

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 560 of 2008

Surendra Ganda, S/o Premlal Ganda, R/o Village- Kumhadekla, P.S. and
Tahsil-Devbhog, District- Raipur, Chhattisgarh

---- Applicant

Versus

State of Chhattisgarh, Through the District Magistrate, District – Raipur,
Chhattisgarh

---- Respondent

For Applicant	:	Ms. Mandavi Bharadwaj, Advocate
For Respondent/State	:	Shri Anurag Verma, PL

Hon'ble Smt. Justice Rajani Dubey

Order On Board

19.08.2019

1. The present revision arises out of the judgment of conviction and order of sentence dated 18.06.2008 passed by the Learned Additional Sessions Judge, Gariyabandh, District – Raipur, in Cr. Appeal No. 07/2008, whereby the learned appellate Court below has affirmed the conviction and sentence of the accused/applicant awarded by the learned Judicial Magistrate, First Class, Devbhog, District – Raipur, vide its judgment dated 27.02.2008 in Cr. Case No. 223/2007 for the offence under Section 457 and 380/511 of the IPC, and sentenced him to undergo RI for six months along with fine of Rs. 200/- and RI for six months along with fine of Rs.200/-, with default stipulations.

2. Brief facts of the case are that on 14.11.2007, in the night when complainant Mehtar was sleeping with his family members. At that time, the applicant entered in his house with intention to commit theft and when he was trying to looting the television from the house of

complainant, one Gangadhar started hue and cry, on which, the applicant was caught of hold by the complainant/Mehtar, Vidyadhar and Parmeshwar. Thereafter, the FIR was lodged against the applicant. After filing of charge-sheet, charges were framed against the accused/applicant under Sections 457 and 380/11 of the IPC.

3. So as to prove the guilt of the accused/applicant, the prosecution has examined 04 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 impugned judgment of conviction and order of sentence dated 27.02.2008, learned Judicial Magistrate, First Class, has convicted the applicant under Sections 457 and 380/511 of the IPC, and sentenced him to undergo RI for six months along with fine of Rs.200/- and RI for six months along with fine of Rs. 200/-, plus default stipulations. This order was appealed by the applicant and in the appeal, learned appellate Court has affirmed the conviction and sentence of the applicant. Hence, the present revision.

5. Heard counsel for the parties and perused the material on record including the impugned judgment.

6. Counsel for the applicant submits that he is not pressing this revision as 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 2007 and thereby more than 12 years have rolled by since then. He is aged about 40 years. The applicant has already remained in jail for

about three months and no useful purpose would be served in again sending him to jail. Therefore, it would be in the interest of justice if the sentence imposed on him may be reduced to the period already undergone by him.

7. Learned State counsel has no objection to this preposition.

8. Having gone through the material on record and the evidence of the witnesses Mehtar (PW-1), Pareshwar(PW-2), Vidyadhar(PW-3) and F.R.Bhoi(PW-04), establishes the involvement of the accused/applicant in the crime in question, this Court does not see any illegality in the findings recorded by both the Courts below as regards conviction of the applicant under Sections 457 and 380/511 of the IPC, being so are hereby maintained.

9. As regards sentence, keeping in view the fact that the incident had taken place in the year 2007 and the applicant has already remained in jail for about three months and further considering the fact that the applicant has already faced a prolonged trial and suffered trauma of uncertainty arising out of his conviction by the Sessions Court, the revision is partly allowed and his sentence is liable to be reduced to the period already undergone by him. Conviction part of the impugned judgment is maintained.

10. The applicant is on bail. His bail bond shall stand discharged.

11. Revision thus partly succeeds.

Sd/-
(Rajani Dubey)
JUDGE