

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 376 of 2011

Dinesh Soni S/o. Netalal Soni, aged about 25 years, R/o. Near old Ghasidas Chauk, Talabpara, Bhadarapara, Balko Nagar, Tahsil and District Korba (CG)

---- Applicant

Versus

State of Chhattisgarh, Through District Magistrate, Korba District Korba (CG)

---- Respondent

For Applicant : Mr. K.K. Dewangan, Advocate
For Respondent : Mr. Sameer Sharma, Dy. GA

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board on 26.03.2021

Case of the prosecution in brief is that on 27.01.2010 complainant (PW-1) was returning to her house from Budhwari Bazar on an auto. When, she reached near Jain temple, then the applicant threatened her and tried to snatch her gold chain from her neck. It is alleged that during robbery, the gold chain was broken into two parts, one was in the hand of applicant and other one was remained present in the hand of the complainant. It is stated that after committing robbery, the applicant run from there. On the report, FIR (Ex.P-1) was registered against the unknown person under Section 392 IPC. Investigation was set into motion on this complaint. In the course of the investigation, on the memorandum statement of the applicant, 12 gram melted gold was seized from co-accused Nitin Metekari. After completion of

investigation, challan was filed for framing of charge under Sections 392 and 201 IPC.

2. After examining the material available on record and the evidence of the witnesses the trial Court convicted the accused/applicant under Sections 392 and 201 IPC and sentenced him to undergo RI for two years and pay fine of Rs. 200/- u/s. 392, RI for two years and to pay fine of Rs. 200/- u/s. 201 IPC plus default stipulations. In appeal, learned lower Appellate Court also affirmed the findings recorded by the Magistrate in *toto* vide judgment impugned dated 26.06.2011 passed in Criminal Appeal No. 12/2011. Hence this revision.

3. Conviction is not being pressed on merit and the sole prayer made by the counsel for the applicant is confined to reduction of sentence imposed on the accused/applicant to the period already undergone on account of the fact that the case is quite old and the accused/applicants have already remained in jail for some time.

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

5. After hearing both the parties, I have perused the entire evidence and considered the case of the applicant in the light of the evidence on record. Admittedly, Smt. Dakchha Dubey (PW-1) has categorically said that her golden chain was snatched by unknown person when she was returning to her house from Budhwari Market on 27.01.2010.

6. It is not in dispute that the complainant (PW-1) has not identified the applicant before the trial court and no identification of

him was conducted during investigation, however, the recovery of the melted gold items of the complainant (PW-1) at the instance of the applicant has very well been proved by the prosecution. Simply because the recovery of the gold item was not done in the presence of the independent witness, it cannot be said that no reliance can be placed on the said recovery. From the memorandum statement of the applicant (Ex.P-4) in which he has accepted that he took the gold chain from neck of the complainant (PW-1) and sold the same to Nitin Metekar. The applicant has failed to offer any explanation that now he was in possession of the gold chain belonging to the complainant (PW-1). From the statement of Kaushal Prashad before whom the melted gold items was recovered. Statement of complainant (PW-1) fully duly corroborated from the statement of Kaushal Prashad (PW-2) and has also supported the case of the prosecution. PW-3 and PW-4 have also supported the case of the prosecution.

7. I have examined the testimony of these witnesses from different angles and by paying heed upon their cross-examination, I find their evidence is clear, cogent and trustworthy and the learned Courts below did not err in placing reliance upon the testimony of these witnesses. Thus, the findings so recorded are hereby maintained.

8. As regards sentence, considering the fact that the incident had occurred in the year 2010 and since then considerable period has passed by and further that the accused/applicant has remained in jail for about ten months, this Court thinks it proper to reduce the

sentence imposed on him to the period already undergone. Order accordingly.

9. Revision is thus allowed in part.

Sd/-
(Vimla Singh Kapoor)
JUDGE

Santosh