

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 921 of 2012

David Walter S/o. John Kinton, Aged about 38 years, R/o. New Rajendra Nagar, Raipur District Raipur (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through Police Station Bagbahra, District Mahasamund (C.G.)

---- Respondent

For Appellant : Mr. Govind Dewangan, Advocate

For Respondent : Mr. Raghvendra Verma, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board on 05.04.2019

Challenge in this appeal is to the judgment of conviction and order of sentence dated 26.09.2012 passed by the Additional Sessions Judge, Mahasamund, District Mahasamund, in Sessions Trial No. 19/2012, whereby the learned Additional Sessions Judge, convicted the appellant for the offence punishable under Section 414 IPC and sentenced him to undergo rigorous imprisonment for 2 years and to pay fine of Rs. 500/- with default stipulation.

2. Case of the prosecution, in brief is that on 02.12.2011 complainant Anil Singh lodged a written report (Ex.P-1) in police Station Tumgaon, on the basis which, FIR Ex.P-2 was registered against the appellant, wherein it is alleged that on 30.11.2011 the co-accused hired his car for taxi purpose from Durg to

Mahasamund. The complainant sent his car with driver Mukesh Tamrakar where the applicant and other accused given intoxicated cold drinks to the driver and after drinking the said cold drinks the driver became unconscious, thereafter the appellant stole car, two mobile phones and driving licence of the driver and left him on the road. The complainant was informed by the Police that Mukesh Tamrakar the driver was found unconscious at the forest and he was with him. The complainant reached the police Station Bagbahra and registered the case under Section 379, 328,34 IPC against the appellant. The matter was investigated, the applicant was arrested and on the memorandum of accused one Tata Indica Vista Car bearing registration No. OR 05 AN 9551 was recovered from him.

2. After completion of the investigation, a charge-sheet was filed against the appellant in the Court of Judicial Magistrate First Class, Mahasamund, who, in turn, committed the case to the Court of First Additional Session, Mahasamund, who, in turn, conducted the trial and convicted and sentenced the appellant as aforementioned.

3. Counsel for the applicant/accused does not assail the conviction part of the judgment impugned and his only request is that looking to the incident being quite old and also considering the fact that he has remained under detention of about 4 months, the jail sentence imposed on him may be reduced to the

period already undergone and thereby protect their well settled family life from being up-rooted at this stage.

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

5. **Complainant** Anil Kumar (PW-1) deposed in his evidence that on the date of incident the applicant came there and informed him that they were working in the Airtel company and wanted to hire his Indica Vista car bearing registration No. OR 05 AN 9551 for taxi purpose and according to him, he sent his car with driver. The complainant made a written complaint Ex.P-1 and on the basis of which FIR (Ex.P-2) was registered in Police Station Tumgaon. The complainant also identified his Indica Vista Car under Ex.P-8. On the memorandum of the appellant vide Ex.P-7 recorded under Section 27 of the Evidence Act, one Indica Vista Car was seized from him under Ex.P-8. The co-accused gave intoxicated cold drinks to the driver for drinking and after becoming unconscious of the driver, the co-accused had stolen the car, two mobile phones and license of the driver and kept the same in their possession. The appellant knowing fully well that the Indica Vista Car was the stolen property and he kept the same in his possession and assisted the co-accused in concealment of stolen property. The other important witnesses PW-2, PW-4, PW-5, PW-8 and PW-9 have also corroborated the testimony of PW-2. In these circumstances, learned Court below has rightly ordered the conviction and sentence of the appellant

under Section 414 IPC. Thus, conviction is justified and no interference is required therewith.

6. However, looking to the fact that the incident had taken place in the year 2011 and thereby more than 8 years have passed by, and further that the accused/appellant has already remained inside the jail about four months, this Court thinks it proper to reduce the sentence imposed on him to the period already undergone, so that his already settled family life is not landed to crises. Order accordingly.

7. Appeal allowed in part.

Sd/-
(Vimla Singh Kapoor)
JUDGE