

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 427 of 2005

Order reserved on 03.10.2018

Order pronounced on 23.10.2018

Chabilal Sahu, aged 56 years S/o Dhanau Sahu, R/o Village Chipali, P.S. Sihava, District Dhamtari, Chhattisgarh.

---- Applicant

Versus

State of Chhattisgarh Through District Magistrate, District Dhamtari, Chhattisgarh.

---- Respondent

For Applicant	:	Shri Shri Bishnu Muri, Advocate
For Respondent	:	Ms. M. Asha, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V Order

The accused / applicant has preferred this revision petition against the judgment dated 03.09.2005 passed by Additional Sessions Judge, Dhamtari (Division Raipur) in Criminal Appeal No. 109/2004. By the said judgment the Additional Sessions Judge maintained the conviction of the accused/applicant under Section 326 IPC but reduced the sentence to Rigorous Imprisonment for one year from that of RI for three years as was imposed by the Judicial Magistrate First Class Dhamtari by Judgment dated 06.04.2004 passed in Criminal Case No. 51/1998. Sentence of fine imposed by learned Magistrate has however been kept as it is by learned lower appellate Court.

2. Facts of the case, in brief, are that on 18.12.1997 at about 5 PM the accused/applicant caused injuries to the victim namely Kanhaiya Lal Sahu (PW-1) with the help of iron made object (locally known as kalari) on account of theft of hey, as a result of which he sustained injuries on right palm and sole. On medical examination of the victim, his middle metacarpal bone was found to be fractured. On the basis of FIR (Ex.P3), lodged at the instance

of PW-5, offence under Section 326 IPC was registered against the accused/applicant and he was charge sheeted accordingly.

3. After examining the witnesses and going through the evidence on record the trial Court convicted the accused/applicant under Section 326 IPC and sentenced to undergo RI for three years and pay fine of Rs. 1,000/-. However, on appeal, the lower Appellate Court though maintained the conviction as imposed by the trial Court, it reduced the sentence to RI for one year with maintenance of sentence of fine.

4. Learned counsel for the accused/applicant submits that he is not pressing this revision on merits and would confine his arguments to the sentence part of the judgment impugned assailed therein. According to him, as the incident had taken place in the year 1998, and that he has already remained in jail for a period of 23 days, 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 both the Courts below.

6. Heard counsel for the parties and perused the material on records.

7. Though counsel for the accused/applicant is not inclined to press conviction of the accused/applicant, 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. Victim PW-1 has stated that on the date of incident the accused/applicant who happens to be his brother, held him responsible for committing the theft of hey and saying so assaulted him with the help of iron made object (locally known as kalari), as a result of which he sustained number of injuries including fracture of palm. According to him, the incident was witnessed by many people namely Pratap, Mohan, Diamond and others. Obviously, Pratap (PW-2), Shaymvan (PW-3), Santuram Sahu (PW-4) and Mohan (PW-7) have also supported the case of the prosecution. Dr. M.L. Ahirwar (PW-6) who medically examined the victim and gave his report (Ex.P5) has also supported the

case of the prosecution categorically stating that the injury suffered by the victim was grievous in nature. On the basis X-ray report (Ex.P6), he has also opined that there was fracture on the metacarpal bone of the victim.

9. Thus, in view of the factual discussion made above in the light of the evidence of the witnesses, this Court of the opinion that both the Courts below have been quite justified in holding the accused/applicant guilty under Section 326 IPC and being so, the same hereby maintained.

10. As regards sentence, the record goes to show that the accused and the victim are real brothers, that the incident had taken place about twenty years back, and that by now he must have been living a happy family life, this Court feels it just and proper to reduce the sentence to the period already undergone by him which comes to about 23 days as a whole. Order accordingly.

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

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi/Pawan

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Post for pronouncement on /10/2018

Judge