of the witnesses minutely. Gendlal (PW-1) has categorically stated that as there was sufficient light, he had identified the accused/applicant while jumping over the wall in order to run away after trying to remove the necklace from neck of her sister (PW-2). Meena Bai (PW-2), Ramai Bai (PW-3) and Poshan (PW-8) who were also sleeping in the veranda at the relevant time, have also corroborated the testimony of PW-1, stating categorically that they saw the accused/applicant running away from the place of incident on hearing the noise raised by PW-1. Thus statements of these witnesses clearly show the involvement of the accused/applicant in the crime in question where he committed lurking house trespass in order to commit theft of the necklace of PW-2. Being so, the finding of conviction recorded by both the Courts below does not call for any interference in this revision. Accordingly, conviction of the accused/applicant under Section 457 is hereby maintained.

5. As regard sentence, as the incident is of the year 2004 and more than 14 years have rolled by since then and further keeping in mind that the applicant has already remain inside for about one and a half month, this Court thinks it just and proper to reduce the sentence imposed on him

to the period already undergone so that his smooth family life is not put at stake at this stage. Order accordingly.

6. The revision is allowed in part with aforesaid.

Sd/-
(Vimla Singh Kapoor)
Judge

jyotishi/ajay