

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Revision No.534/2005**

- Rampal, S/o. Deocharan, Aged about 34 years, R/o. Village Bhalpahari Chowki Urga, Police station Katghora, Distt. Korba (CG)

---- Applicant**Versus**

- State Of Chhattisgarh, Through District Magistrate, Korba (CG)

---- Respondent

For applicant : Shri Ashok Patil, Advocate.

For Respondent : Ms. Sangeeta Mishra, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****08/04/2015**

The applicant has filed this criminal revision under Section 397 of Code of Criminal Procedure, 1973 (for short 'the code') read with Section 401 of the Code as he was convicted by the judgment dated 29.6.05 passed in Criminal Case No.764 of 97. The Chief Judicial Magistrate Korba convicted him for the offence under Section 324 of the IPC and sentenced him to undergo rigorous imprisonment for one year.

2. The applicant has challenged the judgment of conviction and sentence before the Sessions Judge Korba, who vide judgment dated 30.11.05 in criminal appeal No.19/05 affirmed the judgment of conviction and also affirmed the sentence passed by the trial Court. Against the order of the appellate Court, the applicant has preferred revision before this Court stating that the trial Court has erred in not appreciating the evidence in its right perspective, thereby committed

illegality and infirmity while affirming the award passed by the Magistrate. In absence of any independent witnesses and the evidence of the complainant that there was family dispute between the father of the applicant and the complainant, the trial court failed to appreciate the entire evidence. He prayed that the revision may be allowed and the impugned judgment of conviction and sentence may be set aside.

3. Heard counsel for both the parties and perused the judgment impugned of the trial court as well as the appellate court.

4. Learned counsel for the applicant submits that the applicant is not contesting this revision on its merits for judgment of conviction under Section 324 of the IPC against him. As instructed, he is confining his argument on the quantum of sentence passed by the trial Court. Learned counsel would submit that from 30.11.05 till order of suspension of sentence and grant of bail during the pendency of this revision and even after furnishing all the bail bonds the applicant served the part of the sentence more than 13 days. Also as per warrant of arrest issued by this Court the applicant was arrested on 08.02.15 till today he is in jail towards serving the sentence thereby for more than two months 13 days the applicant served part of the sentence awarded by the trial Court. As per the facts the applicant is first offender, at the time of incident he was aged about 26 years and on account of previous dispute this incident happened and the complainant received only one incised wound which was not proved as grievous. Hence, being that injury as simple the applicant was convicted under Section 324 of the IPC. After this incident, the applicant has not involved in any other criminal activities. The incident is more than 18 years old. The applicant will not commit any offence in

future. Looking to the entire facts and circumstances, he may be sentenced for the period already undergone by him.

5. Per contra, learned counsel for the State/respondent opposed the argument advanced on behalf of the applicant and submitted that the applicant assaulted the complainant Suresh Kumar (PW-1) over his head though the injury was simple in nature, the trial Court has rightly convicted and sentenced the applicant for the offence and it was rightly affirmed by the appellate Court. Looking to the injuries received by the complainant, the sentence is adequate hence, there is no scope for interference in the judgment of conviction and sentence passed by the trial Court, hence the revision may be dismissed.

6. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the parties and other facts of the case. Upon minute examination, it appears that though the applicant was having axe he inflicted only one injury which was of simple in nature. The applicant was first offender with no criminal past and as submitted he has not involved himself in any other criminal activities also as submitted he be given an opportunity. At the time of the incident the applicant was aged about 26 years. So far as the conviction awarded to the applicant are concerned, he is not disputing the judgment of conviction awarded by the trial Court and the appellate Court. Even upon perusal of the evidence adduced by the prosecution before the trial Court there is no illegality or infirmity in the judgment of conviction passed by the trial Court against the applicant under Section 324 of the IPC .

7. So far as the quantum of sentences are concerned, the incident is about 18 years old and at the time of the incident the applicant was aged about 26 years, he was first offender with no previous criminal

history, he inflicted only one blow that too simple in nature on the body of the complainant, the applicant remained in jail for 02 months 13 days, after long passage of time it would not be just to send him to jail for serving the remaining part of the sentence. No minimum sentence is provided for the offence under Section 324 of the IPC.

8. Looking to the entire facts and circumstances it would be appropriate to sentence the applicant for the period already undergone by him.

9. Looking to the entire facts and circumstances, judgment passed by both the courts requires interference on the point of sentence as the sentence is excessive. Consequently, the revision filed on behalf of the applicant is partly allowed. Conviction of the applicant under Section 324 of the IPC is affirmed. However, his sentence is modified and instead of RI for one year, the applicant is sentenced for the period already undergone by him. It is stated that the applicant is in jail. He be released forthwith if not required in any other case.

Sd/

(Chandra Bhushan Bajpai)
JUDGE