

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL REVISION NO. 736 OF 2008

Shatruhan Satnai, S/o Budharu Satnai, aged about 43 years, R/o Village-Arkar, Police Station Gurur, District Durg (C.G.)

... Applicant

Versus

State of Chhattisgarh, through the District Magistrate, Durg, District Durg (C.G.)

... Non-applicant

For Applicant	:	Mr. P.P. Sahu, Advocate.
For Non-applicant	:	Ms. M. Asha, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

07/02/2017

1. The present Criminal Revision under Section 397 read with Section 401 of CrPC has been preferred by the Applicant challenging the judgment dated 6.11.2008 passed by the Additional Sessions Judge, Balod, District Durg (as it then was), in Criminal Appeal No. 39 of 2008 as also the order dated 28.2.2008 passed by the Judicial Magistrate First Class, Balod, in Criminal Case No. 1967 of 2005.
2. An FIR was lodged at Police Outpost Gurur, District Durg, on 3.9.2003 alleging that the Applicant is said to have assaulted PW-1 Motilal, on account of which he is said to have received injuries. A case was registered and was put to investigation. Ultimately, the case was put to trial before the Judicial Magistrate First Class, Balod, in Criminal Case No. 1967 of 2005. After the conclusion of the trial, the Trial Court vide impugned order dated 28.2.2008, found the Applicant to be guilty of committing the offence under Sections 325 and 352 of IPC and on convicting him for the said offence, he was sentenced to undergo R.I. for 6 months and to pay fine of Rs.1000/- under Section 325 of IPC and to pay fine of Rs.200/- under Section 352 of IPC. In default of payment of fine amounts, he was required to undergo additional R.I. for two months under Section 325 of IPC and 10 days under Section 352 of IPC. The

said order dated 28.2.2008 was upheld by the lower Appellate Court vide its judgment dated 6.11.2008 passed in Criminal Appeal No. 39 of 2008. Hence, the present Criminal Revision challenging the said two orders.

3. Learned Counsel for the Applicant at this juncture submits that he does not intend to argue the case on its merits and submits that taking into consideration the factual matrix of the case where the Applicant has already remained in jail for a period of about 2½ months out of total sentence of 6 months, the sentence part may be reduced to the period already undergone by the Applicant by maintaining his conviction.

4. Learned Counsel for the Applicant submits that the request for the reduction of the sentence is being made on account of the fact that incident in the instant case had occurred because of a trivial issue of the cattle belonging to the PW-1 Motilal entering the agriculture fields of the villagers including that of the Applicant and had destroyed the standing crops. Subsequently, an altercation took place on this trivial issue. The Applicant is said to have assaulted PW-1 Motilal with a lathi. According to the Counsel for the Applicant, the Applicant has inflicted only one blow of lathi and PW-1 Motilal also sustained only one injury, i.e., fracture on the ulna of the left hand. Apart from this fracture, there was no other injury. Thus, taking into consideration the total facts and circumstances of the case, Counsel for the Applicant prayed for modification of the sentence to be reduced to the period already undergone by the Applicant.

5. Learned Counsel for the State however opposes the prayer of the Counsel for the Applicant, stating that it is a case where the Applicant is said to have assaulted with a lathi and that in case, if the injured would not had blocked the blow with his hand, the blow would have hit the injured-complainant PW-1 Motilal on his head and which would have proved fatal. She further submits that in the given admitted facts and circumstances of the case, the Trial Court itself has awarded a short sentence only for 6 months

rigorous imprisonment and therefore there is no scope of further interfering with the sentence.

6. Having considered the rival contentions put forth on either side and on perusal of the record, what clearly reflects is the fact that the incident in the instant case is of 3.9.2003, i.e., almost 13 years ago. Further, it is also reflected that the injured in the instant case was assaulted only with one blow of a lathi, as is evident from the fact that the complainant PW-1 Motilal had received only one injury, i.e., the fracture of the ulna on his left hand. Another aspect which cannot be brushed aside, is the fact that the Doctor who had treated the complainant PW-1 Motilal also has stated that there was only one injury i.e., the fracture injury. The nature of the injury was not at all serious in nature because of the fact that it was only a fracture on the left hand. The injury was also not on any vital part of the body. The entire dispute arose because of the cattle belonging to the PW-1 Motilal entering the fields of the Applicant and other villagers. The issue which had caused the assault also admittedly is too trivial an issue. Further, from the evidence which have come on record also it does not show that there was any premeditation or an earlier rivalry between the Applicant and Complainant, PW-1 Motilal. There was no evidence of any sort of animosity between the Complainant and the Applicant in the past.

7. Thus, in the given facts and circumstances of the case, there is ample evidence so far as the assault being made by the Applicant on PW-1 Motilal is concerned. Therefore, the conviction of the Applicant for the said offence does not warrant any interference.

8. However, taking into consideration the factual matrix of the case as has been narrated in the preceding paragraphs, further considering the trivial nature of the dispute on account of which the assault was made and the nature of injury sustained by the injured and also considering the fact that the Applicant has remained in jail for a period of about 2½ months out of total

sentence of 6 months, this Court is of the opinion that the ends of justice would meet if the sentence imposed upon the Applicant is reduced to the period already undergone by him.

9. Resultantly, the Criminal Revision is dismissed with the modification in the impugned orders, to the extent that the conviction of the Applicant for the offence under Sections 325 and 352 of IPC is affirmed. However, the sentence imposed upon the Applicant stands reduced to the period already undergone by him.

10. The Applicant is in jail by virtue of the order passed by this Court on 12.8.2016 on account of which he was arrested on 11.12.2016. The Applicant shall be released from jail forthwith, if not required in any other case.

Sd/-
(P. Sam Koshy)
Judge