

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 372 of 2004

1. Gowkaran Prasad S/o. Jivan Lal Shukla, Aged about 52 years, R/o. Village Butena, Pali, Thana Takhatpur, District Bilaspur (C.G.)
2. Sukhdev @ Sonu, S/o. Gowkaran Prasad Shukla, Aged about 18 years, R/o. Village Butena, Pali, Thana Takhatpur, District Bilaspur (C.G.)

---- Applicants

Versus

State of Chhattisgarh, Through District Magistrate Bilaspur
District Bilaspur (C.G.)

---- Respondents

For Applicants : Mr. Hemant Kesharwani, Advocate
For Respondent/ State : Ms. M. Asha, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board

22.10.2018

1. This revision is directed against the judgment of conviction and order of sentence dated 19.07.2004 passed by the Additional Sessions Judge (FTC) Bilaspur in Criminal Appeal No. 28 of 2004 affirming the judgment of conviction and order of sentence dated 07.01.2004 passed by the Judicial Magistrate, First Class, Bilaspur in Criminal Case No. 377/2002 where learned Magistrate had held the applicants guilty under sections

294,452,323/34 IPC and sentenced them to undergo rigorous imprisonment for 6 months with fine of Rs. 500/- under section 452, RI for one month under Section 294 and RI for six months with fine of Rs. 500/- on three counts, under section 323/34 IPC, plus default stipulations. While imposing the sentence learned magistrate directed all the sentences to run separately but modifying that part learned lower appellate Court has held them to run concurrently.

2. Case of the prosecution, in brief, is that on account of some dispute over water being released in the field, there was some dispute between the complainant (PW-1) Purushottam and the accused/applicants herein in furtherance of which on 15.10.2002 the accused/applicants went to the house of the complainant and assaulted him with clubs. Further case of the prosecution is that when brother and wife of the complainant tried to interfere in the dispute, the applicants abused and caused injuries to them also.

3. Having taken note of the material on record the Trial Court convicted and sentenced the Applicants as mentioned above which subsequently has been affirmed by the lower appellate Court by the judgment impugned. Hence, this revision.

4. Learned Counsel appearing for the applicants submits that he is not pressing this revision on merit and confining his argument to the sentence part thereof only. According to him, as the incident had taken place in the year 2002 and that they have already remained in jail for a period of 35 days, no useful

purpose would be served in again sending them to jail, and therefore, the sentences imposed upon them may be reduced to the period already undergone by them.

5. State counsel however, supports the findings recorded by the both the Courts below.

6. I have heard learned counsel for the parties and perused the judgment impugned as also the evidence available on record, carefully.

7. Though there is a prayer only in respect of sentence part of the judgment impugned, this Court is required to deal with the conviction part thereof as well on merit.

8. Complainant Purushottam (PW-1) has stated that on the date of incident there was some dispute between him and the accused/applicants and in furtherance of which the accused/applicants assaulted him with the help of staff carried by him as a result of which he sustained injury on his head and fell down on the ground. According to him the accused/applicants also caused injuries to his wife and brother. Ratan (PW-2) brother of complainant has also made almost similar statement like (PW-1). This witness too was also abused and assaulted by the accused/applicants when he went to the safety of his brother. Sitaram (PW-3) is a hearsay witness who was informed by (PW-4) and (PW-7) regarding assault opened by the accused/applicants on (PW-1). Kunti Bai (PW-6) – the wife of the complainant (PW-1) has also supported the case of the prosecution clarifying the

assault opened on her husband as also on herself when she went to save her husband. Smt. Pramila Bai (PW-7) has also corroborated the testimony of the complainant and PW-6, and thus, lent support to the case of the prosecution as whole. Anjor Das (PW-9)- the witness to seizure has also supported the case of the prosecution. Dr. Chaosingh Patle (PW-11) is the witness who medically examined complainant (PW-1) and Ratan (PW-2) vide reports Ex.P-6 and Ex.P-7. According to him (PW-1) had suffered lacerated wounds of various diameters on head, swelling on wrist and contusions on shoulders, back and scapular region. Likewise, this witness has also noticed contusion and swelling on the hand and palm of Ratan (PW-2). Dr. S. Shukla (PW-12) – is the witness who medically examined Kunti (PW-6) has stated that on examination she (PW-6) complained pain on her waist. This witness however, did not notice any injury on her body which is clear from his report (Ex.P-8). Udayraj Singh (PW-13) is the Investigating officer who has duly supported the case of the prosecution.

9. Having thus seen the material on record including the evidence of (PW-1), (PW-2) and (PW-6) apart from the other witnesses, this Court is of the considered opinion that on the date of incident the accused/applicants have made a house tresspass after preparing themselves for causing hurt to the victim and, after abusing them caused injuries not only to him but also his wife and brother when they came to his safety. Dr. Chaosingh Patle (PW-11) and Dr. S. Shukla (PW-12) who

medically examined (PW-1), (PW-2) and (PW-6) respectively have also noticed injuries on their bodies. Thus, this Court is not inclined to interfere with the well reasoned findings recorded by both the Courts below as far as conviction part of the judgment impugned is concerned. It is accordingly maintained.

10. As regards sentence, keeping in view the fact that the incident had taken place about 17 years back and by now the applicants must be leading a well settled life bearing the burden of their responsibilities and that they have already remained in jail for a period of 35 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 them. In lieu of this, the applicants however, would be required to pay an enhanced sum of fine of Rs. 2000/- each from that of Rs. 1000/- each. Let this amount be deposited by the accused/applicants in the trial Court within a period of three months from today.

11. With the aforesaid observations and modifications in the judgment impugned, the revision stands allowed in part.

Sd/-

(Vimla Singh Kapoor)
JUDGE

Jyotishi