

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 68 of 2012

Naresh Mehar S/o. Sonal Mehar, aged about 33 years, R/o. Village Sankra, Police Station Kumhari, District Durg (CG)

---- Applicant

Versus

State of Chhattisgarh, Through the District Magistrate, Dhamtari, District Dhamtari (CG)

---- Respondent

For Applicant : Mr. Shivendu Pandya, Advocate
For Respondent : Mr. Ashish Tiwari, GA

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board on 31.03.2021

Case of the prosecution in brief is that complainant (PW-2) lodged the FIR (Ex.P-10) in police station Bhakra, alleging therein that on 20.07.2010 some unknown person committed lurking house trespass in his house by breaking open the door and committed theft of gold and silver ornaments and cash of Rs. 20,000/- which kept in the Almira. During investigation the police arrested the some accused persons and from the memorandum statement of the accused/applicant some articles related to the complainant were seized by the police. After completion of the investigation, charge sheet was filed for the said section against the applicant.

2. After examining the material available on record and the evidence of the witnesses the trial Court convicted the accused/applicant under Sections 457/34 and 380/34 IPC and

sentenced him to undergo RI for one year and pay fine of Rs. 100/- u/s. 457 IPC, RI for two years and to pay fine of Rs. 100/- u/s. 380 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/applicant has already remained in jail for some time.

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

5. Rameshwar Sahu (PW-2) deposed that on 20.07.2010 he woke up at 5.00 AM, and saw that the lock of the door was opened which he was closed on the last night. He further deposed that the door of the another room was also opened in which the ornaments were kept. He further deposed on hearing the voice of the neighbours, he went outside the house where he found that the articles of his house was spread here and there and the ornaments were stolen. As per the statement of this witness, he reported the matter to the Police and the police investigated the matter and seized the articles from the possession of the applicant.

6. Naveen Sahu (PW-4) deposed that the articles were seized from accused/applicant under Ex.P-16 and Ex.P-17. This witness has confirmed the seizure of the silver ornaments from the possession

of the applicant. Factum of seizure is also proved by ASI Sanat Sonwani (PW-9).

7. Additional Tahsildar T.R. Sahu (PW-6) who had conducted the Test Identification Parade of applicant in the Jail premises on 20.09.2010. He proves his signature on the Test Identification Parade Ex.P-11. He further states that complainant had identified the silver articles which was stolen from his house. From this also, it is corroborated that the applicant had committed lurking house trespass by night and stolen the silver and gold articles and cash of Rs. 20,000/- from the house of the complainant (PW-2), this Court does not see any illegality or infirmity in the judgment impugned. Accordingly, 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 one year and 7 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