

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 220 of 2003**

1. Suganchand, son of Shri Chaitram, aged about 53 years
2. Rahaslal, Son of Shri Suganchand, aged about 37 years
3. Ravi Shankar, son of Shri Suganchand, aged about 26 years
4. Rajendra Prasad, son of Shri Suganchand, aged about 29 years

All are resident of Navrangpur, PO and P.S. Dadhi, P.S. Nawagarh,
District Durg (Chhattisgarh)

---- Applicants**versus**

The State of Chhattisgarh

---- Respondent

For Applicants	:	Shri P.K.C. Tiwary, Senior Advocate with Shri A.K. Mishra, Advocate
For Respondent/State	:	Shri Majid Ali, Panel Lawyer.

Hon'ble Shri Deepak Gupta, Chief Justice**Order on Board****15/07/2016**

1. This criminal revision is directed against judgment dated 30.04.2003 passed by 3rd Additional District & Sessions Judge (FTC), Bemetara, District Durg in Criminal Appeal No. 63 of 2000, whereby the appeal filed by the present Applicants has been dismissed and judgment dated 31.01.2000 passed by the Judicial Magistrate First Class, Bemetara in Criminal Case No. 77 of 1997 has been affirmed, convicting Applicants/Accused in the following manner:-

Conviction

U/s 452 IPC

Sentences

R.I. for one year and fine of Rs.100/-,
in default of payment thereof further
R.I. for one month

U/s 352 IPC

R.I. for one month, in default of payment thereof imprisonment for one month.

(To each of the Applicants/Accused)

(Applicant No. 2 Rahaslal in addition to above)

U/s 504 IPC

R.I. for six months

U/s 509 IPC

Three months R.I.

2. The prosecution story, briefly stated, is that the cattle of complainant/Nanki Bai (PW-2) had entered the field of Rahaslal/Accused No. 2 and the said cattle were taken by Suganchand to the cattle pond where they were detained. Thereafter, the husband of Nanki Bai (PW-2), namely, Sant Prasad (PW-3) got those cattle released from the cattle pond on 04.07.1997. It is alleged that on the same day, in the evening hours, at about 7:00 pm, Rahaslal/Accused No. 2 trespassed into the house of Nanki Bai (PW-2) and Sant Prasad (PW-3). He abused Nanki Bai (PW-2) and threatened her with dire consequences for having left the cattle loose in his fields. He also used abusive language and threatened to put chilly powder in her private part. The further allegations are that Rahaslal started beating PW-2, Nanki Bai, and in the meantime, other three accused persons, i.e., Suganchand, Ravi Shankar and Rajendra Prasad also entered the kitchen of PW-2, Nanki Bai and assaulted her with lathis and also gave her fist blows. Nanki Bai (PW-2) raised alarm and on hearing her cries, her husband Sant Prasad (PW-3) rushed there. After investigation, the accused were charged for having committed number of offences, but after trial, they have been convicted and sentenced for the offences as afore-stated. The appeal filed by the accused was also dismissed. Hence, this revision.

3. There are only two important witnesses. First witness is Nanki Bai (PW-2), who has stated what has been mentioned hereinabove. Second witness is Sant Prasad (PW-3), husband of Nanki Bai (PW-2). He also supported the version of his wife that all the accused persons were beating his wife when he reached the place of occurrence. According to him, Rahaslal/ Accused No.2 had threatened his wife to put chilly powder in her anus.

4. In this revision, the main ground raised is that there is contradiction in the statements of PW-2 and PW-3. It is also urged that independent witnesses, who were examined, have not supported the case of prosecution. It is also urged that the medical evidence does not support the version of complainant (PW-2). Lastly, it is submitted that even if some case is made out, it is a fit case where the accused should not be put behind the bar at this stage because two decades have already elapsed since the occurrence took place.

5. I propose to decide this case in two parts, first with regard to accused/Rahaslal and the second with regard to other three accused. As far as accused Rahaslal/accused No.2 is concerned, as per suggestion made by the accused, the allegation was that the cattle of complainant Nanki Bai had entered the field of Rahaslal. It is also not disputed that these cattle were impounded at the instance of Rahaslal. Therefore, Rahaslal had no business of going to the house of Nanki Bai (PW-2) and why did he go there? There should be some explanation for this because the cattle had already been impounded and thereafter, the husband of Nanki Bai (PW-2), Sant Prasad (PW-3) got the cattle released. This lends credence to the version of the prosecutrix (PW-2) that Rahaslal came to her

house and abused her. It has been urged that merely entering the house would not be sufficient because there is no proof that Rahaslal went to the house of Nanki Bai with a preparation to commit an offence. An offence means not only an act of physical violence. If a person orally abuses a woman and orally threatens her, no prior preparation is required. The intention to commit the offence has to be gathered from the surrounding circumstances. The version given by Nanki Bai (PW-3) regarding the incident relating to Rahaslal appears to be correct. It is true as argued by the Learned Counsel for the Applicants that the statements of husband (PW-3) and wife (PW-2) are contradictory to each other with regard to putting of chilly powder in the private part of PW-2. This Court cannot lose sight of the fact that in local language, terminology is different and it appears to this Court that the husband was not even present when the occurrence took place. Wife (PW-2) herself stated that Rahaslal abused and threatened to put chilly powder in her private part. Thereafter, the accused persons assaulted her also. On hearing her cries, her husband came there and as such, her husband could not have been present when Rahaslal threatened to put chilly powder in her private part. Therefore, I do not rely upon the statement of husband for any purpose whatsoever. There is however no reason to disbelieve the statement of Nanki Bai.

6. As far as the other three accused are concerned, the allegation of Nanki Bai (PW-2) is that they beat her. The doctor, who examined the complainant, has been examined. He did not find any injury on the person of Nanki Bai which would support her version regarding beating by accused with lathis and fist blows. The doctor states that he found two small cut wounds near the wrist of Nanki Bai (PW-2) and he also states that these

wounds could have been caused due to breaking of bangles in the scuffle.

7. Be that as it may, the two cut wounds cannot be connected with the allegations made against the accused with regard to beating because none of the accused was alleged to be carrying a sharp edged weapon, which could have caused such injuries. The other three accused were residents of the same village. They may have come into the room even after hearing a hue and cry. The allegation that they beat the complainant is not proved and not supported by the medical evidence. Therefore, I have no hesitation to set aside their conviction. However, so far as Rahaslal is concerned, his conviction is upheld.

8. This incident took place in the year 1997 and we are now in the year 2016. Rahaslal has been sentenced to undergo various terms of imprisonment, but maximum period of sentence is one year. He has also been imposed with a minor fine amount of Rs.100/-. To send him behind the bar at this stage would be highly injustice because 19 years have elapsed and by now he must be 57 years of age. In this view of the matter, the substantive jail sentence awarded to accused Rahaslal is reduced to the period already undergone by him. However, the accused Rahaslal is directed to pay fine of Rs.10,000/- (Rupees Ten Thousand) only, which, on deposit, shall be paid to Nanki Bai (PW-2). This amount of fine be deposited by him in the Trial Court within a period of three months from today. In default of payment of fine, he will undergo rigorous imprisonment for one year.

9. Copy of this order shall be sent to the Trial Court, who shall ensure that the amount of fine is deposited within a period of three months, and in

case it is not deposited, he shall ensure that accused Rahaslal to undergo rigorous imprisonment for one year. As far as three other accused namely Suganchan, Ravi Shankar and Rajendra Prasad are concerned, they are acquitted of the charges framed against them.

10. The criminal revision is partly allowed to the extent indicated above.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE