

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 53 of 2007****Order Reserved on 6.1.2017****Order Delivered on 1.2.2017**

1. Jagganathin Bai widow of Antram Kurmi, aged about 69 years,
 2. Sukhdeo Prasad S/o of late Antram Kurmi, aged about 26 years.
- Both resident of village Mada, police Chowki Hasaud, police station & Tahsil Jaijaipur, District-Janjgir-Champa, Chhattisgarh.

---- Applicants/ Complainants**Versus**

1. Nanki Dandar @ Kartik Ram Kashyap, son of Bandharam, aged about 67 years,
 2. Smt. Sahodara Bai W/o Nanki Dandar @ Kartik Ram Kashyap, aged about 58 years,
 3. Shanti Lal S/o Nanki Dandar @ Kartik Ram Kashyap, aged about 19 years,
- All resident of village - Malda, police Chowki Hasaud, police station & Tahsil Jaijaipur, District-Janjgir-Champa, Chhattisgarh.
4. State Of Chhattisgarh Through Police Chowki Hasaud, police station, Jaijaipur, District-Janjgir-Champa, Chhattisgarh.

---- Respondents/ Non-applicants/ Accused No. 1, 2 & 3

For the Applicants	:	Shri Neeraj Mehta, Advocate.
For Respondents No.1 to 3	:	None present.
For Respondent No.4 / State	:	Shri Arvind Dubey, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice Rajendra Chandra Singh Samant****CAV ORDER****Per R.C.S. Samant, J.**

1. The applicants have brought this revision against the judgment dated 6.12.2006 passed in Sessions Trial No. 65 of 2005 by the Learned Additional Sessions Judge, Sakti, District Janjgir-Champa, Chhattisgarh, whereby the learned Additional Sessions Judge has acquitted Respondents

No.1, 2 and 3, of the charges framed under Sections 307/ 34 and 450 of the Indian Penal Code (for short 'the IPC') and convicted them for lesser offence under Sections 323/34 and 325/ 34 of the IPC and sentenced to undergo imprisonment for the period of custody already undergone in both the offences and to pay fine of Rs.1,000/- and Rs.4,000/-, respectively.

2. The case of the prosecution, in brief, is that applicant No.1– Jagganathin Bai (PW-1) is the mother of complainant – Sukhdev Prasad (PW-2) and resident of village Malda. Prior to date of incident, respondents No.1 to 3 expressed their doubts that Jagganathin Bai was a sorcerer and they used to abuse her. On the date of incident, i.e. 10.11.2004 between 5:30 – 6:00 pm, respondents No.1 to 3 armed with clubs, trespassed into the house of the complainant Sukhdev Prasad (PW-2) and assaulted him and her mother Jagganathin Bai (PW-1) with clubs alleging that she is a sorcerer. It is alleged that Respondent No.2 – Sahodra Bai assaulted Jagganathin Bai (PW-1) with fists. On the same day, unnumbered First Information Report Ex. P/1 was lodged in outpost Hasoud of police station Jaijaipur at about 22:30 pm. On the basis of which, offence under Sections 307, 323/34, 325 and 450 of the IPC was registered against the respondents No.1 to 3. During investigation, injured Jagganathin Bai (PW-1) and Sukdev Prasad (PW-2) were medically examined vide Exs. P/36 and P/19. Spot map (Ex. P/2) was prepared. X-ray report shows that Jagganathin Bai (PW-1) suffered with multiple fractures on her left leg. Blood stained soil and plain soil were preserved and seized vide Ex. P/10. One club was seized from the possession of Shanti Lal Kashyap (respondent No.3). One blood-stained shirt belonging to Sukhdev Prasad (PW-2) was seized vide Ex. P/12. Another club was seized from the possession of Ramgopal Kashyap (PW-7)

and Jethu Ram (PW-13). Statements of the witnesses were recorded and on completion of investigation, respondents No.1 to 3 were charge-sheeted. The trial court charged respondents No.1 to 3 for the offence under Sections 450, 323 and 307/34 of the IPC. On denial of the charges, trial was conducted. The prosecution examined as many as 20 witnesses. The defence examined only one witness. On being examined under Section 313 of the Cr.P.C., respondents No.1 to 3 while denying all the incriminating circumstances against them and the statements of the prosecution witnesses, pleaded innocence and false implication. The impugned judgment was passed by which respondents No.1 to 3 have been acquitted of charges under Section 307/34 and 450 of the IPC, and convicted under lesser offence sentencing them accordingly as mentioned above.

3. Applicant No.1 – Jagganathin Bai (PW-1) and Sukhdev Prasad (PW-2) not being satisfied with the conviction and sentence imposed against respondents No.1 to 3, brought this revision on the grounds that the finding of the trial court is contrary to the facts and the evidence available on record. It is very clear from the evidence that respondents No.1 to 3 suspecting applicant No.1 as *Tonhi*, assaulted her with intention to cause death due to which she has sustained grievous injuries. Further, it has also come in the evidence that the offence was committed inside the house of the applicants and as such the offence under Section 450 of the IPC is made out. On these grounds, it is prayed that respondents No. 1 to 3 should be convicted under Sections 307 and 450 of the IPC. In the alternative, it is prayed that maximum sentence provided under Sections 323 and 325 of the IPC be imposed upon respondents No. 1 to 3.

4. Learned counsel for the applicants submits that on the basis of the statements of the prosecution witnesses, it can be clearly inferred that respondents No.1 to 3 intended to cause death of applicant No.1, which is mentioned in FIR Ex. P/1. The trial court has also failed to appreciate the evidence of the prosecution, which clearly discloses that the incident took place within the premises of the applicants residence. This evidence was ignored and respondents No. 1 to 3 were acquitted of the charge under Section 450 of the IPC. Learned counsel also submits that there had been sufficient evidence to convict respondents No. 1 to 3 under Sections 307 and 450 of the IPC. Hence, this revision may be allowed. In the alternative, it is prayed that if this court is not inclined to interfere with the finding with regard to conviction of respondents No.1 to 3, then the sentence awarded to them may be enhanced.

5. No submission has been made on behalf of respondents No. 1 to 3 as they were not represented on the date of final argument.

6. Learned State counsel has opposed the grounds and submissions made by the applicants and submitted that there is no scope for interference in this revision petition.

7. The only question to be adjudicated by this Court is whether the evidence produced by the prosecution before the trial Court was sufficient to hold guilty the accused persons under Sections 307/34 and 450 of the IPC.

8. Jagganathin Bai (PW-1) stated that at the time of incident respondents/ accused persons assaulted her with clubs, fists and hands

because they expressed their doubts that applicant No.1 is *Tonhi* and *Bhoothi* (sorcerer) and also assaulted her son Sukhdev Prasad (PW-2) and caused injuries. This statement has remained un-rebutted in her cross-examination. Sukhdev Prasad (PW-2) has stated that on the date of incident, respondent No.2 started abusing his mother and at the same time respondents No.1 & 3 pulled him out of his house and gave him beating. Respondent No.2 dragged Jagganathin Bai (PW-1) from inside the house and assaulted her. The accused persons assaulted them with clubs, fists and hands which resulted in injuries to both of them. In cross-examination, he was confronted with his previous statement Ex. P/2 and on comparison, there is omission in the court statement about the fact that the incident took place inside the house and there is also an improvement that he and his mother Jagganathin Bai (PW-1) were dragged out of the house and beaten up. These omissions and improvements in the statement cannot be taken into consideration since Jagganathin Bai (PW-1) has not made any statement about the place of incident whether it was inside the house or outside the house.

9. Jawaharlal Kurre (PW-3) has supported the version of the complainant and stated that respondent No.2 Sahodra Bai dragged Jagganathin Bai (PW-1) near the door and assaulted her. There is no such statement that the applicants were assaulted within the premises of their residence. Ghanaram Kashyap (PW-4) is a hostile witness and he has not supported the prosecution case. Ramnarayan Kashyap (PW-17) was informed about the incident by others and Jagganathin Bai (PW-1) narrated that she was beaten by the respondents/ accused persons. Apart from that, there is no other description about the incident. These are the only eyewitnesses

examined and other evidence related to the investigation procedure is not under challenge in this revision petition.

10. Considering the totality of the evidence the only evidence on record is that on the date of incident respondents No. 1 to 3 assaulted Jagganathin Bai (PW-1) and Sukhdev Prasad (PW-2) with clubs, fists and hands and thereby caused injuries to them. Injury report has been discussed and the finding given by the trial court in the impugned judgment is not under challenge. The improvements and omissions in the statement of Jagganathin Bai (PW-1) are of no consequence.

11. The ground urged in this revision is that there had been evidence to draw this conclusion that the respondents/ accused persons intended to cause death of Jagganathin Bai (PW-1). There is no such statement of any of the witnesses that the injuries caused to Jagganathin Bai was of such nature. Dr. K. L. Uraon (PW-10) examined Sukhdev Prasad vide Ex. P/19 and Jagganathin Bai vide Ex. P/36 and has stated that the injuries caused to Sukhdev Prasad were simple in nature and injuries caused to Jagganathin Bai (PW-1) were of grievous in nature. No opinion has been given by him as to that the injuries caused to Jagganathin Bai (PW-1) were sufficient to cause death in ordinary course of nature.

12. One dying declaration of Jagganathin Bai (PW-1) was recorded by the Executive Magistrate, B.K. Lakda who was examined as PW-15 before the trial court. This statement cannot be taken into consideration, as dying declaration is relevant only when the maker of such statement dies after making the statement. In the instant case, Jagganathin Bai (PW-1) is alive.

The statement recorded in the name of dying declaration had the value of only a previous statement and it could have been used within the meaning of Section 162 of the Cr.P.C.

13. As discussed above, it is very clear that there is no such clear statement and evidence of any of the witnesses that the incident of assaulting the applicants took place within the premises of their residence. Neither there is evidence to conclude that the respondent/ accused persons intended to cause death of Jagganathin Bai (PW-1). Hence, after going through the evidence on record, it is found that the trial court has not committed any error in giving the finding of conviction under Sections 323/ 34 and 325/ 34 of the IPC against respondents No.1 to 3. Similarly, no fault is found with the sentences awarded to respondents No.1 to 3.

14. In view of the reasons aforementioned and the findings arrived at, the revision petition is devoid of merits. Accordingly, it is dismissed.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(R.C.S. Samant)
Judge