

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.11 of 2006

Order Reserved on : 12.10.2017

Order Passed on : 13.11.2017

- 1. Ramsunder Singh, S/o Mohan Singh, aged about 30 years,
 - 2. Puran Singh, S/o Mohan Singh, aged about 22 years,
- Both are by Caste Gond and R/o Village Pondi, P.S. Pasan, District Korba, Chhattisgarh

---- Applicants

versus

State of Chhattisgarh through P.S. Pasan, District Korba, Chhattisgarh
--- Respondent

For Applicants	:	Shri Abhishek Pandey, Advocate
For Respondent/State	:	Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. This revision has been preferred by the accused/Applicants against the judgment dated 31.12.2005 passed in Criminal Appeal No.17 of 2005 by the Sessions Judge, Korba, by which the Learned Sessions Judge has dismissed the appeal filed by the Applicants and upheld the judgment dated 28.5.2005 passed in Criminal Case No.76 of 2002 by the Judicial Magistrate First Class, Katghora convicting and sentencing each of the Applicants as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 325/34 of the Indian Penal Code	Rigorous imprisonment for 1 year and fine of Rs.300/-, in default of payment of fine, additional simple imprisonment for 1 month
Under Section 323/34 of	Fine of Rs.100/-, in default of payment

the Indian Penal Code	of fine, additional simple imprisonment for 15 days
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While upholding the judgment of the Trial Court, the Lower Appellate Court reduced the sentence of rigorous imprisonment of 1 year to 6 months and upheld the sentence of fine of Rs.300/- for the offence under Section 325/34 of the Indian Penal Code.

2. Case of the prosecution, in brief, is that on 13.7.2002 at about 4:10 p.m., Kushal Singh (PW2) along with his father Gulab Singh (PW5) lodged a report in Police Station Pasan, District Korba that there was a dispute between him and father of the Applicants Mohan Singh regarding an agricultural field and he (Kushal Singh) had won the case. On 7.7.2002, at about 8:00 a.m., he along with his father had gone for cultivating the said agricultural field. At that time, the Applicants, armed with Tangi and Lathi, came to them in the said field and saying that the said field belonged to them, started a dispute. As a consequence of the dispute, beating took place between both the parties. He (Kushal Singh) sustained injuries on his left knee and chin and his father Gulab Singh sustained injury on his left wrist. The incident was witnessed by Man Singh (PW3) and Puraniyabai (PW4). Both the injured were examined in Primary Health Centre, Pasan. It was found that Gulab Singh had sustained a fracture in his radius bone. Thereafter, a crime under Section 325/34 of the Indian Penal Code was registered against the accused/Applicants. A Lathi was seized from the possession of Applicant Puran Singh. On completion of the investigation, a charge-sheet was filed against the accused/Applicants under Section 325/34 of the Indian Penal Code. Charges under Sections 325, 323/34 of the Indian Penal

Code were framed against the accused/Applicants. The Applicants denied the guilt.

3. The prosecution examined as many as 6 witnesses in support of its case. Statements of the Applicants were also recorded under Section 313 Cr.P.C. in which they pleaded false implication in the case.
4. After trial, the Trial Court convicted and sentenced the accused/Applicants and the Lower Appellate Court affirmed the judgment of conviction but reduced the sentence as mentioned in the first paragraph of this order. Hence, this revision.
5. Learned Counsel appearing for the accused/Applicants submitted that the instant revision has been brought before this Court on the grounds that the impugned judgments passed by the Courts below are bad in facts and law. Both the Courts below have acted illegally in relying on the testimony of Kushal Singh (PW2) and his father Gulab Singh (PW5) because their testimonies are contradictory to their police case diary statements. Both Kushal Singh and Gulab Singh have stated in their Court statements that the agricultural field in question belonged to the accused/Applicants. Therefore, it is clear that Complainant party, i.e., Kushal Singh and Gulab Singh are trespassers and when the accused/Applicants raised an objection and tried to dispossess the Complainant party, the occurrence took place between them and at that time the Applicants were only exercising their right to defend their interest vested in their said property.
6. Per contra, Learned Counsel appearing for the State supported the

impugned judgment and submitted that the same does not warrant any interference by this Court.

7. I have heard Learned Counsel appearing for the parties and perused the material available on record including the judgments passed by the Courts below minutely.
8. The scope of revisional jurisdiction under Section 397 of the Code of Criminal Procedure is very limited, whereby the jurisdiction is exercised only to examine the correctness, legality and propriety of the judgment/order passed by the Subordinate Court.
9. In **(2004) 7 SCC 659 (State of Maharashtra v. Jagmohan Singh Kuldip Singh Anand)**, it is held by the Supreme Court that in exercise of revisional power, High Court cannot undertake in-depth and minute re-examination of entire evidence and upset the concurrent findings of the Trial Court and the Lower Appellate Court. Within this scope, the impugned judgment is examined now.
10. In support of the prosecution case, Kushal Singh (PW2) has stated that at about 10:00 a.m. when he was cultivating his field, the accused/Applicants came there and assaulted him with Lathi and Tangi. As a result of the assault, he received injuries on the chin and waist.
11. Gulab Singh (PW5), father of Kushal Singh has deposed that at the time of occurrence, his son Kushal Singh was cultivating the field in question. At that time, the accused/Applicants came there and asking whether the field belongs to your father, assaulted them

with Lathi. He sustained injuries on the left hand. He further deposed that Kushal Singh sustained injury on the mouth.

