

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 183 of 2010

Santosh @ Tengna, S/o Soukhi Lal Khariwar, aged about 25 years,
R/o Village Madra, P.S. Saragaon, District Janjgir-Champa (CG)

---- Applicant

Versus

State of Chhattisgarh through District Magistrate Korla, arise out of
P.S. Chirmiri, District Korla (C.G.)

--- Respondent

For Applicant : Mr. Basant Dewangan, Advocate

For Respondent : Mr. Himanshu Sharma, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

19/06/2019

It is alleged that in the intervening night of 28-29.06.2004 the accused/applicant had barged into the ready made garment shop belonging to Bappa Lahri (PW-1) and committed theft of several types of wearing apparels. On the report lodged by PW-1 offence under Sections 457 and 380 IPC was registered against the accused/applicant vide FIR (Ex.P-1) and after completion of investigation charge sheet was filed, charge framed and the accused/applicant was put to trial.

2. Learned Magistrate vide judgment 11.03.2010 convicted the accused/applicant under these sections and slapped the jail sentence of 3 years on each count coupled with a meager amount of fine. In appeal however the jail sentence was reduced to 2 years from that of 3 years keeping the conviction under both the sections as it is.

3. Counsel for the accused/applicant assails the judgment impugned on the ground that it is not based on proper appreciation of the evidence of the witnesses particularly when PW-3 – the witness to seizure has turned hostile. State counsel however supports the judgment impugned.

4. From the evidence collected by the prosecution in particular that of PW-1 and PW-2 it is apparent that on the date of incident the accused/applicant had committed a lurking house trespass in the shop of PW-1 in the dead of night and took away several kinds of ready made clothes. The alabaster sheet lay over the shop of PW-1 was also found damaged. This apart, on the memorandum of accused/applicant (Ex.P-2), seizure of jeans pant, Sari, under garments etc. was made from amidst the bushes near the railway station Chirmiri as is clear from the evidence of PW-2. Though PW-3 – another witness to seizure has turned hostile yet he has admitted his signature on the seizure memo. Thus the complicity of the accused/applicant in the crime in question is fully established and the minor deviations, if any, in the testimony of the witnesses need to be ignored. In this view of the matter, the conviction of the accused/applicant under Section 457 and 380 IPC being fully based on the evidence of the witnesses is hereby maintained.

5. As regards sentence, looking to the fact that incident is of the year 2004 making almost 14 years roll by since then and further being awake to the situation where the accused/applicant languished behind the bars for about five months, interest of justice demands reduction of sentence to the period already undergone so that his network of responsibilities does not left unattended. Ordered so.

6. Revision allowed in part.

Sd/-
(Vimla Singh Kapoor)

Judge