

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 52 of 2007****Judgment Reserved on 25.10.2016****Judgment Delivered on 15.11.2016**

1. Shankar Yadav, son of Daya Ram aged about 45 years,
2. Mahadev Yadav, son of Daya Ram aged about 35 years,

Both are agriculturists, residents of village Turi, police station Shivri Narayan, District Janjgir-Champa, Chhattisgarh.

---- Applicants**Versus**

State of Chhattisgarh through District Magistrate Janjgir – Champa,
District Janjgir- Champa, Chhattisgarh.

---- Respondent

For the Applicants	:	Smt. Indira Tripathi, Advocate.
For the Respondent/ State	:	Shri Sameer Behar, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**CAV Judgment**

1. The applicants have brought this revision against the judgment dated 31.1.2007 passed in Criminal Appeal No. 11 of 2006 by the Learned Sessions Judge, Janjgir – Champa, Chhattisgarh, whereby, after allowing the appeal in part, convicted applicant No.1 - Shankar Yadav under Sections 324 and 323 of the Indian Penal Code (for short 'the IPC') and sentenced to undergo RI for 1 year and to pay fine of Rs.100/-, in default of payment of fine to further undergo RI for 10 days on each count and convicted applicant No.2 – Mahadev Yadav under Sections 325 and 323 of the IPC and sentenced to undergo RI for 1 year and to pay fine of Rs.200/-, in default of payment of fine to further undergo RI for 20 days and to undergo RI for 1 year and to pay fine of Rs.100/-, in default of payment of fine to further undergo RI for 10 days, respectively.

2. Facts of the case are that on the date of incident, i.e., 12.1.1998, complainant – Uttara Kumar, who belongs to Village Siund, met with accused Saheb in the evening hours who asked him before all the persons present there to arrange for liquor. On his refusal, the complainant was beaten by accused Saheb, Shankar Yadav and one Amarnath Yadav. After this incident, when the complainant was on his way to home at village Siund met with his father Prahlad and brothers Puni Ram, Munna Ram and Krishna Kumar etc. and informed them about the incident. At the same time, applicant No.1 - Shankar Yadav, who was carrying an axe alongwith Mahadev Yadav, Saheb, Teras Ram and Amarnath Yadav, who were carrying clubs, came to the spot and assaulted the complainant and his father and brothers. First Information Report (Ex. P/1) was lodged by complainant Uttara Kumar (PW-1) on the same date in outpost Nawagarh, which was registered as an unnumbered FIR and later on registered as numbered FIR in police station Shivrinarayan. The case was registered under Sections 147, 148, 149, 307 and 323 of the IPC. Injured Prahlad, Puni Ram, Uttara Kumar, Krishna Kumar and Munna Ram were examined by the doctor. MLC report was obtained alongwith x-ray reports as advised by the examining doctor. Seizures of articles were made. Statements of the prosecution witnesses were recorded under Section 161 of the Cr.P.C. On completion of the investigation, charge-sheet was filed against the applicants and other accused persons under Sections 147, 148, 149, 307, 326 and 323 of the IPC.

3. The case was committed to the Sessions Court which was registered as Sessions Trial No.205 of 1998 and thereafter vide order dated 29.1.1999 the case was remanded under Section 228 (1) of the Cr.P.C. to the court of

Chief Judicial Magistrate, Janjgir – Champa, on the basis of this finding that the case is not exclusively triable by the Court of Session. The trial court framed charges against the applicants and other accused persons under Sections 147, 148, 324 and 325/149 and 323/149 of the IPC, tried the case and delivered judgment on 10.11.2006, wherein accused Saheb and Lala Kurmi were acquitted of the charges and remaining accused persons were convicted under Section 147 read with Section 148 of the IPC and were sentenced to undergo RI for one year and to pay fine of Rs.200/-. Further they were convicted under Section 323 of the IPC and sentenced to undergo RI for one year and to pay fine of Rs.100/- each Applicant No.2, Mahadev was convicted further under Section 325 of the IPC and sentenced with RI for two years alongwith fine of Rs.200/-. Both the Applicants herein were convicted and sentenced as mentioned above. The Sessions Court decided the appeal in which the applicants herein and other accused persons were acquitted of the offences under Sections 147 and 148 of the IPC. The conviction of accused Teras Ram and Sadhu Ram under Section 323 of the IPC was confirmed but sentence was modified to the period of custody already undergone by them and the sentence of fine was increased to the amount of Rs.800/- to be paid by each of them. However, conviction of the applicants Shankar Yadav and Mahadev Yadav was maintained as mentioned above.

4. The grounds in this revision are that there is no evidence against the applicants in this case and even then the trial Court and the lower appellate court have convicted the applicants. The evidence of the prosecution witnesses have not been trustworthy on which the conviction against them is based. Hence, it is prayed that the impugned judgment of conviction and

sentence may be set aside.

5. This Court has a limited scope in criminal revision to examine the legality, propriety and correctness of the judgment of lower Court. Accordingly, the judgment of the lower appellate court is examined.

