

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 332 of 2006**

- Durga Prasad Sahu S/o Chetan Lal Sahu, aged about 32 years, Occupation, Labourer, R/o Beergaon, Police Station- Urla, Raipur, District Raipur (CG)

---- Revisioner/Applicant**Versus**

- State Of Chhattisgarh through the District Magistrate, District Raipur (CG)

---- Non Revisioner/Respondent

For Revisioner/applicant	: None
For Respondent/State	: Shri Anil S. Pandey, Govt. Advocate

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****11.12.2017**

1. The revisioner/applicant has filed this revision under Section 397/401 Cr.P.C. against the order dated 19.5.2006 passed by the Sessions Judge, Raipur, District Raipur (CG) in Cr. Appeal No. 72/2006 wherein the said Court has affirmed the judgment of conviction and order of sentence passed by the Judicial Magistrate First Class, Raipur dated 31.3.2006 in Criminal Case No. 145/2005. The trial Court has convicted the accused/applicant under Section 325 IPC and sentenced him to undergo R.I. for 6 months and to pay fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for 3 months.

2. In the present case, name of the victim is Kali Bai. It is alleged that on 5.12.2001 one Ganga Bai was standing in her house situated

at village Birgaon before the mirror and when her son came there in front of the mirror, the said Ganga Bai abused him and at the same time, the accused/applicant made quarrel with Ganga Bai that she is abusing him. When Kali Bai intervened, the accused/applicant came on the spot and assaulted Kali Bai by way of pulling her hand. Kali Bai sustained injury on her hand and upon x-ray, it is found that her radius bone was fractured. The matter was reported to Police Station Urla and offence under Section 325 IPC was registered against the accused/applicant and the matter was investigated. After completion of investigation, charge sheet was filed against the accused/applicant to which he did not plead guilty and trial was conducted. After completion of trial, the trial Court convicted and sentenced the accused/applicant as aforementioned.

3. The revision is preferred on the ground mentioned as under:

- (i) Version of prosecution witnesses are contradictory on material points and are not worth reliance;
- (ii) The person who took x-ray of Kali Bai is not presented before the trial Court and therefore, it is not established that Kali Bai sustained fracture of radius bone;
- (iii) From the version of defence witnesses it is established that Kali Bai sustained injury by fall on surface and therefore, it is not a case of causing voluntary grievous hurt to Kali Bai.

4. Perused the memo of revision and the record of the Courts below.

5. Learned counsel appearing on behalf of the State supporting the impugned judgment submits that the same is strictly in accordance with law and not liable to be interfered with invoking jurisdiction of revision.

6. Ganga Bai (PW1) deposed that there was quarrel between her and the accused/applicant and when her mother Kali Bai intervened the matter, the accused/applicant pulled her hand and she sustained injuries.

7. Kali Bai (PW2) deposed that when she intervened between Durga Prasad and Ganga Bai while they were quarreling, the accused/applicant pulled her hand and she sustained injury on hand.

8. Chandraprakash (PW7) is a Doctor who deposed that x-ray of Kali Bai shows fracture of radius bone. But from his statement, it is not clear as to who had taken the x-ray of Kali Bai. No one is produced before the trial Court to establish the conduction of x-ray of Kali Bai.

9. In order to prove fracture it is necessary that the person who conducted x-ray should be examined before the trial Court to confirm the conduction of x-ray. But that is not the case here. In absence of evidence of any technician it is difficult to conclude that Kali Bai was subjected to x-ray. From the evidence adduced by the prosecution it is established that it was the accused/applicant who pulled the hand of Kali Bai and she sustained injury on her hand.

10. The accused/applicant was aware of the fact that pulling hand of Kali Bai will cause pain to her and the case of the

accused/applicant does not fall under any of the exceptions mentioned in the Indian Penal Code.

11. Though there is evidence of defence witness to the effect that Kali Bai fall on the surface, but these witnesses have deposed before the Court after 4 years of the incident and they have not stated anything during investigation, therefore, their version is not reliable.

12. On overall assessment of the evidence, it is established that the accused/applicant caused voluntary simple hurt to Kali Bai and the case falls under Section 323 IPC. The conviction of the accused/applicant is liable to be altered to Section 323 IPC. Accordingly, the accused/applicant is convicted under Section 323 IPC instead Section 325 IPC.

13. Corporeal punishment is not compulsory for offence under Section 323 IPC. It is a case of year 2001 i.e. 16 years ago and it would not be proper to curtail the liberty of the accused/applicant after such a long period and send him to jail. Therefore, the sentence awarded by the trial Court to R.I. for 6 months is set aside and the fine amount imposed by the trial Court will be treated as fine amount of the offence under Section 323 IPC.

14. With the above modifications, the revision is partly allowed.

Sd/-

(Ram Prasanna Sharma)

JUDGE