

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 42 of 2004

Order reserved on : 04.09.2018

Order passed on : 22.10. 2018

Banwari @ Basant, Aged about 24 years, S/o. Goharam, R/o. Devermal, P.S. and Tahsil Sakti, District Janjgir Champa (C.G.)

---- Applicant

Versus

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

---- Respondent

For Applicant : Mr. Ravi Bhagat, Advocate
For Respondent : Ms. M. Asha, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Judgment

1. This revision is directed against the judgment dated 08.01.2004 passed by the Additional Sessions Judge Sakti, District Bilaspur, in Criminal Appeal No. 223 of 2003, affirming the judgment of conviction and order of sentence dated 10.10.2003 passed by the Additional Chief Judicial Magistrate, Sakti, in Criminal Case No. 765/2001 whereby learned Additional Chief Judicial Magistrate after holding the applicant guilty for commission of offence punishable under section 392 of the IPC

and sentenced him to undergo rigorous imprisonment for 1 year and to pay fine of Rs. 100/- with default stipulation.

2. Case of the prosecution, in brief, is that on 03.04.2001 at about 8.00 PM when the victim along with his friend was riding his motorcycle for going to Deori, on the way one person carrying sword in his hand stopped them and asked to leave the motorcycle. He even chased them upto the Devarmal nala and then by taking the motorcycle he ran away. After the incident, the complainant lodged the First information Report (Ex. P-1) in Police Station Sakti. During investigation, memorandum of the accused/applicant was recorded on the basis of which one Hero Honda motorcycle and a sword was seized from him.

3. Having taken note of the material on record the Trial Court convicted and sentenced the Applicant 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 Applicant 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 2001 and that he has already remained in jail for a period of five months, no useful purpose would be served in again sending him to jail, and therefore, the sentence imposed upon him may be reduced to the period already undergone by him.

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

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

7. Though there is 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. The complainant (PW-1) and his friend PW-2 who was sitting on the motorcycle as pillion rider have clearly stated that on the date of incident when they were going to Deori on bike, the accused/applicant asked him to stop, chased them away upto some distance and then after taking the motorcycle he left the spot. Further on the memorandum of the accused/applicant, one motorcycle and a sword has also been seized from him. Therefore, merit aspect of this case has also been strengthened by the prosecution by adducing the sufficient material on record. No infirmity is noticeable by this Court in the finding of the Courts below holding the accuse/applicant guilty under Section 392 IPC. Conviction is thus held to be proper.

9. As regards sentence, keeping in view the fact that the incident had taken place about 17 years back and by now the applicant must be leading a well settled life bearing the burden of his responsibilities, 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.

10. Resultantly, the revision is hereby allowed in part with the modification in the judgment impugned as above.

Sd/-

(Vimla Singh Kapoor)
JUDGE

Santosh