

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 498 of 2004**

- Shambhu @ Dariyav Singh S/o Kartik Ram Satnami Aged About 21 Years, R/o Village-Chalari, P.S. Gurur District-Durg, Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh, Through : Station House Officer, Police Station Gurur, District-Durg, Chhattisgarh.

---- Respondent

For Applicant	:	Mr. Shourabh Sharma, Advocate.
For Respondent/State	:	Mr. Wasim Miyan, PL.

Hon'ble Smt. Justice Rajani Dubey**Order on Board****04/09/2019**

1. The present revision arises out of the impugned judgment of conviction and order of sentence dated 01.09.2004 passed by the learned Additional Sessions Court, Balod, District- Durg, C.G. in Criminal Appeal No. 95/2003 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, Balod, vide its judgment dated 28.01.2003 in Criminal Case No. 928/2002 for the offence under Section 457 of IPC and sentenced him to undergo R.I. for two years with fine of Rs. 1,000/-, plus default stipulation.
2. Brief facts of the case are that on 19.04.2002 about 2 am. the applicant entered the house of complainant Godin Bai with an intention to commit theft and tried to theft *Mangal Sutra* from her neck, thereafter, an FIR was lodged against applicant/accused person. After completion of investigation, charge sheet was filed and charges were framed by the trial Court against accused/applicant under Section 457 of IPC.
3. So as to hold the accused/applicant guilty, the prosecution has examined as many as 7 witnesses. Statement of the accused/applicant was also recorded under Section 313 of the Cr.P.C. in which he denied the charges leveled against him and pleaded innocence and false implication in the case.
4. After hearing the parties, vide judgment of conviction and order of sentence

dated 28.01.2003, learned Judicial Magistrate has convicted and sentenced the accused/applicant for the offence under Section 457 of IPC and sentenced him to undergo R.I. for two years with fine of Rs. 1,000/-, plus default stipulation. 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. Learned counsel for the applicant submits that he is not pressing the revision so far as it relates to the conviction part of the judgment and would confine his argument to the sentence part thereof only. According to him, the incident is said to have taken place in the year 2002, and thereby more than 17 years have rolled by since then. The applicant has already remained in jail for more than one and half month, and no useful purpose would be served in again sending him to jail, therefore, in the interest of justice, it would be appropriate if the sentence imposed upon the applicant may be reduced to the period already undergone by him.
6. Learned counsel for the State has no objection to this preposition.
7. Heard learned counsel for the parties and perused the material on record including the impugned judgment.
8. Having gone through the material on record and the evidence of the witnesses Godin Bai (PW-1), Dhansingh (PW-2), Pundash (PW-3), Bhaduram (PW-4), Laxmi Prasad (PW-5), Suraj Lal (PW-6), and Rajesh Kumar (PW-7), established the involvement of the accused/applicant in the crime in question beyond reasonable doubt. This Court does not see any illegality in the findings recorded by both the Courts below as regards conviction of the appellant under Section 457 of IPC.
9. As regards sentence, keeping in view the facts that incident had taken place in the year 2002, and further that the appellant has already remained in jail for more than one and half month, 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 will stand discharged.

Sd/-
(Rajani Dubey)
JUDGE