

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 278 of 2011

- Lakhan Lal Yadav, S/o Dashai Yadav, aged about 32 years, R/o Village Sarfi, P.S.- Madanpur, District Aurungabad, presently residing at Dhak Thana, District- Mahasamund (C.G.)

---- Applicant

Versus

- State of Chhattisgarh, through District Magistrate, Mahasamund, District – Mahasamund (C.G.)

---- Respondent

For Appellant	:	Ms. Ranjana Jaiswal, Advocate
For Respondent/State	:	Mr. Wasim Miyan, PL

Hon'ble Smt. Justice Rajani Dubey

Order On Board

22.07.2019

1. The present revision arises out of the impugned judgment of conviction and order of sentence dated 18.03.2011 passed by the First Addition Sessions Judge, Mahasamund (C.G.), in Cr. Appeal No. 30/2011 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, Pithaura, vide its judgment dated 30.12.2010 in Criminal Case No. 755/2010 for the offence under Sections 457 and 380 of IPC and sentenced him to undergo R.I. for one year with fine of Rs. 500/- and R.I. for one year with fine of Rs. 500/-, plus default stipulation, respectively.

2. The prosecution story, in brief, is that complainant Shubham Agrawal lodged an FIR in Police Station, Pithora, on 06.08.2010 alleging that a theft has been committed in his brother's Dinesh Mobile Shop in the night intervening 5-6.08.2010. On 05.08.2010, he went home after closing his shop at 8:00 PM and on the next day morning,

when he came to open the shop, he found that the lock of the shop was broken and when he went inside the shop, he found that 20 mobile chargers, 15 head phones, 11 batteries and 2 Nokia handsets (for repairing) were stolen by the thieves. During investigation, after receiving secret information, the accused was interrogated in which he admitted having committed the offence. After completion of investigation, charge-sheet was filed and charges were framed against the applicant under Sections 457 and 380 of IPC.

3. So as to hold the accused/applicant guilty, the prosecution has examined as many as 6 witnesses. Statement of the accused/applicant was also recorded under Section 313 of the Cr.P.C. in which he denied the charge 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 30.12.2010, learned Judicial Magistrate First Class, has convicted the applicant for the offence under Sections 457 and 380 of IPC and sentenced him as described above in para 1 of this case. This order was appealed by the applicant and in the appeal, learned Appellate Court has confirmed the conviction and sentence of the applicant. Hence, the present revision.

5. Heard learned 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 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 2010, and thereby more than 8 years have rolled by since then. Applicant is aged about 50 years. The applicant has already remained in jail for more than four months, 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 him may be reduced to the period already undergone by him.

7. Learned counsel for the State has no objection to this

preposition.

8. Having gone through the material on record and the evidence of the prosecution witnesses Manmeet Singh (PW-1), Durgesh (PW-2), Syam Sundar Chandrakar (PW-3), Jeevan Sahu (PW-4), Shubham Agrawal (PW-5) and Lal Bahadur Singh (PW-6), involvement of the accused/applicant in the crime in question stands proved 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 Sections 457 and 380 of IPC.

9. As regards sentence, keeping in view the facts that incident had taken place in the year 2010, and further that the applicant had already remained in jail for more than four months, 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 stands discharged.

**Sd/-
(Rajani Dubey)
JUDGE**