6. Learned counsel for the applicants argued at length and submitted that the evidence of prosecution witnesses is not reliable. It has been further argued that the accused persons were also injured which has not been explained by the prosecution. It was admitted by Uttara Kumar (PW-1) that there had been free fight which has not been considered nor the independent witnesses have been examined by the prosecution. In the alternative, it is prayed that the applicants have already undergone about 21 days in custody, therefore, they may be sentenced with imprisonment for the period of custody already undergone by them.

7. Learned counsel appearing on behalf of the State has submitted that there is no infirmity in the judgment of the lower appellate court. The prosecution has successfully established the guilt of the applicants for which the applicants have been rightly convicted. Hence, there is no scope for interference.

8. I have heard learned counsel appearing for the parties at length and also perused the evidence available on record to examine the legality, propriety and correctness of the impugned judgment passed by the lower appellate court.

9. Uttara Kumar (PW-1) has stated that on the date of incident when he had been to Village Turi he was asked by accused Saheb to arrange liquor for him. On his refusal, he was abused by accused Shankar Yadav and Amar Nath and slapped by them as well. Thereafter, on his way to home, he was followed and stopped by applicants Shankar Yadav and Mahadev Yadav. In this incident, applicants Shankar and Mahadev assaulted him by an axe and also assaulted his father with a club. He also narrated the other details of the incident recorded in Ex. P/1, which are not concerned with the present applicants. In cross-examination, this statement has remained unrebutted.

10. Prahlad (PW-2) is father of the complainant, who has supported the version of Uttara Kumar (PW-1). Puniram (PW-3) has also witnessed this incident and narrated before the court and remained consistent in his cross-examination. Munnaram (PW-4), Satyanarayan (PW-5) and Krishna Kumar Yadav (PW-6) have also witnessed this incident and remained consistent with their statements in their cross-examination. Saharta (PW-7) is a witness of the incident, when accused Saheb was asking Uttara Kumar (PW-1) to arrange liquor which was the reason of the occurrence. Ramsharan (PW-8), Yuvraj (PW-9), Puniram (PW-3), Pyarelal (PW-10), Gajalal (PW-12), Panchuram (PW-13) and Dr. S.N. Jangde (PW-14) have not supported the prosecution case. Dr. S.N. Jangde (PW-14) examined Prahlad Yadav and found his injury to be grievous in nature. He also examined Puniram and found his injury as well to be of grievous in nature. On examining Uttara Kumar (PW-1), Krishna Kumar Yadav (PW-6) and Munnaram (PW-11) injuries were found and they were of simple in nature (Ex. P/24 to P/34). Statement on the basis of these reports have remained unrebutted.

11. On being examined under Section 313 of Cr.P.C., it was stated by the applicants and other accused persons that they had been to the house of Bisahu Master. After sitting there for sometime, they all went to answer the call of nature to a nearby pond and at that place complainant Uttara Kumar and members of his family came on the spot carrying axe and clubs and assaulted the applicants and other accused persons causing injuries to them. Thereafter, the applicants were falsely implicated in the case. In support of this statement, defence has examined Ghasiram (DW-1), who stated that he saw Uttara Kumar and others having some dispute with each other in which Amarnath was assaulted and thereafter this witness left the spot. In cross-examination, he admitted that he was not present on the spot when the incident of *marpeet* occurred. Bed Kumar (DW-2) is not the witness of the incident in which beating was given by either of the parties.

12. Radheshyam (DW-3) witnessed that Amarnath had sustained injury on his body and Sadhu had sustained injury on his head. This witness does not appear to be direct witness of the incident which occurred between the complainant and the applicants along with other accused persons.

13. No question has been asked from the Investigating Officer Kumar Singh Gahlot (PW-11) about the injuries caused to the applicants or other accused persons. A suggestion was made that Sadhu Ram Yadav had lodged a report, to which he denied and he could not remember whether he got Sadhuram examined by any doctor. In cross-examination, Uttara Kumar (PW-1) admitted that his party did *marpeet* with the accused party. This statement alone is not sufficient to conclude that the applicants and their party were injured in the incident and Uttara Kumar and Others were the assailants.

14. There is no admission in the statement of the witnesses of the prosecution regarding any assault made by the complainant party against the accused party though there is a statement under Section 313 of the Cr.P.C. by the applicants that upon their information, the police did not act upon. In these circumstances, no effort was made on the part of the applicants to approach the higher authorities of the police or to file a private complaint in the court.

15. Considering the entire evidence available on record and the arguments advanced on behalf of the applicants and the State, this Court arrives at a conclusion that the judgment of the lower appellate court is based on cogent, relevant and reliable evidence, which suffers from no infirmity. There is no basis to give a different finding in favour of the applicants on the ground of their challenge to legality, propriety and correctness of the impugned judgment. The alternative prayer made by the applicants that their sentence may be modified and reduced to the period of custody already undergone by them is not acceptable as the applicants have not been in custody for a substantive period which could be considered sufficient to reduce the sentence. Looking to the gravity of the offence committed in this case and for the foregoing reasons, I find no merit in this revision petition, which is accordingly dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge