

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 285 of 2003**

1. Jagropan, S/o Deonath, aged about 32 years, Caste Yadav.
2. Sukhdeo, S/o Devnath, aged about 30 years,
3. Chhattarman, S/o Dinesh, aged about 38 years, Caste – Yadav,

All resident of village Rampur, P.S. Lakhanpur, Tah. Ambikapur, Distt. Surguja (C.G.)

---- Petitioners**Versus**

State Of Chhattisgarh

---- Respondent

For Petitioner: Smt. Hamida Siddiqui, Advocate.

For Respondent/State: Shri Anupam Dubey, Dy. Govt. Advocate.

For Complainant: Shri D.N. Prajapati, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****30/07/2015**

1. Invoking revisional jurisdiction of this Court under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (hereinafter called as "Cr.P.C."), the applicants herein have filed the instant criminal revision challenging the impugned judgment dated 30.06.2003 passed by the Third Additional Sessions Judge, Ambikapur, Surguja, in Criminal Appeal No. 66

of 2000 affirming the judgment of conviction and order of sentence dated 21.08.2000 passed by Judicial Magistrate, First Class, Ambikapur, Sarguja, in Criminal Case No.765/97, whereby the applicants have been convicted for the commission of offence punishable under Section 326/34 of the Indian Penal Code and were sentenced to undergo rigorous imprisonment for one year & fine of Rs. 1,000/-, in default of payment of fine to further undergo rigorous imprisonment for three months.

2. The prosecution/State charge sheeted the present applicants along with accused/applicant – Deonath, who died during the pendency of the instant revision, for the offence punishable under Section 326/34 of the Indian Penal Code alleging that on 9.4.1995 at 8.30 AM at village with an common intention they assaulted complainant – Bheemsen with the sharp edged weapon i.e. *Tabbal* and caused grievous hurt.

3. The matter was investigation by the concerned Police Station and after investigation, charge sheet was filed before the competent jurisdictional Criminal Court against the accused/applicants for the aforesaid offence.

4. Applicants abjured their guilt and decided to enter into defence stating that they have been falsely implicated in the offence in question as on the report of applicant No.1 a Counter Case No.769/97 (State Vs. Bheemsen & others) has been registered, in which, the complainant party have been acquitted.

5. During the course of trial, the prosecution examined as many as eleven witnesses and exhibited six documents to bring

home the offence, whereas the defence not examined any witness but exhibited four documents in support of its defence.

6. Upon appreciating the oral and documentary evidence available on record, learned Judicial Magistrate First Class, Ambikapur, Distt. Sarguja, vide its order dated 21.08.2000 passed in Criminal Case No.765/97 convicted the applicants as aforementioned in para 1 of the order.

7. In an appeal preferred by the applicants, learned Third Additional Sessions Judge, Ambikapur, Sarguja, by its judgment dated 30-06-2003 affirmed the judgment of conviction and order of sentence passed by the Trial Magistrate. Feeling dissatisfied with the judgment of the appellate Court, the applicants have filed the instant criminal revision.

8. Mrs. Hamida Siddiqui, learned counsel appearing for the applicants would submit that both the courts below have committed legal error in convicting the applicants for commission of offence punishable under Section 326/34 of the IPC by recording a finding which is perverse and contrary to the evidence available on record. She would alternatively submit that jail sentence awarded to the applicants is disproportionate to the gravity of the offence as the applicant No.1 remained in jail for 40 days whereas applicants No. 3 & 4 remained in jail for 35 days & 76 days, respectively. She would further submit that there is mitigating circumstances that on the report of applicant No.1- Jagropan, a counter case No.769/97 was registered as State Vs. Bheemsen & others against the complainant party, in which, they

have been acquitted. She also submits that the second appeal is also pending between the parties relating to land dispute and, therefore, the period already undergone by the applicants be held to be sufficient sentence against the sentence awarded by the two courts below and accordingly the revision be allowed by modifying the sentence awarded.

9. On the other hand, Mr. Anupam Dubey, learned Deputy Government Advocate for the State & Shri D.N. Prajapati, learned counsel for the State would submit that the judgment of conviction and sentence awarded is based on evidence available on record and it is well merited judgment recorded by the first appellate court and as such no interference is called for by this court in this revisional jurisdiction. Therefore, the instant criminal revision deserves to be dismissed.

10. I have heard learned counsel for the parties, perused the impugned judgment and records of both the courts below with utmost circumspection.

