

**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRR No. 290 of 2013**

Tufan Singh, S/o. Shri Ramnath Barle, aged about 20 years, R/o. Pachri, Post – Kathiya No. 01, P.S. - Kharona, District. Raipur, C.G.

**---- Applicant**

**Versus**

The State Chhattisgarh, Through P.S. - Kharona, District Raipur, Chhattisgarh

**---- Respondent**

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For Applicant : Mr. C.R. Sahu, Advocate

For Respondent/State : Ms. Shubha Shrivastava, PL

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**Hon'ble Smt. Justice Vimla Singh Kapoor**

**Order on board**

**21.01.2021**

As is revealed from the case put-forth by the prosecution, on 10.02.2012 at about 10 PM, when Ghanshyam (PW 2) had parked his Hero Honda Passion motor cycle bearing registration No. CG-04 CB-3147, and on the next day when he woke up, the said vehicle was found missing. After making search for sometime, he made a complaint against an unknown person (Ex-P3) and during investigation memorandum of the accused/applicant herein was recorded as Ex-P1, on the basis thereof seizure of the motorcycle was made from him under Ex.P-2. Based on the FIR an offence under Section 380 of the IPC was registered against the accused/applicant and after investigation charge-sheet was also filed accordingly followed by framing of charge.

2. Learned Magistrate vide judgment dated 08.01.2013, passed in Criminal Case No. 294/2012 found the accused/applicant guilty under Section 380 IPC and imposed the sentence of RI for 2 years with fine Rs.300/-, plus default stipulations. The findings recorded

by learned Magistrate have been approved by the lower appellate Court also vide judgment impugned dated 25.04.2013 passed in Criminal appeal No. 28/2013. Hence, this revision.

3. Counsel for accused/applicant submits that as most of the witnesses have been declared hostile, conviction recorded by the two Courts below can not be allowed to stand. In the alternative, he submits that if this court is not inclined to grant any concession with regard to conviction, at least the sentence imposed on the accused may be reduced to the period already undergone.

4. State counsel however, supports the judgment impugned and submits that though some of the witnesses have been declared hostile, PW-2 and PW-1 have categorically supported the case of prosecution and therefore, the findings recorded by both the Courts below do not require any interference in this revision.

5. Evidence of complainant (PW-2) containing the description of his motorcycle and the documents pertaining to the same go to show that he was the real owner of the motorcycle in question which was stolen from his house on 10.02.2012. Lileshvar (PW-4) before whom papers of the motorcycle belonging to the PW-2 were seized under Ex.P-5 has also supported the case of prosecution. Lileshwar Dahariya (PW-4) is also the signatory of Ex-P5. Narendra Koushal (PW-1) one of the seizure witnesses has also supported the case of prosecution stating that while being interrogated by the police the applicant and one other had disclosed to the police about committing theft of a motorcycle from village Banaguma. Further the seizure of the motorcycle stolen by the accused was also made from his house on his memorandum Ex.P-1. This apart, the accused/applicant has

utterly failed of prove his ownership over the vehicle in question as not even a single document including the registration paper issued in his name, has been produced by him.

7. Thus, the aforesaid factual discussion goes to show that it is accused/applicant who was involved in commission of theft of motorcycle in question which was seized from his own house based on his memorandum Ex.P-1. This court does not find any error in the findings recorded by both the Courts below *insofar* as they relate to conviction of the accused/applicant. Thus the conviction of the accused/applicant is hereby maintained.

9. As regard sentence, the documents go to show that the accused/appellant remained in jail from 13.02.2012 to 03.04.2012 and then from 25.04.2013 to 02.05.2013 which comes to about two months and also considering the case being quite old, this court finds it just and proper to reduce the sentence imposed on him to the period already undergone. Order accordingly.

10. Revision is thus allowed in part with the observations made above.

Sd/-

**(Vimla Singh Kapoor)**  
**Judge**

Jyotishi/Vaishali