

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 586 of 2004

Order reserved on : 03.03.2017

Order passed on : 03.2017

1. Noharu, S/o Mahadev Thethwar, aged 30 years,
2. Purshottam @ Souda, S/o Bhond Thethwar, aged 29 years,
3. Dev Kumar, S/o Ledga Ram Thethwar, aged 28 years
4. Hiranman @ Chirku, s/o Kriparam Thethwar, aged about 32 years

All residents of village Bhattgaon, Police Chowki Jevra Sirsa,
PS Pulgaon, District Durg (CG)

----Applicants

Versus

- The State of Chhattisgarh through the District Magistrate,
Durg (CG)

---- Respondent

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For Applicants	:	Smt Indira Tripathi, Advocate
For Respondent/State	:	Smt Smita Ghai, PL

Hon'ble Shri Justice Anil Kumar Shukla

CAV Order

1) This revision has been preferred against the judgment dated 19.11.2004 passed in Criminal Appeal No.402 of 2003 by the First Additional Sessions Judge, Durg by which the judgment dated 12.09.2003 passed in Criminal Case No. 92 of 2002 by the Additional Chief Judicial Magistrate, Durg convicting the applicants for the offences punishable under Sections 323/34 and 325/34 of the IPC and sentencing each of them to undergo Rigorous Imprisonment for six months and one

year, respectively and to pay fine of Rs.100/- with default stipulation has been altered and the applicants, by the First Additional Sessions Judge, have been convicted under Sections 323/34 and 325/34 IPC and sentenced to undergo RI for 3 months and 6 months with imposition of fine of Rs.100/- each, respectively. The applicants have already paid the fine amount in the trial Court itself.

2) Prosecution story, in brief, is that on 21.08.1994 brother-in-law of the complainant, namely, Bhekhilal Sahu came to village Bhattgaon from village Malood on the occasion of Rakhi festival. In the night on the same day at about quarter to 10 pm, they went to attend the call of nature near the village pond and when they were returning home, all of a sudden the applicants obstructed them, started abusing the complainant and assaulted him for no reason. When his brother-in-law Babulal came in between to rescue the complainant, they also assaulted him. By the assault, both of them received injuries and fell unconscious. Later on, other villagers brought them to their home. Thereafter, the injured went to the Police Station and lodged a complaint against the applicants. The Police sent them for medical examination and after completion of investigation, charge-sheet was filed against the applicants in the Court below, wherein a case was registered against them and by the judgment dated 12.09.2003 the Additional Chief Judicial Magistrate, Durg convicted and sentenced the applicants as mentioned above. Being aggrieved by this judgment, the applicants preferred Criminal Appeal No. 402 of 2003 before the Court of Session at Durg in which the First Additional Sessions Judge, Durg by the judgment dated 19.11.2004, though altered the sentence, confirmed the conviction imposed by the Additional Chief Judicial Magistrate, Durg. Hence the applicants preferred this revision.

3) I have heard learned counsel for the parties, perused the judgment impugned, copies of statements of the witnesses and other documents relevant to the present case.

4) Learned counsel for the applicants at the outset, submitted that the applicants are not challenging their conviction, rather it was submitted that their sentence of imprisonment should be reduced to the period already undergone by them with some additional fine as the applicants have already suffered imprisonment for some days and all of them are, as on date, below the age group of 50 years. Learned counsel further submitted that the applicants have been facing Criminal case since the year 1994 i.e. for about 23 years and there is no criminal antecedent against them. The applicants had paid the fine amount imposed upon them and had been granted bail by this Court on 25.11.2004. Therefore, learned counsel for the applicants prayed to reduce the sentence of the applicants imposed upon them to the period already undergone by them.

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

6) It is not in dispute that the applicants are facing the case since 1994; the applicants were young at the time of the incident and now they are in their middle age; there is no criminal antecedent against them and the present offence is their first one. Applicants- Noharu, Purshottam and Dev Kumar have remained in custody for 12 days, whereas applicant Hiranman has remained in custody for 9 days. They have deposited the fine amount in the Court below.

7) Considering all the facts and circumstances of the case, also considering the age of the applicants, their custody period as well as the

period of trial, appeal and revision, I am of the considered opinion that ends of justice would be met if the jail sentence awarded to the applicants is reduced to the period already undergone by each of them as it would not be in the interest of justice to send them back to Jail after a long gap of 23 years.

8) Accordingly, on the basis of the aforesaid discussion, the substantive sentence of imprisonment awarded to the applicants for the offences under Sections 323/34 and 325/34 of the IPC on each count is reduced to the period already undergone by each of the applicants while their conviction under these Sections is hereby maintained. However, each applicant shall pay an additional fine of Rs.2,000/- (Rupees two thousand only) for the offence under Section 325 of the IPC and in default, shall undergo Simple Imprisonment for fifteen days.

9) It is reported that the applicants are on bail. Their bail bonds are not discharged at this stage and shall remain operative for a further period of six months from today in view of the provisions contained under Section 437-A of the Cr.P.C.

10) Records of the Courts below be sent back along with a copy of this order forthwith for information and necessary action.

Sd/-
(Anil Kumar Shukla)
JUDGE