11. The following two questions would arise for consideration in this criminal revision:-

- (i) Whether the prosecution has proved the aforesaid offence against the applicant beyond reasonable doubt?
- (ii) Whether sentence awarded to the applicant is just and proper?.

12. **Answer to question No.1:** The trial Magistrate, after appreciating the oral & documentary evidence, has clearly recorded a finding that applicants with a common intention,

assaulted complainant Bheemsen by sharp edged weapon i.e. *tabbal* and caused grievous injuries to him, as a result of which he suffered injuries in his ulna bone; and also suffered fracture and in order to reach such finding relied upon the testimony of one eye witness namely Parsadi (PW-6) and Dr. M.K. Jain (PW-7), in which Dr. Jain found the fracture in the ulna bone, which is grievous hurt within the meaning of Section 320 of the Indian Penal Code.

13. On an appeal being preferred by the applicants, the appellate Court has also minutely examined the finding of the trial Court and come to the categorical conclusion that the trial Court has not committed any perversity or illegality in the judgment of conviction and order of sentence and affirmed the judgment of the trial Court.

14. After hearing learned counsel for the parties and after carefully going through the records and findings of both the courts below, I do not find any illegality in the findings recorded by the two courts below holding the applicants guilty for offence punishable under Section 326/34 of IPC warranting interference. The finding so recorded by the two courts below holding the applicants guilty is hereby affirmed.

15. **Answer to question No.2:** The determination of issue with regard to conviction brings me to reasonableness of the sentence awarded by the trial Court as affirmed by the appellate Court.

16. Mrs. Hamida Siddiqui, learned counsel appearing for the applicants would submit that the applicant No.1 remained in jail for 40 days whereas applicants No. 2 & 3 remained in jail for 35 days & 76 days and during the pendency of the revision one of the applicants namely Devnath has already died. He further submits that there is some land dispute between the parties, for which, the second appeal is also pending consideration; and on the report of applicant No.1, a counter case has also been registered against the complainant party, therefore, taking the lenient view of the matter, the sentence awarded to the applicants i.e. one year R.I. be reduced to the period already undergone by him holding it to be sufficient sentence.

17. Mr. Anupam Dubey, learned counsel for the State would submit that the lenient view ought not to be taken and sentence awarded to the applicant for a period of one year is not only just and proper, but it is also a fair sentence looking to the gravity of the offence and as such the sentence awarded to the applicant need not be interfered with as scope of interference in revisional jurisdiction is extremely limited.

18. At this stage, it would be appropriate to notice a judgment of the Supreme Court in the matter of **George Pon Paul Vs. Kanagalet & others**¹ in which their Lordships have held that custodial sentence of confinement till rising of the Court with fine was held to be sufficient for the offence under Section 326 of the Indian Penal Code. Relevant paragraphs of the report states as under:-

1 2009 AIR SCW 6701

“4. The only question that remains is whether the custodial sentence as was imposed by the trial Court was adequate or not i.e. confinement till rising of the Court.

5. It appears from record that the fine amount has been deposited and the amount which was directed to be paid to PW-2 has already been paid.

6. Considering this fact and the long passage of time, it would appropriate to restrict the period of sentence to the period already undergone. The appeal stand disposed of. “

19. Taking into consideration the fact that incident occurred on 9.4.1995 i.e. 20 years back; there is dispute of landed property between the complainant and the applicants, which is apparent from the fact that criminal case was also registered against the complainant party, in which, they were acquitted and complainant – Bheemsen has suffered fracture in his ulna bone; and further considering the fact that the applicants have already faced a prolonged trial and suffered the trauma of uncertainty arising out of their conviction by the Trial Magistrate as affirmed by the Appellate Court. Besides that applicants have no criminal antecedent or involvement in any case and after conviction by the Trial Magistrate, they have not misused the liberty granted to them time to time by the Trial Court, Appellate Court and this Court. The applicant No.1 remained in jail for 40 days whereas applicants No. 2 & 3 remained in jail for 35 days & 76 days, I am of the considered opinion that the ends of justice would meet if the substantive jail sentence, which the applicants have already undergone is held sufficient.

20. As a fallout and consequence of the aforesaid discussion, the criminal revision is partly allowed. Conviction part of the impugned judgment is hereby maintained. Applicant No.1 remained in jail for 40 days whereas applicants No. 2 & 3 remained in jail for 35 days & 76 days, therefore, their sentences are reduced to the period already undergone by them. It is stated that applicants are on bail. Their bail bond shall remain in force for a period of six months from today in view of provision contained in Section 437-A of the Code of Criminal Procedure.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-