

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 291 of 2005

Order reserved on : 17.03.2017

Order passed on :13 .04.2017

- Desi Ram, s/o Choudhary Ram, aged about 45 years, Occupation Agriculturist, R/o village, Mainpur, Police Chowki, Bishrampuri Police Station Keskai, Distt Bastar (CG)

---- Applicant

Versus

- State of Chhattisgarh through the District Magistrate, Bastar at Jagadapur, CG

---- Respondent

For Applicant : Shri Shobhit Koshta, Advocate
For Respondent/State : Ms Smita Ghai, PL

Hon'ble Shri Justice Anil Kumar Shukla

CAV Order

1) This revision petition has been filed against the judgment dated 28.06.2005 passed by the Fourth Additional Sessions Judge (FTC), Kanker in Criminal Appeal No. 26 of 2000, whereby the learned Additional Sessions Judge has altered the judgment dated 22.12.1999 passed by the Chief Judicial Magistrate, Kanker in Criminal Case No. 566 of 1998, convicting the applicant for the offence punishable under Section 326 of the IPC and sentencing him to undergo rigorous imprisonment for one year with fine of Rs.1,000/-, with default stipulation. The learned Additional Sessions Judge has convicted the applicant under Section 324 of the IPC instead of Section 326 of the IPC and sentenced him to undergo RI for six months with fine of Rs.1,000/-. The applicant has already paid the fine amount imposed upon him in the trial Court itself.

2) The prosecution case, in brief, is that on 12.09.1991 in the evening, complainant- Pichu, who was mentally disturbed, went to look after his fields situated at village Udid. On the next day, he woke up and was doing his daily chores of the day. At that time, present applicant came there with an axe in his hand. He asked the complainant to settle the dispute regarding agricultural land by doing partition of the said land and also asked him to give his share of land. Saying this, he assaulted the complainant with the axe on the ankle of his right foot and had fled towards village Udid. On hearing screaming of the complainant, his elder brother Baakda came there. By that time, the applicant had fled towards village Udid. Complainant- Pichu reported the matter at Police Chowki, Vishrampuri on the same day at 4 pm. Based on that report, Vishrampuri Police registered a criminal case against the applicant and on completion of the investigation, filed a charge-sheet against him under Section 326 of the IPC before the Court of Chief Judicial Magistrate, Kanker. After framing of charge and recording of evidence, the said offence was found proved and the applicant was convicted and sentenced as aforementioned. Being aggrieved, an appeal was preferred by the applicant in which the conviction and sentence have been altered. Hence, this revision petition.

3) I have heard learned counsel for the parties, perused the judgment impugned, statements of the witnesses and other documents relevant to the present case.

4) Learned counsel for the applicant submits that the applicant is not challenging his conviction. He further submits that he confines his argument to the sentence part only and prays to reduce the jail sentence awarded to the applicant to the period already undergone by him as he has been facing the case against him since 1991 and now he is 71 years old. The applicant was in jail for 17 days during pendency of the *lis* and has been granted bail by this Court on 13.07.2005. Learned counsel for the applicant has further submitted that the applicant has no criminal antecedent and since the applicant has already served 17 days' jail sentence, the same be reduced to the period already undergone by him. The applicant has already paid the fine amount imposed upon him.

5) On the other hand, learned State counsel opposed the revision and supported the impugned judgment though not disputed the above facts.

6) It is not in dispute that the applicant is now 71 years old; there is no criminal antecedent against him and the present offence is his first one, for which he faced trial, appeal and the present revision for the past 26 years; he remained in custody for seventeen days and the total sentence awarded to him is six months; it is a property dispute between two cousins and the complainant had only one simple injury, that too on his foot, not on any vital part of the body; at present, the applicant is leading a peaceful life and is not involved in any criminal activities.

7) Considering all the facts and circumstances of the case, also considering the prayer of learned counsel for the applicant and particularly in view of old age of the applicant, as also considering his custody period as well as the period passed in trial, appeal and revision, I am of the considered opinion that ends of justice would be met if, while affirming the conviction, the jail sentence awarded to the applicant is reduced to the period already undergone by him with imposition of additional fine amount. It would not be in the interest of justice to send him back to Jail after a long gap of 26 years.

8) In view of the foregoing discussion, the Criminal Revision is allowed in part. I confirm the conviction of the applicant under Section 324 of the IPC and modify the jail sentence awarded thereunder to the period already undergone by him. However, the applicant shall pay an additional fine of Rs.1,000/- (Rupees one thousand only) within one month of receipt of a copy of this order, failing which, he shall be liable to undergo RI for 7 days.

9) It is reported that the applicant is on bail. His bail bonds are not discharged at this stage and shall remain operative for a further period of six months from today in view of the provision contained under Section 437-A of the Cr.P.C.

10) Records of the Courts below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Anil Kumar Shukla)
JUDGE