

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 417 of 2009

Nanhu Tandi S/o. Bhagirathi Tandi, aged about 32 years, R/o Motilal Nehru Nagar, Kota, Police Station Amanaka, Raipur, District Raipur, CG.

---- **Applicant.**

Versus

State of Chhattisgarh through the District Magistrate, District Raipur, CG.

---- **Respondent**

For Applicant : Mr. Shivendu Pandya, Advocate.

For State/Respondent : Mr. Sameer Sharma, Dy. GA.

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

11.02.2021

Zunus Barwa (PW-1) is the complainant herein. On 22.12.2007 he along with his family members had gone to his native village for celebrating Christmas. When on 31.12.2007 he came back to Raipur, his house situated at Gangabihar Colony was found unlocked and the hinge of the door was found broken. When he opened his almirah, the gold and silver ornaments and also some cloths as well as the camera were found missing. Report to this effect Ex.P-1 was made on 31.12.2007 against unknown person. However, on 02.03.2006 Head Constable (PW-2) acting upon a secrete information regarding some theft, nabbed the accused/ applicant herein along with one Raju, and on the basis of memorandum of the accused/applicant under Ex. P-4 seizure of gold and silver ornaments and camera etc. was made under Ex. P-5 and he was arrested under Ex.P-6. Total worth of the articles stolen from his house has been assessed at Rs. 50,000/-. FIR was registered against the accused/applicant under Sections 457 and 380 IPC. The investigation however resulted in charge-sheet being filed by the police under Sections

457, 411 and 380 and charge framed by the learned Magistrate under Sections 457 and 380 IPC.

2. Learned Magistrate vide judgment dated 26.03.2009 passed in Criminal Case No. 243/2009 eventually convicted the accused/applicant under Sections 454 and 380 IPC by imposing the sentence of RI for three years with fine of Rs. 100/- on each count, plus default stipulations. Learned lower appellate Court vide judgment impugned dated 30.06.2009 passed in Criminal Appeal No. 56/2009 affirmed the finding of the Magistrate as a whole. Hence this revision.

3. Counsel for the accused/applicant submits that the conviction of the accused/applicant under Sections 454 and 380 IPC is in fact based on no evidence and, therefore, liable to be set aside. In the long run, he further prays for reduction of the sentence to the period already undergone in case the submission on conviction does not find favour from this Court. State counsel however, supports the judgment impugned.

4. The role of the accused/applicant in committing the house trespass by breaking open the door and stealing several gold and silver ornaments, digital camera total worth being about Rs. 50,000/- is fully established from the evidence of the witnesses examined by the prosecution. The accused/applicant however did not produce the bill/receipt of the ornaments stolen as they were received by him in marriage yet he duly identified the Mangalsutra and two rings in identification conducted under Ex.P-3. Moreover, on the basis of memorandum of the accused/applicant under Ex. P-4, seizure of gold and silver ornaments was made from the present applicant and on the memorandum of co-accused Raju under Ex.P-6 number of gold ornaments were seized from him under Ex.P-7. Though the seizure witness PW-6 has not supported the case of the prosecution yet he has admitted his signature on the seizure memo. Thus

the act of the accused/applicant in committing the house trespass by way of house breaking and stealing the ornaments and other articles as well, is duly proved. His conviction under Sections 454 and 380 IPC is thus maintained.

5. However, looking to the fact that the incident had taken place in the year 2007 and since then the accused/applicant remained inside for about one and half year, the interest of justice would be served if the sentence imposed on him is reduced to the period already undergone. Order accordingly.

6. Revision is thus allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi/Pawan