

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

Reserved on 13-11-2019

Delivered on 06-12-2019

**CRA No. 287 of 2011**

- Sonau Ram s/o. Nemsingh Gond, aged 32 years, r/o. Village Chimra, Police Station Kawardha, District Kabirdham, CG.

---- Appellant

**Versus**

- State Of Chhattisgarh through Police Station Kawardha, Dist. Kabirdham (CG).

---- Respondent

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 For Appellant : Mr. Malay Shrivastava,  
 Advocate

For respondent/State : Mrs. Smita Jha, PL.  
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**Hon'ble Shri Justice Ram Prasanna Sharma****CAV Judgment**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 30-11-2011 passed by the Special Judge, Kabirdham (Kawardha), CG in Special Case No. 57 of 2009 wherein the said Court has convicted the appellant for commission of offence under Sections 457 of IPC and sentenced him to undergo rigorous imprisonment for two years and fine of Rs.2000/- with default stipulations.

2. In the present case, name of the complainant is Shyamlal. As per version of prosecution on 10-7-2008 in the night about 1.30 a.m., appellant entered into the house of complainant namely Shyamlal situated at village Chimra for commission of theft. On hearing sound, complainant woke up and opened the door and saw that one had entered into kitchen. As per version of the complainant, appellant tried to run away, the complainant chased him and caught hold him in front of the house of one Kaushal Sahu and other witnesses also reached to the spot. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced him as aforementioned.

3. Learned counsel for the appellant would submit as under:

- i) There is previous enmity between complainant and the appellant which has been ignored by the trial court.
- ii Evidence of prosecution witnesses suffers from material contradictions and omissions, but same is not evaluated by the trial court.
- lii) Appellant was beaten by the complainant Shyamlal, Bhudhari and Kaushal Sahu and

this report was lodged against appellant as coercive measure in order to prevent the appellant for taking any action against the complainant and his brother, therefore, finding arrived at by the trial court is not sustainable.

- iv) Appellant sustained grievous injury which shows that offence has been committed by the complainant and other witnesses against appellant.
- v) The trial court has not evaluated the evidence in its true perspective, therefore, finding of the trial court is liable to be set aside.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshalling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. In the present case, date of incident is 10-7-2008 and report was lodged on the same day at Police Station Kawardha naming the appellant as culprit and act of house breaking for commission of theft. FIR is lodged by the complainant Shyamlal who is PW/1. He deposed before the trial court that they were sleeping at night in the house at village Chimra and at about 1.30 am., he heard some sound and saw the appellant who tried to flee away. Appellant was caught on the spot. Version of this witness is supported by version of PW/2 Bhudhari Sahu, PW/3 Janakram Sahu and Soukhilal (PW/4). All the witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of defence. Appellant made confession before Budharilal (PW/2) and Janakram Sahu (PW/3) that he entered into the house of the complainant for commission of theft of petrol.

7. From the evidence of complainant Shyamlal (PW/1) it is established that one box was opened in his house and some articles were found outside the box. Looking to the report lodged on same day and looking to the clinching evidence of these witnesses who have been subjected to searching cross examination but nothing could be elicited in favour of defence, the trial court opined that the appellant committed house breaking in the night for commission of theft.

8. After assessing the evidence, this court has no reason to say that the appellant has been falsely implicated. Even if he has been assaulted by the complainant side, it does not make any difference regarding commission of offence of house breaking by the appellant. There is no reason that the appellant has been falsely roped with charge.

9. On over-all re-assessment of the evidence, this court has no reason to take a contrary view what is recorded by the trial court. House breaking for commission of theft is an offence under Section 457 of IPC for which the trial court convicted him. Looking to the evidence, argument advanced on behalf of the appellant is not sustainable. Conviction of the appellant for the said offence is hereby affirmed.

10. Heard on the point of sentence.

The trial Court awarded RI for two years for offence of house breaking under Section 457 of IPC which cannot be termed as harsh or unreasonable or disproportionate. Sentence part is also not liable to be interfered with and same is hereby upheld.

11. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. The appellant is reported to be on bail. His bail bonds stand cancelled. The trial Court will prepare super-session warrant and issue non-bailable warrant against the appellant and after his arrest he be sent

to jail for serving out remainder of the sentence. The trial Court to submit its compliance report on or before 30-04-2020.

**Sd/-**

**(Ram Prasanna Sharma)**

**Judge**

Raju