

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 57 of 2005**

Babulal Parthi, Aged about 41 years, S/o Shri Ramdas Parthi, R/o Village Banjari, P.S. Sarangarh, District Raigarh (Chhattisgarh) ---- **Applicant**

Versus

State of Chhattisgarh through : the District Magistrate, Raigarh (Chhattisgarh)
---- **Non-applicant**

For Applicant	:-	Shri Roop Naik, Advocate.
For Non-applicant/State	:-	Shri Ravindra Agrawal, Panel Lawyer.

SB: Hon'ble Shri Justice Rajendra Chandra Singh Samant**Order on Board****23-06-2017**

This revision petition is directed against the judgement dated 19-01-2005 passed by First Additional Sessions Judge, Raigarh in Criminal Appeal No.49/2004 in which the conviction of applicant recorded by trial Court under Section 325 of the IPC and sentenced to undergo simple imprisonment for one year along with fine of Rs.100/- and under Section 294 of the IPC sentenced to pay fine of Rs.100/- with default stipulations, was upheld.

2. Case of the prosecution in brief is that complainant Vridhichand (PW-1) was sitting near the house of Droupadi Bai (PW-3) at about 2-30 p.m. in Village Banjari, one Gopal (PW-4) kept his cycle in front of the house of applicant, getting annoyed with that applicant, threw away his cycle, on which Gopal (PW-4) had some exchange of words with the applicant. The applicant getting enraged assaulted Vridhichand (PW-1) with a piece of wood thereby causing injury to Vridhichand (PW-1) on his palm, wrist and elbow of both hands. FIR (Ex. P-1) was lodged by Sadhuram (PW-2) in Police Station Sarangarh. The complainant Vridhichand (PW-1) was medically examined, investigation was conducted. After completion of investigation, charge-sheet was filed before the trial Court.

3. Trial Court has framed charges under Section 294, 506 (Part-II), 323 and 325 of the IPC. The applicant denied the charges and prayed for trial.

4. After affording opportunity of hearing to both the parties, the impugned judgement was passed by the Court below in which the applicant was convicted under Section 325 of IPC and sentenced to undergo simple imprisonment along with fine of Rs.100/- and was also convicted under Section 294 of the IPC and sentenced with fine of Rs.100/- with default stipulations. This judgement of conviction and sentence was challenged before the Court of Sessions. After due consideration, the impugned judgement has been passed in which the conviction and sentence passed by the trial Court was upheld and the appeal was dismissed.

5. The grounds in this revision are that the applicant has been falsely implicated. Eyewitness of this incident Gopal (PW-4) has turned hostile, the prosecution evidence discloses that Vridhichand (PW-1) and Sadhu Ram (PW-2) were in drunken state and intoxicated at the time of incident. Dr. J.N. Shukla (PW-8) has given statement that injuries caused to Vridhichand (PW-1) may be caused due to fall on ground. The seizure witnesses also have not supported the case of prosecution. Hence, prayed that the applicant be acquitted of all the charges.

6. It is submitted by learned counsel for the applicant, that the judgement of conviction passed against the applicant is erroneous under law and not based on legally admissible evidence. The witnesses of prosecution have stated against the applicant that on account of some previous enmity. The evidence of doctor clearly demonstrates that injuries caused to complainant Vridhichand (PW-1) could have been due to fall on the ground. It is stated by the prosecution witnesses that Vridhichand (PW-1) and the applicant had verbal engagement before the incident of the assault which shows the possibility of injuries caused to the complainant Vridhichand (PW-1) due to fall on ground. Hence, the applicant is not directly responsible for the injuries caused to the complainant Vridhichand (PW-1) who was drunken and in intoxicated state at the time of

incident. In the alternative, it is submitted that the case is more than 15 years old. The applicant is nearly about 60 years of age at present and he is residing in the same village in which Complainant Vridhichand (PW-1) is also residing without there being any dispute between them. Further, the applicant has already undergone a period of 20 days in jail. Hence, looking to the change of circumstances, the sentence awarded to the applicant may be modified to the period of custody already undergone by him.

7. It is submitted by learned State counsel that the prosecution has proved its case beyond reasonable doubt. Vridhichand (PW-1), Sadhu Ram (PW-2) and Droupadi Bai (PW-3) have supported the case of prosecution which is also corroborated by the statements of Vishram (PW-6), Dr. J.N. Shukla (PW-8), Dr. Sharad Awasthi (PW-10) and Dr. A.K. Gupta (PW-13), hence there is no scope for interference in the impugned judgement.

8. Perused the material available on record.

9. The only question arises for consideration in this revision petition is whether the conviction and sentence passed against the applicant are legally sustainable?

10. Vridhichand (PW-1) has stated that at the time of incident, the applicant threw away the cycle of Gopal (PW-4) because of which exchange of words took place on which the applicant got annoyed and took out a piece of wood from its roof and assaulted him causing injuries on his right palm, finger, ankle, shoulder and back. In cross-examination, there is no such statement which can be considered as rebuttal to his statement of examination-in-chief. Sadhu Ram (PW-2) who was present on the spot and supported the version of Vridhichand (PW-1). Droupadi Bai (PW-3) has equally supported the statement of Vridhichand (PW-1). Other witnesses on the spot Gopal (PW-4) has not supported the case of prosecution and has been declared hostile. Similarly, Shyamlal (PW-5) and Vishram (PW-6) are also hostile witnesses who have not supported the case of prosecution.

11. Statement of Vridhichand (PW-1), Sadhu Ram (PW-2) and Droupadi Bai are sufficient against the applicant in which it has been clearly stated that it was the applicant who assaulted Vridhichand (PW-1) and caused injury to him. Presence of injuries on body of the Complainant Vridhichand (PW-1) have been proved by Dr. J.N. Shukla (PW-8) who conducted MLC examination vide Ex. P-7 and advised for X-ray examination for the injuries of Vridhichand (PW-1). Further, he examined X-ray plates and reported vide Ex. P-9 that Vridhichand (PW-1) suffered fracture on Femur's bone and one fracture on Ulna bone. Finding of these injuries on the body of Vridhichand (PW-1) is unchallenged. Dr. Sharad Awasthi (PW-10) has treated Vridhichand (PW-1) and Dr. A.K. Gupta (PW-13) has stated about the admission of complainant Vridhichand (PW-1) for treatment in his hospital. Those medical evidence have fully corroborated the statement of Vridhichand (PW-1) and thus the finding of the Courts below that the applicant voluntarily assaulted and caused grievous hurt to Vridhichand (PW-1) is a correct finding which cannot be interfered with.

12. Considering the alternative prayer made on behalf of the applicant, it is taken into consideration that the incident took place in the year 2001. Almost 16 years have been passed since then. Looking to the background of the incident, it appears that the incident took place all of a sudden on account of some misunderstanding and for this reason, the applicant lost his temper when the complainant confronted. Looking to the long lapse of time, it appears that it would serve no purpose, if the applicant is sent to jail at this juncture. Section 401 of Cr.P.C. empowers High Courts to exercise the power under Section 386 of Cr.P.C. which are the powers exercised by the appellate Court according to which without altering the finding of conviction, the nature or extent of the sentence can be altered. Hence, for this reason, this revision is allowed in part. The conviction against the applicant by the trial Court and the Appellate Court is upheld. The sentence of imprisonment for offence under Section 325 of IPC is set aside, instead that applicant is sentenced with a period of custody already undergone by him in jail and to

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pay fine of Rs.5000/-. In default of payment of fine, the applicant shall be required to undergo additional RI for two months.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

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