12. Puraniyabai (PW4) has deposed that at the time of occurrence, she was going to the field of Kushal Singh. At that time, she saw that the accused/Applicants were assaulting Kushal Singh and Gulab Singh with Lathi.
13. Man Singh (PW3) has also supported the case of the prosecution and deposed that at the time of incident, he was cultivating his field. At that time, he had seen injury on the face of Kushal Singh and on being asked Kushal Singh had told him that the accused/Applicants had assaulted him.
14. Dr. K.S. Pendro (PW6) has deposed that on 7.7.2002 he had examined Kushal Singh and Gulab Singh. In the examination, he had found that a bluish mark had emerged as a result of injury on left hip of Kushal Singh. He had also sustained a lacerated wound on chin, an abrasion on left knee and a bluish mark had emerged as a result of injury on the left index finger. His medical report in respect of Kushal Singh is Ex.P2. As per his medical report (Ex.P3) in respect of injured Gulab Singh, the injured had sustained injury over the lower third left fore arm. As per the x-ray report (Ex.P4), it was found that left lower third part of fore arm of Gulab Singh was fractured.
15. From the above statement of Dr. K.S. Pendro (PW6) and the medical reports (Ex.P2 and P3) and the x-ray report (Ex.P4), it is clear that Kushal Singh had sustained simple injuries and Gulab Singh had sustained grievous injuries.

- 16.** From the above discussion, it is clear that at the time of occurrence, Kushal Singh and his father Gulab Singh were cultivating the agricultural field in question. At that time, the accused/Applicants, armed with Tangi and Lathi came there and assaulted them with Lathi. Kushal Singh sustained simple injuries and Gulab Singh sustained grievous injuries.
- 17.** It was argued by Learned Counsel appearing for the accused/Applicants that the agricultural field in question belonged to the accused party. Complainant Kushal Singh and his father Gulab Singh were trespassers. When the Applicants raised an objection and tried to dispossess the Complainant party, the occurrence took place between them and the Applicants were only exercising their right to defend their interest vested in the property in question. Therefore, no case is made out against the Applicants.
- 18.** I have carefully gone through the evidence on record and found that the Trial Court has considered and rightly rejected the above version of the accused/Applicants. As per the prosecution story, particularly, Rojnamcha Sanha, there was a dispute between the accused/Applicants and the Complainant party and the Complainant party had won the case. As per the Court statement of Kushal Singh (PW2), he was cultivating the field in question from the time of his father. Kushal Singh and his father Gulab Singh have categorically denied the suggestion made before them that the agricultural field belonged to the accused/Applicants. Not a single document has been produced by the accused/Applicants to show that the said field belonged to them or the field was in their exclusive possession. Therefore, it cannot be said that the

Complainant party was trespasser. Therefore, the argument of Learned Counsel appearing for the accused/Applicants that the accused/Applicants had right to defend their right vested in the property is not acceptable. Both the Courts below have considered and rightly rejected the above version of the accused/Applicants. The impugned judgment is well reasoned and there is no scope for interference therein as to its correctness, legality and propriety.

19. In the premises of aforesaid, I find no merit in the revision petition. The conviction imposed upon the Applicants is upheld.
20. So far as sentence part is concerned, the Applicants are facing the *lis* since 2002, i.e., for about 15 years. They have already undergone 5-6 days. They have no criminal antecedent. The occurrence of assault took place between the parties for an agricultural field. I am of the considered opinion that the ends of justice would be met if the jail sentence awarded to them is reduced to the period already undergone by them and the fine imposed upon them is enhanced to Rs.10,000/- each for the offence under Section 325/34 of the Indian Penal Code, adjustable against the amount of fine already deposited by them and payable within a period of 2 months from the date of receipt of a copy of this order and in default of payment they shall be liable to undergo simple imprisonment for 2 months. The sentence awarded for the offence under Section 323/34 of the Indian Penal Code is upheld.
21. Ordered accordingly.
22. In the result, the revision is allowed in part to the extent indicated above.

- 23.** It is reported that the Applicants are on bail. Their bail bonds shall continue for a further period of six months from today in terms of Section 437A of the Code of Criminal Procedure.
- 24.** Records of the Courts below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
JUDGE