

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 87 of 2008

Santosh Kumar, S/o Shri Aasaram Gond, aged about 26 year, R/o
Camp No.1 Kelabadi, Dallirajhara, P.S. Rajhara, District Durg, CG.

---- Applicant

Versus

- State of Chhattisgarh through Police Station Rajhara, District Durg, CG.

---- Respondent

For Applicant : Shri Pankaj Agrawal, Advocate

For State/Respondent : Smt. M. Aasha, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

02 /01/2019

The accused/applicant has preferred this revision petition against the judgment of conviction and order of sentence dated 25.01.2008 passed by Additional Sessions Judge, Balod District Durg, CG. in Criminal Appeal No. 39/2007 affirming the judgment dated 22.01.2007 passed by Judicial Magistrate First Class, Balod in Criminal Case No. 463/2005 convicting the accused/applicant under Section 457 and 380 IPC and sentencing him to undergo RI for six months with fine of Rs. 200/- for each offence, plus default stipulation.

2. Facts of the case, in brief, are that on 15.07.1998 one portable colour TV purchased by the complainant namely Kuber PW-2 was stolen from his house. On the basis of memorandum of accused/applicant the same was seized from one Seema - the daughter of absconding accused Dankwar. On the basis of report Ex. P-1 offence under Section 380 IPC was registered against the unknown persons. However, after investigation the *Challan* was filed against the present applicant and three others under Sections 457, 380, 411, 34 IPC followed by framing of charge.

3. On the basis of material on record learned Magistrate convicted and sentenced the accused/applicant as mentioned above but at the same time the other accused person were acquitted of the charges leveled against them. On appeal, the findings recorded by learned Magistrate have been affirmed by the judgment impugned. Hence this revision.

4. Learned counsel for the accused/applicant submits that he is not pressing this revision on merits and would confine his argument to the sentence part of the judgment impugned therein. According to him, as the incident had taken place in the year 1998, and that he has already remained in jail for 21 days, no useful purpose would be served in again sending him to jail, and therefore, the sentence imposed upon him may be reduced to the period already undergone.

5. State counsel however, supports the findings recorded by both the Courts below

6. Heard counsel for the parties and perused the material on record.

7. Though counsel for the accused/applicant is not inclined to press the conviction of the accused/applicant on merit, this Court thinks it appropriate to refer to the evidence of the witnesses to ascertain his guilt or innocence and therefore, it proceeds to do so.

8. Having perused the material on record it is clear that after committing theft, the accused/applicant had given the stolen TV to the daughter of co-accused namely Seema which was subsequently seized under Ex. P-4 on the memorandum of none else but the accused/applicant himself. From the statement of Phulo Bal PW-1 - the wife of complainant PW-2 also it is clear that the TV stolen, was purchased fifteen days before the incident from her house. Even the receipt thereof was also seized under Ex. P-3. Thus, it is apparent that it is the accused/applicant who had entered the house of complainant and stolen the TV in question therefrom, which was subsequently seized under Ex. P-4. Other material also

establishes the involvement of the accused/applicant in the crime in question. Being all this, conviction of the accused/applicant is hereby maintained.

9. As regards sentence, keeping in view the fact that the incident had taken place about 21 years back, that the applicant has already remained in jail for a period of about 21 days, and that by now he must be in the heap of family responsibilities, this Court is of the opinion that it would be in the interest of justice to reduce the sentence imposed on him to the period already undergone. Order accordingly.

10. Resultantly, the revision petition is hereby allowed in part with the modification in the judgment impugned as above.

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi/Pawan