

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 400 of 2006

Order reserved on 13.11.2018

Order pronounced on 28.01.2019

Prafull Dubey, S/o Shri Krishna Kumar Dubey, Vill-
Singhbondha, Post - Chakarbhata, Tahsil - Mungeli, District
Bilaspur, CG.

---- Applicant

Versus

1. Pusp Raj, aged about 46 years S/o Hukum Singh Thakur.
(Dead)
2. Vishva Raj Singh, S/o Hukumchand Thakur, aged about 44
years.
3. Manas Singh S/o Hukum Singh Thakur, aged about 36
years.

All-R/o Village-Singh Bandha Thana & Tahsil Mungeli,
District Bilaspur, CG.

4. State of CG, through -Collector, Bilaspur.

---- Respondents

For Applicant	: Shri K.A. Ansari, Sr. Advocate with Shri Akhil Mishra, Advocate
For State/ Respondent	: Shri Garry Mukhopadhyay, GA.

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Order

This revision is by the complainant/applicant against the judgment dated 29.03.2006 passed by Additional Sessions Judge, Mungeli District Bilaspur in Criminal appeal No. 140/2005. The Additional Sessions Judge, modified the judgment passed by Judicial Magistrate First Class Mungeli, in Criminal Case No. 640/1997 convicting the accused/respondents under Sections 452, 323, 324, 325 and 506-B IPC.

2. Case of the prosecution, in brief, is that on 26.06.1997 at about 8 pm the accused/respondents barged into the house of the

complainant (PW-5) to recover the debt and in that pursuit they caused grievous injuries to his siblings. Report Ex. P-5 was lodged by the applicant herein examined as (PW-5) and after medical examination of the injured persons and completing the investigation *challan* was filed against the respondents/accused under Sections 452, 323, 324, 325 and 506-B IPC.

3. On analysis of the material on the file, learned Magistrate, convicted the respondents/accused for the offences punishable under Sections 452, 323, 324, 325 and 506-B IPC and awarded the sentence of imprisonment for various terms. On appeal being preferred by the respondents/accused, their conviction under Sections 452, 324, 325 and 506-B IPC has been set aside and they have been held guilty only under Section 323 IPC. Hence, this revision by the complainant.

4. Counsel for the applicant/complainant vehemently argued that even in the midst of more than enough material indicative of the involvement of the respondents/accused in the crime in question, the lower appellate Court has committed a grave legal error in setting aside the conviction of the respondents under Sections 452, 324, 325 and 506-B IPC. He further submits that even the medical evidence indicates that one of the injured (PW-2) had suffered fracture of the clavicle bone whereas the others suffered number of injuries on various parts of their body but yet the lower appellate Court has lost sight of the same and convicted them only under Section 323 IPC. He further submits that the findings of the lower appellate Court being contrary to the evidence on record are liable to be set aside.

5. Counsel for the respondents/accused however, lend full support to the findings recorded by the lower appellate court and

thus make a prayer for the same being affirmed by this Court. State counsel too assisted the Court.

6. This Court has perused the material collected by the prosecution with greater degree of care and caution, and having done so, it becomes crystal clear that on the date of incident the respondents/accused entered the house of the complainant in order to recover the money due, and inflicted injuries to his siblings. Bhanu Pratap (PW-7) has categorically stated that when he went to the house of Krishna Kumar (PW-2) on hearing the noise of his children, he saw accused Puspraj, Vishwaraj and Manas inflicting injuries to the injured persons. Thereafter, he has specified the role played by the accused persons stating that accused Puspraj inflicted injuries to Krishna Kumar with *Gupti* and accused Manas with crowbar. According to him, accused Vishwraj also inflicted ten-twenty injuries to Krishna Kumar with club. The record also shows that on account of the club injury one of the teeth of (PW-7) was broken. Evidence of Dr. S.V. Bhaghel (PW-11) shows number of lacerations, penetrating wounds and abrasions on various parts of the body of Krishna Kumar (PW-2); abrasion on head and swelling on right eye of Bhanu Pratap (PW-7) and diffused swelling, abrasions and lacerations on the body of Sanat Kumar Dubey (PW-3). This apart, there was fracture in the clavicle bone of Krishna Kumar (PW-2) as is evident from the evidence of radiologist (PW-1) who gave his report Ex. P-1. In addition to this, PW-3 has clarified that the accused/respondents had entered his house and had threatened him and his family members of being finished. Thus, from the evidence of the witnesses it is clear that the respondents/accused had entered the house of the applicant, threatened them of life, opened assault on his family members using *Gupti*, crowbar and *lathi* in

so doing. Medical evidence is also suggestive of number of injuries on the bodies of PW-2, PW-3 and PW-7. PW-2 even suffered fracture of the clavicle bone as is evident from Ex. P-1.

7. Thus, the prosecution has collected sufficient evidence making out a clear-cut case against the accused/respondents under Sections 452, 323, 324, 325 and 506-B IPC and being so, the trial Court had been fully justified in convicting them as such. This Court finds absolute force in the argument of the counsel for the applicant that lower appellate court has committed a serious error in setting aside the conviction of the respondents except under Section 323 IPC. Indeed, the lower appellate court has gone wrong in appreciating the evidence and thereby interfering with the well-reasoned findings recorded by the learned Magistrate.

8. In aforesaid view of the matter, the judgment impugned is hereby set aside and the one rendered by learned Magistrate convicting the respondents/accused under Sections 452, 323, 324, 325 and 506-B IPC is hereby affirmed as a whole. Revision is thus allowed.

Sd/-

(Vimla Singh Kapoor)

Judge