

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.445 of 2013**

Mohd. Kadar Qureshi, aged about 46 years, son of Noor Mohd. Qureshi, resident of Dharsiwa, Police Station Dharsiwa, Civil and Revenue District Raipur, Chhattisgarh

---- **Applicant**

versus

State of Chhattisgarh through the District Magistrate Balodabazar, District Balodabazar – Bhatapara, Chhattisgarh

--- **Respondent**

For Applicant	:	Shri Goutam Khetrapal , Advocate
For State/Respondent	:	Shri Rajkumar Jaiswal, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

2.2.2018

1. This revision is directed against the judgment dated 22.5.2013 passed by the Additional Sessions Judge, Bhatapara in Criminal Appeal No.3 of 2013 affirming the judgment dated 17.1.2013 passed by the Judicial Magistrate First Class, Simga in Criminal Case No.676 of 2010 convicting and sentencing the Applicant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 352 of the Indian Penal Code	Fine of Rs.500/- with default stipulation

2. Facts of the case, in brief, are that on 24.7.2010 at about 1:45 p.m., Complainant Lallan Singh (PW6), Station House Officer, Police Station Simga was standing near Simga Chowk (a square) along with Constables. It is alleged that at that time, the present Applicant and co-accused Mansoor Ali started abusing to Lallan Singh (PW6) in filthy language. They also assaulted him with a bamboo stick. Lallan Singh himself registered an offence against the Applicant and Mansoor Ali, investigated the offence and on

completion of the investigation filed a charge-sheet against both the accused under Sections 294, 186, 353 and 506B, 34 of the Indian Penal Code. Charges were framed against them under Sections 294, 186, 353, 506 Part II of the Indian Penal Code.

3. To rope in both the accused, the prosecution examined as many as 8 witnesses. Statements of both the accused were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the guilt. 2 witnesses have been examined in their defence.
4. After trial, both the accused have been acquitted of the charges framed against them, but they have been convicted and sentenced under Section 352 of the Indian Penal Code. Against the judgment of conviction and sentence, the present Applicant preferred an appeal, being Criminal Appeal No.3 of 2013 which has been dismissed by the Appellate Court. Hence, this revision.
5. Learned Counsel appearing for the Applicant submits that Complainant Lallan Singh himself lodged the FIR and investigated the offence. But, this fact was not seen by both the Courts below. There is nothing on record which establishes that the Applicant gave any blow to the Complainant or used any criminal force against him. None of the independent witnesses has supported the case of the prosecution and they have been declared hostile. The conviction is based on the statements of Complainant Lallan Singh (PW6) and Assistant Sub-Inspector Ramlal Sahu (PW7). But, there are material contradictions in their statements and, therefore, their statements are not reliable.
6. On the other hand, Learned Counsel appearing for the State

supported the impugned judgment.

7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. Perusal of the record reveals that Abid (PW1), Manharan (PW2), Bharatlal (PW3), Pritpal (PW4) and Bisahat (PW5), who are independent witnesses of the case, have not supported the case of the prosecution and have been declared hostile.
9. Complainant Lallan Singh (PW6) has stated that he and Assistant Sub-Inspector Ramlal Sahu (PW7) were controlling the traffic at Simga Chowk. At that time, the present Applicant and co-accused Mansoor Ali came there and started abusing him and taking a *danda* in their hands both of the accused ran towards him to assault him. Some persons from the nearby hotel came there and tried to intervene, but the accused committed breakage in the hotel.
10. Ramlal Sahu (PW7) has stated that he and Lallan Singh (PW6), after investigating into another offence, had come to Simga Chowk. There they controlled the traffic and thereafter they went to Bhatia Restaurant. At that time, both the accused entered the hotel (the restaurant) and started abusing. After some time, both the accused picked up 1-1 *danda* from a nearby *Thela* (a push-cart), returned to the hotel and again started abusing. He has further stated that both the accused caught the hand of Lallan Singh to assault him.
11. From the above, it is clear that as per the statement of Lallan Singh (PW6), the incident had taken place at the Chowk and at the same

place both the accused had come with *danda* and at the Chowk itself they had chased Lallan Singh to assault him. But, as per the statement of Ramlal Sahu (PW7), the incident had taken place at Bhatia Restaurant and as per the statement of this witness the accused abused in Bhatia Restaurant and thereafter they went to the nearby push-cart and picked up *danda* and again they returned to Bhatia Restaurant and started abusing. It has not been stated by Ramlal Sahu (PW7) that the accused came to the Chowk along with *danda* to assault Complainant Lallan Singh. As per the statement of Ramlal Sahu (PW7), the accused, after coming along with *danda*, had caught the hand of Lallan Singh to assault him, but Lallan Singh has not stated anything about catching of his hand by the accused.

12. From the above, it is clear that both Lallan Singh (PW6) and Ramlal Sahu (PW7) have contradicted the statements of each other at material points. The place of incident is not clear. Where did the incident occur, whether at the chowk or in the restaurant, is not clear. There is no clinching evidence on record to establish that any blow was given to Complainant Lallan Singh or any criminal force was used against him by any of the accused.
13. In the premises of aforesaid, the revision is allowed. The impugned judgment of conviction and sentence is set aside. The Applicant is acquitted of the charges framed against him.
14. 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