

HIGH COURT OF CHHATTISGARH BILASPUR

Criminal Revision No. 599 of 2004

Judgment reserved on: 25.01.2017

Judgment delivered on 08 .02.2017

Hiran S/o. Bhudhau, Aged about 50 years, Occupation Agriculture, Resident of Village Sidhama, P. S. Dhaurpur, District Surguja (C.G.)

---- Applicant

Versus

State of Chhattisgarh through Police Station- Dhaurpur, District Surguja (C.G.)

---- Respondent

For Applicant :- Mr. Pramod Shrivastava, Advocate

For Respondent/ State :- Mr. Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Anil Kumar Shukla

C.A. V. Order

1. This revision is directed against the judgment dated 24.11.2004 passed in Criminal Appeal No. 166/2004 by the First Additional Sessions Judge Ambikapur, by which the judgment dated 10.09.2004 passed in Criminal Case No. 663/2004 by Judicial Magistrate First Class, Ambikapur, Sarguja (C.G.) has been altered and modified and the applicant, by the judgment in the Criminal Appeal, has been convicted under Section 326 Indian Penal Code and sentenced to undergo rigorous imprisonment for 2 years and to pay fine of Rs. 1000/- with default stipulation.

2. As per the case of prosecution, on 16.02.2002 at about 8 PM, complainant Etvaram had gone to village Madneshwarpur along with Duhan, Kaushal and Ramjanam to see Mahadev dance. During the dance, the complainant began to sing a song. The applicant asked the complainant that despite being his assistant why was he singing better than him and raised a dispute. After end of the Mahadev dance, when the complainant was returning home along with his friends, the applicant stopped him on the way, used filthy language against him and saying that he would kill the complainant assaulted him with a Tabbal. As a result of the assault, the complainant sustained injuries on his right palm and near the wrist of the left hand. Blood oozed out from the injuries. Duhan, Kaushal and Ramjanam who had accompanied the complainant had intervened during the assault. Thereafter, the complainant along with them went to Police Station Dhaurpur , Chowki Bariyo and lodged First Information Report (Ex.P-3) against the applicant. The complainant was sent to hospital for medical treatment and statements of witnesses were recorded.
3. After completion of investigation, charge sheet was filed against the applicant in the Court of Judicial Magistrate First Class, Ambikapur, Sarguja where Criminal Case No. 663/2004 was registered and after trial the applicant was convicted and sentenced under Sections 341 and 326 IPC.
4. Being aggrieved by the judgment of trial Court, the applicant preferred Criminal Appeal No. 166/2004 before the

Court of First Additional Sessions Judge, Ambikapur. By the judgment dated 24.11.2004, the Appellate Court partly allowed the appeal of the applicant and modified the judgment of the trial Court, convicted and sentenced the applicant as mentioned above in the first paragraph of this order.

5. I have heard learned counsel for the parties, perused the judgments, statements of the witnesses and other documents relevant to the present case.

6. Learned counsel appearing for the applicant submits that he does not want to argue the case on merit and confines his argument to the sentence part only. He further submits that the incident is of the year 2002 and since then about 15 years have passed. At the time of incident, the applicant was aged about 50 years and now he is 65 years old. Out of the jail sentence of 2 years R.I. awarded to him, he has already undergone nearly 2 months and 15 days and has deposited fine amount of Rs. 1000/- imposed upon him. Learned counsel further argued that the dispute arose at the time of a dance programme in the village. Learned counsel also argued that the complainant sustained injuries only on his hand and not on the vital parts of the body. He further submitted that sentence of fine amount awarded to the applicant by the Appellate Court may be enhanced and the jail sentence awarded to him may be reduced to the period already undergone by him.

7. On the other hand, learned State counsel opposed the revision and supported the impugned judgment though not disputed the above facts.

8. Considering the facts and circumstances of the case and in light of the above submissions that the incident had happened on 16.02.2002 and about 15 years have passed since then and that at present the applicant is 65 years old, I do not feel it appropriate to send the applicant back to jail. I am of the considered opinion that ends of justice would be met if, while upholding the conviction of the applicant under Section 326 IPC, the jail sentence awarded to him is restricted to the period already undergone by him besides imposing/ enhancing the amount of fine.

9. In the result, the revision is partly allowed. The conviction awarded to the applicant under Section 326 IPC is upheld. However, the jail sentence awarded to him is reduced to the period already undergone by him. So far as the sentence of fine is concerned, the amount of fine is enhanced from Rs. 1000/- to Rs. 3000/- and the applicant is granted 2 months' time to deposit the same, failing which, he shall be liable to undergo rigorous imprisonment for 2 months. The amount of Rs. 1250/- already deposited by the applicant towards fine shall be adjusted in the amount of fine enhanced by this Court today.

10. It is reported that the applicant is on bail. His bail bonds are not discharged at this stage and shall remain operative for a further period of six months in view of the provisions contained under section 437-A of the Cr.P.C.

Sd/-
(Anil Kumar Shukla)
Judge

santosh