

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 256 of 2005**

1. Mohan Ram son of Ramkriksha Ram aged about 28 years, occupation Teacher
 2. Jitendra @ Babloo, son of Pooran Singh aged about 20 years, occupation agriculture
- Both R/o village Ghatgaon, PS Out Post Bariuyon, PS Dhourpur, Distt. Surguja (CG)

---- Applicants**Versus**

- State Of Chhattisgarh

---- Non-applicant

For applicants	: Ms. Hamida Siddiqui, Adv.
For Respondent/State	: Mr. Arvind Shukla, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****22/04/2015**

1. By this order, the revision filed on behalf of the applicants under Section 397 read with Section 401 of the Code of Criminal Procedure is pending disposed of. Their conviction for the offence under Sections 323 read with Section 34 and Section 452 of the Indian Penal Code (in brevity 'IPC') is upheld by the appellate court/3rd Additional Sessions Judge, Ambikapur, Sarguja (FTC) in Criminal Appeal No. 8/2005 vide judgment dated 21-6-2005 and they are sentenced to pay a fine of Rs. 1,000/-, in default of payment of fine SI for 3 months (under S. 323/24, IPC) and RI for 6 months and pay a fine of Rs. 200/-, in default of payment of fine, to further undergo SI for 1 month, (under S. 452, IPC).
2. Both the applicants and another co-accused Dharmendra were convicted and sentenced by the Judicial Magistrate First Class, Ambikapur as under with a direction to run all the sentences concurrently :-

Sr. No.	Section of IPC	Sentence	Default clause
1	452	1 year + Rs. 1500/-	3 months
2.	323/34 Victim-Tersa	6 months + Rs. 700/-	1 month
3.	323/24 victim- Anju	6 months + Rs. 700/-	1 month
4.	323/34 victim- Itvaru	3 months + Rs. 500/-	1 month

3. Against the judgment of the trial Court, the applicants and co-accused Dharmendra preferred an appeal. The appellate court acquitted co-accused Dharmendra of charges under Sections 452 and 323 of IPC but upheld the conviction of the applicants under above offences however modified the sentences as mentioned in para 1 of this order.
4. As per facts of the case on 15-11-2001 applicants committed house trespass in the house of complainant Itwaru and after house trespass, they inflicted simple injuries to complainant Itwaru, his wife Tersa and his daughter Anju. Complainant in the night at about 2.50 am lodged FIR before Police of Dhaupur, Distt. Sarguja. The IO examined all the three injured, seized sticks from the spot. After completion of investigation charge sheet was filed before the Judicial Magistrate First Class, Ambikapur on 10-12-2001.
5. After providing opportunity of hearing to the parties, learned trial Court convicted and sentenced the applicants as above-mentioned. Against the order of trial Court, all the convicted accused preferred an appeal in which vide judgment dated 21-6-2005, both the applicants are convicted and sentenced by the appellate court against which this revision is preferred and ground has been taken that the courts below failed to consider the material available on record and also failed to appreciate the evidence of the prosecution witnesses, also committed error by convicting the applicants and erred in holding that the applicants are not entitled for benefit of Probation of Offenders Act.

6. Heard learned counsel for both the parties.
7. Learned counsel for the applicants submitted that they are not assailing the legality, propriety and correctness regarding conviction of the applicants under Section 323/34 and 452 of IPC. The applicants have deposited entire fine amount as directed by the Court below. The incident is about more than 14 years old, on account of sudden dispute and previous discussion, this incident happened. Applicants are first offenders with no criminal history. Even after the incident, they have not involved themselves in any other crime. The applicants served the part of sentence for 9 days i.e. from 21-6-2005 to 29-6-2005 and also they furnished bail after few days, as per direction of this Court while granting bail and remained in jail for few days. By this more than 9 days they remained in jail. There is no minimum sentence prescribed for the offence under Section 452 of IPC. Looking to the age and other facts, the applicants may be sentenced for the period already undergone by them. While not appreciating the above facts, learned trial Court and the learned appellate court committed error. Hence learned counsel submitted that the applicants may be sentenced for the period already undergone by them with fine part as ordered by the appellate court.
8. Per contra, learned counsel for the respondent State opposed the submission made on behalf of the applicants and submitted that looking to their act, the trial Court rightly convicted the applicants and sentenced them which was adequately modified and reduced by the appellate court. There is no scope for reduction of sentence. Hence this revision may be dismissed as not maintainable.
9. In order to appreciate the arguments advanced on behalf of the parties, I have perused the record of the courts below.
10. As the applicants are not contesting their conviction and fine sentence awarded ultimately by the appellate court, on the other hand on perusal of

entire evidence and facts I see no reason to interfere with the judgment of conviction passed by the trial.

11. So far as substantive jail sentence awarded under Sections 452 and 323/34, IPC by the appellate court is concerned, at the time of incident, both the applicants were young boys of 28 and 20 years. They were first offenders, no any criminal history was noticed during investigation. On a petty dispute and earlier discussions, this incident happened and as submitted, after this incident the applicants have not involved themselves in any other criminal activities. The incident is more than 14 years old. Both the applicants remained in jail for more than 9 days to serve the sentence. Looking to the entire facts and circumstances of the case in the considered view of this Court, the judgment of the appellate court requires interference for substantive jail sentence and it would be just and proper to sentence the applicants for the period already undergone by them.
12. Consequently, the criminal revision filed by the applicants is hereby allowed in part. The applicants' conviction for the offence under Sections 323/34 and 452 of IPC is hereby affirmed. Fine sentence awarded by the appellate court is also maintained. However instead of the substantive jail sentence awarded by the appellate Court, they are sentenced to the period already undergone by them.
13. It is stated that the applicants are on bail. They be set at liberty forthwith. Their bail bonds shall continue for a further period of six months as per Section 437-A of the Code of Criminal Procedure.

Sd/
Chandra Bhushan Bajpai
JUDGE