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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 429 of 2006

Sagar & Another

Versus

State Of Chhattisgarh

C A V ORDER

Post for pronouncement of Order on..21..08/2017

Sd/-
Sharad Kumar Gupta
Judge
22/08/2017



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29/08/17

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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 429 of 2006

Order Reserved on 11/08/2017

Order Delivered on 22/08/2017

1. Sagar S/o Dukalu, aged about 48 years, R/o village – Palari, Occupation – Labour, O.P. Kanwar, Police Station Gurur, District – Durg, Chhattisgarh
2. Anuj Ram S/o Sagar, aged about 29 years, R/o village – Palari, Occupation – Labour, O.P. Kanwar, Police Station Gurur, District – Durg, Chhattisgarh

----Applicants

Versus

- State of Chhattisgarh through Police Station Gurur, O.P. Kanwar, District Durg, Chhattisgarh.

---- Non-applicant

For the applicants : Shri Praveen Dhurandhar, Advocate
For the State : Shri RK Gupta, Deputy Advocate General

Hon'ble Shri Justice Sharad Kumar Gupta

CAV Order

1. In this criminal revision the challenge levied is to the judgment dated 08.05.2006 passed by the Additional Sessions Judge, Balod in Criminal Appeal No.115/2001 whereby he affirmed judgment of conviction and order of sentence dated 24.07.2001 passed by the J.M.F.C Balod in Criminal Case No. 638/1998 whereby and whereunder the J.M.F.C. Balod convicted the applicants for the offences punishable under Sections 452, 325/34 and 323/34 of the Indian Penal Code (hereafter called as "IPC") and sentenced under



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Sections 452, 325/34 IPC to undergo rigorous imprisonment for one year and fine of rupees five hundred, in default of payment of fine additional simple imprisonment of three months on each count and under Section 323/34 IPC to undergo rigorous imprisonment of six months, to both the applicants.

2. The prosecution case follows the subsequent events; on 25.09.1998 in the evening at village Pallari, an altercation took place between applicant No.1 Sagar and the complainant Dukhram who is also nephew of the said applicant, because of couple of buffaloes of applicant No.1 were grazing in said complainant's field. Then, the applicants entered into his house along with an axe and stick and caused injuries to complainant Dukhram, his sister Bhanbai and his mother Zareenabai. Fracture was found on left hand of complainant Zareenabai. A charge-sheet was filed against the applicants. After conclusion of the trial, the applicants were convicted and sentenced as mentioned herebefore with a direction to run all the sentences concurrently.
3. Shri Praveen Dhurander, counsel for the applicants urged at this stage that he is not challenging the conviction of the applicants, rather, he is challenging only the aforesaid period of sentences of rigorous imprisonment. He further submits that applicants have already undergone their sentences for three months, thus the period of rigorous imprisonment may be reduced upto the period undergone.
4. Shri R.K.Gupta, Deputy Advocate General for the State argued that the said sentences imposed upon the applicants are just and



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proper and do not call for any interference.

5. In **Manjappa v. State of Karnataka {(2007) 6 SCC 231}**

Hon'ble Supreme Court dealing with the case wherein applicant was sentenced by the High Court under Section 325 IPC for simple imprisonment for 1½ months and fine Rs. 1000/- with stipulation clause held in paragraph 14 as under :-

“14. At the same time, however, the fact remains that the High Court has reduced substantive sentence to a month and a half. It is also not in dispute that the appellant has undergone and has remained in custody for about fifteen days. Moreover, as on today, he is on bail. Hence, even though we are of the view that in the facts and circumstances of the case, provisions of Section 360 read with Section 361 of the Code are not attracted and Om Prakash¹ does not help the appellant, it would not be appropriate now to direct the appellant to surrender and to suffer the remaining sentence for about a month. The incident is of 1997 and about 10 years have passed. ”

6. In **SPS Rathore v. Central Bureau of Investigation and Another {(2017) 5 SCC 817}** while dealing the punishment under

Section 354 of the IPC held in paragraph 55 as under :-

“55. With regard to sentence of the appellant-accused, learned Senior Counsel on his behalf has pointed out certain mitigating factors which are - old age of the appellant-accused, health ailments, responsibility of looking after the unmarried daughter suffering from congenital heart disease, past meritorious service and prolonged trial. Keeping in view the aforementioned

¹ (2001) 10 SCC 477: 2003 SCC (Cri) 799

factors especially the old age and physical condition of the appellant-accused, we do not think it expedient to put him back in jail. While we uphold the findings as to the guilt of the appellant-accused, we are of the opinion that the cause of justice would be best subserved when the sentence of the appellant-accused would be altered to the period already undergone. We, therefore, reduce the sentence of the appellant to the period already undergone by him as a special case considering his very advanced age."

7. At the time of the incident no minimum imprisonment was provided for the offences punishable under Sections 452, 323 and 325 IPC. The incident happened on 25.09.1998 i.e. 19 years have elapsed. Now the applicant No. 1 is near about 67 year old and applicant No.2 is near about 47 year old. They have spent around three months in jail. Now they are in mainstream of society. Sending them again to jail would disturb their as well as their family members' life. Hence no useful purpose would be served. I am of the opinion that the cause of justice would be best subserved when the rigorous imprisonment of six months and one year to the applicants would be altered to the period undergone.
8. Therefore, it is ordered that subject to each of the applicants, if and only if, deposit fine of Rs. 1000/- under Section 323/34 IPC and additional fines of Rs 2,000/- under Section 325/34 IPC and Rs. 2,000/- under Section 452 IPC before the Trial Court within a period of two months from today over and above the fine amount ordered to be paid by the subordinate courts, then the rigorous imprisonment of six months under Sections 323/34 and one year

rigorous imprisonment for Section 452 and 325/34 IPC on each count, to the applicants, shall be reduced to the period undergone by them.

9. Out of amount of fine and additional fine imposed by this Court, the complainant- Bhanbai should get Rs. 1000/- (Rupees One Thousand only), the complainant – Dukharam should get Rs. 5000/- (Rupees Five Thousand only) and the complainant – Zareenabai should get Rs. 4000/-(Rupees Four Thousand only).
10. Consequently, the revision is partly allowed. In terms of the aforementioned observation the bail bonds of the applicants should be discharged subject to the provisions contained in Section 437-A of the Cr.P.C.

Sd/-
Sharad Kumar Gupta
Judge

Judge 22/8/2017