

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 213 of 2010

Salim Mohammed S/o. Maru, Aged about 26 years, Occupation Labour, R/o. Talapara, Kumharpara, Police Station Civil Lines, Bilaspur District Bilaspur (CG)

---- **Applicant**

Versus

State of Chhattisgarh, Through SHO, P.S. Civil lines Bilaspur, District Bilaspur(C.G.)

---- **Respondent**

For Applicant : Mr. Vivek Singhal Advocate
appointed through Legal Aid Committee.
For Respondent : Mr. Ishwar Jaiswal, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board on 25.02.2021

Case of the prosecution in brief is that on 11.05.2004 at about 1.15 AM in the night, the applicant along with co-accused break opened the lock of scrape shop of the complainant (PW-1) with an intention of committing theft. Sanjay Masih (PW-4) and Nilesh Bharos (PW3) who were the neighbours of the complainant, woke up on hearing some noise and caught hold the applicant and co-accused from the shop and thereafter they informed the incident to the complainant (PW-1). Then the complainant came there and saw that the lock of his shop was broken and the articles of the shop were scattered here and there. FIR (Ex.P-1) was lodged in Police Station under Section 457 IPC and after

completion of investigation the Challan came to be placed and the charge framed.

2. By the judgment dated 26.12.2009 learned trial Court convicted the accused/applicant under Section 457 IPC and imposed the sentence of RI for 1 year and to pay fine of Rs. 100/- plus default stipulation. Learned Lower Appellate Court vide judgment impugned dated 17.03.2010 passed in Criminal Appeal No. 10/2010 modified the sentence to the extent of R.I. for six months and fine of Rs.100/-, plus default stipulation. Hence this revision.

3. Counsel for the accused/applicant apart from vehemently arguing his case makes an alternative prayer that if his submissions do not yield any positive result on conviction part of the judgment impugned, keeping in mind the fact that the accused/applicant has already faced a lot for his misdeeds and remained inside for about four months, the sentence imposed on him may be reduced to the period already undergone.

4. State counsel however supports the judgment impugned and submits that the concurrent findings of fact recorded by both the Courts below being well grounded and well founded do not call for any disturbance in these revisions.

5. Having heard counsel for the parties and perused the material available on record including the evidence of Sanjay Masih (PW-4) and Nilesh Bharos (PW3) who caught red handed

the applicant from the shop of the complainant (PW-1) and thereafter they informed the incident to the complainant. Broken locks and rod which were used in the incident was seized under Ex.P-2 and Ex.P-3. Statement of Nishar Hussain (PW-2) is fully corroborated from the statement of complainant (PW-1). Thus, the statement of all these witnesses are quite consistent and therefore there is no reason to disbelieve or discard the same. In this view of the matter, both the Courts below appear to have been fully justified in holding the accused/applicant guilty under Section 457 IPC and therefore, no infirmity or illegality is visible in the judgment under assail. The conviction of the applicant is hereby maintained as such.

6. As regards sentence, considering the fact that the incident had occurred in the year 2004 and since then considerable period has passed by and further that the accused/applicant has remained in jail for about three months, this Court thinks it proper to reduce the sentence imposed on him to the period already undergone. Order accordingly.

7. Revision is thus allowed in part.

Sd/-

(Vimla Singh Kapoor)
JUDGE