

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 170 of 2007

- Lakshman Surya, S/o Khadru Surya, Aged About 47 Years S/o
- Jaitram Surya, S/o Khadru Surya, Aged about 32 years
- Dilharan Surya S/o Laxman Surya, Aged about 40 years,

All R/o. Village Dhatura Chowki-Hardibazar, PS- Kusmunda, Tah. Katghora, District Korba (CG)

---- Applicants

Versus

- State Of Chhattisgarh, Through the Police Station Kusmunda, Tah. Katghora, District Korba (CG)

---- Respondent

For Applicant	: Shri Virendra Verma, Advocate
For Respondent/State	: Smt. M.Asha, PL.

Hon'ble Smt. Justice Rajani Dubey

Order On Board

01/12/2018

The present revision arises out of the impugned order and judgment dated 28.03.2007 passed by the Additional Sessions Judge, Katghora in Cr. Appeal No. 01/2007 whereby the learned appellate Court below has confirmed the conviction and sentence of the accused/applicants as awarded by the learned Judicial Magistrate first Class, Katghora vide its judgment dated 28.12.06 in Cr. Case No. 280/2004 for the offence under Sections 325/34 and 323/34 IPC and sentenced each of them to undergo RI for three months and to pay fine of Rs. 500/- u/s. 325/34 and to pay fine of Rs. 500/-u/s. 323/34 plus default stipulation.

2. Brief facts of the case are that on the date of incident i.e. 02.02.04, at about 10.00 a.m. when Bhakkulal and Ravilal were covering the area with earth after breaking the wall, accused/applicants came there and started abusing them as to why they had broken the wall and accused/appellant Dilharan Surya assaulted Bhakku Lal with iron rod on his right leg as a result of which he fell down and shouted for help at that time, his son Ravi Lal came to intervene. It is stated that the applicants also threatened and Laxman Surya assaulted him on his head whereas applicant Jaitram assaulted with *lathi* as a result of which, blood started oozing out from his head and thereafter they fled away from the spot. Report was lodged by Bhakku Lal and they were medically examined. After x-ray report, Injuries suffered by Bhakkulal it was opined by the doctor that they were grievous in nature. Investigation was done and charges were framed against the accused/applicants under Sections 325/34 and 323/34 IPC.

3. So as to prove the guilt of the accused/applicant, the prosecution has examined 8 witnesses. Statement of the accused/applicants were also recorded under Section 313 of the Cr.P.C. in which they denied the charges leveled against them and pleaded their innocence and false implication in the case.

4. After hearing the parties, vide impugned judgment and order dated 28.12.2006 learned Magistrate has convicted the accused/applicants for the offence under Sections 323/34 and 325/34 IPC and has sentenced to undergo RI for three months with fine of Rs. 500/- and to pay fine of Rs. 500/- respectively, with default stipulations. However, they were acquitted of the charges under Sections 294 and 506 Part II IPC. This order was appealed by the applicants and in the appeal, learned appellate Court has

confirmed the conviction and sentence of the applicants. Hence, the present revision.

5. Heard counsel for the parties and perused the material on record including the impugned judgment.

6. Counsel for the applicants submits that he is not pressing the revision as far as it relates to the conviction part of the judgment and would confine his argument to the sentence part thereof only. According to him, the incident is said to have taken place in the year 2004 and thereby more than 14 years have rolled by since then, the applicant has already remained in jail for about one month, no useful purpose would be served in again sending them jail, therefore it would be in the interest of justice if the sentence imposed on them is reduced to the period already undergone by them. To this, counsel for the State has no serious objection.

7. In view of above, the fact that the incident had taken place in the year 2004 and further that the applicants have already remained in jail for about one month, the revision is partly allowed. Conviction part of the impugned judgment is maintained. Applicants are reported to have remained in jail for a period of one month, their sentence is reduced to the period already undergone by them.

8. Revision thus partly succeeds.

Sd/-

(Rajani Dubey)
Judge