

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRIMINAL REVISION NO. 90 OF 2014**

1. Vanmali @ Bono, S/o Somaru, aged about 24 years; Caste- Sundi

2. Mahadev, S/o Khagpati, aged about 23 years, Caste-Bhatra

Both applicants are permanent R/o Village Bajawand, Police Station- Nagarnar, Civil & Revenue District Bastar (Jagdalpur), (C.G.)

---Applicants**Versus**

State of Chhattisgarh, through Collector, P.S. Nagarnar, District Bastar (Jagdalpur), Civil & Revenue District Bastar (Jagdalpur) (C.G.)

---Non-applicant

For Applicants	:	Mr. Kunal Das, Advocate
For Non-applicant	:	Mr. O.P. Sahu, Govt. Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****21/08/2015**

1. Invoking the 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 have filed instant criminal revision challenging the impugned judgment dated 22/01/2014 passed by the Sessions Judge, Bastar at Jagdalpur in Criminal Appeal No. 11/2013, by which, Appellate Court has partly allowed the appeal while maintaining conviction for the offence punishable under Section 324/34 of the Indian Penal Code (hereinafter called as 'IPC') and reducing the jail sentence from rigorous imprisonment for two years and fine of Rs.500/- to simple imprisonment for six months and fine of Rs.500/- to each of the applicants.

2. The facts, briefly stated are as under:-

2.1 The applicants have been charge-sheeted by the Police Station Nagarnar, District Bastar for the offence punishable under Sections 324/34, 294 and 506 Part-II of the IPC alleging that on 04/02/2011, in public place, the applicants threatened and abused the complainant/victim- Dhanpati (PW-3) and also assaulted him by dangerous weapon, by which, he suffered hurt.

2.2 In duly constituted trial, applicants abjured the guilt and decided to enter into defence stating that they have been falsely implicated in the offence in question.

2.3 During the course of trial, prosecution examined as many as twelve witnesses and exhibited ten documents in support of his case, whereas, defence neither examined any witness nor exhibited any document.

2.4 Upon appreciating the oral and documentary evidence available on record, learned Judicial Magistrate First Class, Jagdalpur, by its judgment dated 26/02/2013, convicted the applicants for the offence under Section 324/34 of the IPC and sentenced them to undergo rigorous imprisonment for two years and fine of Rs.500/-, with default sentence of rigorous imprisonment for one month to each of them and acquitted of the charges framed under Section 294 and 506 Part-II of the IPC.

2.5 In an appeal preferred by the applicants, learned Sessions Judge, Bastar at Jagdalpur, by its judgment dated 22/01/2014 in Criminal Appeal No. 11/2013, affirmed the judgment of conviction for

the offence under Section 324/34 of the IPC and reduced the jail sentence from rigorous imprisonment for two years and fine of Rs.500/- to simple imprisonment for six months and fine of Rs.500/- to each of the applicants.

2.6 Feeling dissatisfied with the judgment of the Appellate Court, applicants have filed instant criminal revision.

3. Mr. Kunal Das, learned counsel appearing for the applicants would submit that both the Courts below have committed legal error in convicting the applicants for the offence punishable under Section 324/34 of the IPC by recording a finding which is perverse and contrary to law and would alternatively submit that the jail sentence awarded to the applicants is on the higher side, as the applicants have already remained in jail from 13/02/2012 to 14/02/2012 and 22/01/2014 to 07/02/2014, i.e. for a period of 19 days, therefore, the period already undergone be held to be sufficient sentence, and accordingly, revision be allowed.

4. On the other hand, Mr. O.P. Sahu, learned Govt. Advocate appearing on behalf of the State/non-applicant would submit that the concurrent finding recorded by two Courts below holding the applicants guilty for the commission of offence under Section 324/34 of the IPC is a finding of fact based on evidence available on record and no interference is called for in this criminal revision and sentence awarded is also quite reasonable and no interference is warranted in exercise of revisional jurisdiction.

5. I have heard learned counsel appearing for the parties and have also perused the record of the Court below with utmost circumspection.

6. The Trial Magistrate after appreciating the entire evidence available

on record and relying upon the testimonies of complainant/victim- Dhanpati (PW-3), Investigating Officer- D.M. Gahlot (PW-8) and medical report (Exhibit-P/8) duly proved by Dr. C.L. Gawde (PW-9) came to the categorical conclusion that applicants assaulted the complainant/victim by iron rod and knife, by which, he suffered simple injury, which is punishable under Section 324/34 of the IPC.

7. The finding of the Trial Court has been affirmed by the First Appellate Court. After perusal of the records and hearing of learned counsel appearing for the parties, I hold that there is sufficient incriminating circumstances for holding the applicants guilty for commission of offence under Section 324/34 of the IPC, it is neither perverse nor contrary to the record. Thus, the Trial Magistrate has not committed any illegality in convicting the applicants for commission of offence under Section 324/34 of the IPC, which was duly accepted by the Appellate Court and I hereby affirm the finding so recorded by both the Courts below. Thus, the conviction of the applicants under Section 324/34 of the IPC is hereby maintained.

8. The determination of issue with regard to conviction brings me to consider the reasonableness of the sentence awarded by the Trial Magistrate as modified by the Appellate Court.

9. Their Lordships of the Supreme Court in case of **Manjappa v. State of Karnataka**¹ has held in paragraph-14 as under:-

“14. At the same time, however, the fact remains that the High Court has reduced substantive sentence to a month and a half. It is also not in dispute that the appellant has undergone and has remained in custody for about fifteen days. Moreover, as on today, he is on bail. Hence, even though we are of the view that in the

¹ (2007) 6 SCC 231

facts and circumstances of the case, provisions of Section 360 read with Section 361 of the Code are not attracted and Om Prakash does not help the appellant, it would not be appropriate now to direct the appellant to surrender and to suffer the remaining sentence for about a month. The incident is of 1997 and about 10 years have passed.”

10. The Trial Magistrate has sentenced the applicants to undergo rigorous imprisonment for two years and fine of Rs.500/-, with default sentence of rigorous imprisonment for one month to each of them, which was modified by the Appellate Court to simple imprisonment for six months and fine of Rs.500/- to each of the applicants. Keeping in view the fact that the incident was occurred on 04/02/2011 and the complainant/victim has suffered simple injury, 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 applicants are in jail from 13/02/2012 to 14/02/2012 and 22/01/2014 to 07/02/2014, i.e. for a period of 19 days. In my considered opinion, the ends of justice would be served if the substantive jail sentence, which the applicants have already undergone is held sufficient.

11. As a fallout and consequence of the aforesaid discussion, the criminal revision is partly allowed. Conviction part of the impugned judgment is hereby maintained. Applicants are reported to have remained in jail for a period of 19 days, therefore, their jail sentence is reduced to the period already undergone by them. It is stated that the applicants are on bail. Their bail bonds shall remain in force for a period of six months from today in view

of provision contained in Section 437-A Cr.P.C.

Tiwari

Sd/-
(Sanjay K. Agrawal)
JUDGE