

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 226 of 2008

1. Vijay Singh son of Chaitram Rathiya, aged about 22 years, Occupation - Agriculture, Resident of village Dhasakamuda, Thana Chhal, Tehsil Dharamjaigarh, District Raigarh, CG

--- Applicant

Versus

1. State of Chhattisgarh through District Magistrate, Raigarh, CG

--- Respondent

For Applicant	-	Shri Neeraj Pradhan, Advocate.
For Respondent/State	-	Shri Raghvendra Verma, GA

Order on Board by Hon'ble Smt. Vimla Singh Kapoor, J.

09.04.2019:

FIR (Ex.P-1) lodged by Tara Singh Rathia (PW-2) says that on 12.09.2006 at about 10 PM when all the inmates were asleep, the accused/applicant had entered his house. On hearing the noise of utensils he woke his father up, went to the place from where the noise was emanating and found the accused/applicant present there. While being caught hold of by PW-2 and his father (PW-1), though the accused/applicant tried to escape, he was apprehended in the lane outside his house and in the meanwhile people from neighbourhood gathered there on hearing the commotion like activities. On the report lodged by PW-2, offence under section 457 IPC was registered against the accused/applicant, after investigation *challan* was filed followed by commencement of trial.

2. The trial resulted in conviction of the accused/applicant under Section 457 IPC and sentence of RI for four months with fine of Rs. 500/- plus default stipulation vide judgment dated 17.09.2007 passed in Criminal Case No. 516/2006. The view of the trial Court got affirmed in appeal also (Criminal Appeal No. 39/2007) vide judgment impugned dated 24.03.2008, and it is what that is under assail in this revision.

3. Counsel for the applicant submits that though the evidence collected by the prosecution does not entail conviction of the accused/applicant under Section 457 IPC yet resorting to misappreciation thereof, the judgment under challenge has been passed, which is liable to be set aside. He further submits that the Courts below have also not considered the evidence adduced by the defence and abruptly arrived at the conclusion in the form of conviction and sentence referred to above. State counsel however supports the view of the Courts below holding the judgment under challenge to be well reasoned.

4. PW-1, PW-2, PW-3, PW-8 and PW-9 have categorically stated that the accused/applicant had entered their house in the night hours and while being on the run he was caught hold of. People of the locality who appeared on the spot after sensing some noisy scene, being Jaggu alias Jag Singh (PW-4) and Chandra Bhuvan (PW-5) have also stated they had seen PW-2 catching hold of the accused. Other witnesses too supported the case of the prosecution, may be partially. Thus, from the evidence on record, it is proved that on the date of incident that too in the night hours

the accused/applicant had gained an entry in the house of the complainant most probably for committing theft and being so his conviction under Section 457 IPC does not appear to suffer from any flaw. It is maintained accordingly.

5. However, considering the fact that the incident had taken place about 13 years back and that by now the applicant might be battling the family responsibilities, reduction of sentence to the period already undergone, which in this case comes to eight days, appears to be just and proper and also in the interest of justice. Order accordingly.

6. Revision thus succeeds in part.

Sd/-
(Vimla Singh Kapoor)
Judge