

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 451 of 2010

Santosh aged about 25 years, S/o. Ghasiram, Caste – Kenwat, R/o. Vill. Parasi, P.S. Marwahi, District – Bilaspur, CG

---- Applicant

Versus

- State of Chhattisgarh through – Police Station Marwahi, District – Bilaspur, CG

---- Respondent

For Applicant	:	Shri Shashi Bhushan Tiwari, Advocate
For Respondent/State	:	Smt. M. Aasha, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

27 /11/2018

1. The applicant in this revision has challenged the judgment dated 12.08.2010 passed by Additional Sessions Judge (FTC) Pendra Road, District Bilaspur, CG in Criminal Appeal No. 37/2010 arising out of the judgment dated 06.11.2009 passed by JMFC Marwahi, District Bilaspur in Criminal Case No. 209/2009 convicting the accused/applicant under Sections 325 and 294 IPC and sentencing him to undergo RI for six months with fine of Rs. 400/- under Section 325 and SI for three months under Section 294 IPC, plus default stipulation.
2. Case of the prosecution, in brief is that on 14.06.2006 at about 9.15 PM when complainant Kailash Chaturvedi was in the company of his colleague, the accused/applicant came there and waylaid him. He also hurled filthy abuses and started assaulting him with club. Thereafter he was taken to the police station by his colleagues and the report Ex. P-1 was lodged. The complainant thereafter was taken to CIMS Bilaspur for medical examination and on X-ray been taken his right shoulder joint was found to be dislocated. After

completion of investigation, charge-sheet was filed against the accused/applicant under Sections 294, 506B, 323 and 325 IPC.

3. On being satisfied with the averments of the parties and evidence on record the trial Court convicted and sentenced the accused/applicant as mentioned above. The findings recorded by the trial Court have been affirmed by the lower appellate Court by the Judgment impugned, and it is that which is under challenge in this revision.
4. Learned counsel for the accused/applicant submits that he is not pressing this revision on merits and would confine his argument to the sentence part of the judgment impugned therein. According to him, as the incident had taken place in the year 2006, and that he has already remained in jail for a period of 26 days, no useful purpose would be served in again sending him to jail, and therefore, the jail sentence imposed upon him may be reduced to the period already undergone.
5. State counsel however, supports the findings recorded by both the Courts below.
6. Heard counsel for the parties and perused the material on record.
7. Though counsel for the accused/applicant is not inclined to press the conviction of the accused/applicant on merits, this Court thinks it appropriate to refer to the evidence of the witnesses to ascertain his guilt or innocence and therefore, it proceeds to do so.
8. From the evidence of complainant (PW-1) it appears that on the date of incident at about 7.30 pm when he along with his companions was going to village Bhagatola on foot, on the way near the pond the accused/applicant along with his friend was hiding himself behind a tree and when the complainant reach there,

they both abused him and assaulted with club. On being intervened by his companions, the accused/applicant and his friend left the spot. In the incident the injured had sustained injuries on his back and hand. Further, Dr. B.S. Paikra (PW-3) who medically examined the complainant and gave his report Ex. P-5 had noticed swelling near his eyes, bruises on his back and contusions on his right shoulder. Similarly, the radiologist (PW-6) has stated that though he did not notice any fracture on the body of the complainant yet the shoulder joint was found to be dislocated. Thus, on going through the material on record the trial Court was absolutely justified in convicting the accused/applicant under Sections 325 and 294 IPC. There is no illegality or infirmity in the same warranting interference by this Court. Conviction of the accused/applicant is thus maintained.

9. As regards sentence, keeping in view the fact that the incident had taken place about 12 years back and the applicant has already remained in jail for a period of 26 days, this Court is of the opinion that it would be in the interest of justice to reduce the sentence to the period already undergone by him. Order accordingly.
10. Resultantly, the revision petition is hereby allowed in part with the modification in the judgment impugned as above.

Sd/-

(Vimla Singh Kapoor)

Judge