

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Revision No. 195 of 2005**

Videshi Naik, aged about 19 years, son of Shri Sewak Ram Naik, Caste-  
Aghariya, R/o Village- Devgaon, Police Station Saria, Tahsil, Sarangarh,  
Distt. - Raigarh (C.G.).

**----Applicant**

**Versus**

The State of Chhattisgarh, through- the District Magistrate, Raigarh (C.G.)

**---- Respondent**

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|----------------|---|-------------------------|
| For Applicant  | : | Mr. Roop Naik, Advocate |
| For Respondent | : | Mr. Sumit Jhanwar, PL   |

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**Hon'ble Shri Justice Arvind Singh Chandel**

**Order on Board**

**08/01/2018**

1. This revision has been preferred under Section 397 read with Section 401 of the Code of Criminal Procedure against the judgment dated 27/04/2005 passed in Criminal Appeal No. 132/2004 by 4<sup>th</sup> Additional Sessions Judge (Fast Track Court), Raigarh, whereby, the Learned Additional Sessions Judge has affirmed the judgment dated 07/08/2004 passed in Criminal Case No. 763/2003 by the Judicial Magistrate First Class, Sarangarh, Distt. Raigarh convicting and sentencing the accused/Applicant as under:

| <u>Conviction</u>        | <u>Sentence</u>                                            |
|--------------------------|------------------------------------------------------------|
| Under Section 323 IPC    | Fine of Rs. 50/- with default stipulation.                 |
| Under Section 325 of IPC | 6 months SI and fine of Rs. 50/- with default stipulation. |
| Under Section 354 of IPC | 3 months SI.                                               |

2. Case of the prosecution, in brief, is that on 29/06/2003, Complainant-Kunti Bai along with her mother-in-law, sister-in-law and daughter, after attending the call of nature, was returning to village. On the way, the accused/Applicant came behind and caught hold her hand. When she tried to come out of his clutches, the accused/Applicant caught her Sari and said "*Chalo Chalo*". She, then, came out of his clutches. Her mother-in-law and sister-in-law, who were coming behind, shouted "*Kon hai, kon hai*". Then, the accused, by picked up a wood lying nearby and assaulted the complainant on her left hand with which she was holding her daughter. The said assault caused injuries to her and her daughter. Later on, a written report (Ex-P.1) was lodged by Kunti Bai, based on which, First Information Report (Ex-P.2) was registered. After investigation, a charge-sheet under Sections 323, 325 and 354 of IPC was filed against the accused/applicant. Charges were framed under Sections 323, 325, and 354 of the India Penal Code.
3. In support of its case, the prosecution has examined as many as 7 witnesses. Statement of the Applicant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the allegation made against him, pleaded innocence and false implication. One defence

witness has been examined.

4. After trial, the Trial Court convicted and sentenced the Applicant and the Appellate Court affirmed the judgment of conviction and sentenced as mentioned in the first paragraph of this order. Hence, this revision.
5. Learned Counsel appearing for the Applicant argued that he is not challenging the conviction of accused/applicant, rather he is challenging the sentence part only. He further submits that the Applicant has already undergone about 10 days out of the total jail sentence of 6 months. He is facing the *lis* since 2003 i.e. for about 14 years. He has no criminal antecedent. Therefore, the sentence awarded to him may be reduced to the period already undergone by him.
6. Per contra, learned Counsel appearing for the State, supporting the impugned judgment, has argued that the jail sentence imposed upon the accused/Applicant is just and proper and the same does not call for any interference.
7. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.
8. In **Manjappa v. State of Karnataka {(2007) 6 SCC 231}**, the Supreme Court while dealing with the case wherein applicant was sentenced by the High Court under Section 325 of IPC with simple imprisonment for 1 ½ months and fine Rs. 1000/- with stipulation clause, held in para-14 as under:-

*“14. At the same time, however, the fact remains that the High Court has reduced substantive sentence to a month and a half. It is also not in dispute that the appellant has undergone and has remained in custody for about fifteen*

*days. Moreover, as on today, he is on bail. Hence, even though we are of the view that in the facts and circumstances of the case, provisions of Section 360 read with Section 361 of the Code are not attracted and **Om Prakash (2001) 10 SCC, 477**, does not help the appellant, it would not be appropriate now to direct the appellant to surrender and to suffer the remaining sentence for about a month. The incident is of 1997 and about 10 years have passed.”*

9. In the light of above judgment and looking to the facts and circumstances of the instant case, particularly, considering the fact that in this case also the applicant has undergone about 10 days, he is facing the *lis* since 2003 i.e. for about 14 years and he has no previous criminal antecedent, I am of the opinion that the ends of justice would be met if, while upholding the conviction imposed upon the Applicant, he is sentenced with the period already undergone by him and the fine imposed upon him for the offence under Sections 323 and 325 of IPC is enhanced to Rs. 1,000/- and Rs. 4000/-, respectively. Ordered accordingly. The enhanced amount of fine of Rs. 1000/- for the offence under Section 323 of IPC and the enhanced amount of fine of Rs. 4000/- for the offence under Section 325 of IPC shall be payable within three months from the date of receipt of a copy of this order. In default of payment of the aforesaid amount of Rs. 1000/-, the Applicant shall be liable to undergo simple imprisonment for 3 months, and in default of payment of the aforesaid amount of Rs. 4000/-, he shall be liable to undergo simple imprisonment for 6 months. If any amount has already been deposited towards fine, the same shall be adjusted in the amount of fine imposed/enhanced today.
10. Consequently, the revision is partly allowed to the extent indicated above.

11. 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**

Rahul