

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 88 of 2008**

- Dev Kumar Patel, S/o Ugrasen, Aged About 53 Years, R/o village Bhedikona, Police Station- Dabhra, District- Janjgir-Champa (C.G.).

---- Applicant**Versus**

1. Vishambhar alias Chirai, S/o Jug Lal Maitri, Aged about 61 years, R/o village Bhedicon, Police Station- Dabhra, District- Janjgir-Champa (C.G.).
2. Sewakram, S/o Vishambhar Maitri, Aged about 22 years, R/o village Bhedicon, Police Station- Dabhra, District- Janjgir-Champa (C.G.).
3. State of Chhattisgarh through Police Station- Dabhra, District- Janjgir-Champa (C.G.).

---- Respondents

For Applicant	:	Shri Shourabh Sharma, Advocate
For Respondents/State	:	Shri Akhtar Hussain, P.L.

Hon'ble Smt. Justice Rajani Dubey**Order On Board****24.09.2019**

01. The present revision for enhancement of sentence arises out of the impugned judgment of conviction and order of sentence dated 23/11/2007 passed by Additional Session Judge, Sakti, District- Janjgir-Champa (C.G.) in Sessions Trial No. 1/2006 whereby, the learned Sessions Judge has convicted the respondents of the offence punishable under Section 307 of IPC and sentenced them to undergo R.I. for 5 years and fine of Rs. 5,000/- each, with default stipulation.

02. Brief facts of the case are that on 30.06.2006 at about 9:00 O' clock, complainant Dev Kumar Patel with the help of (Labho Yadav, Dujo Yadav and Laxman Das Mahant) was constructing the wall adjoining to his residential house at back yard, just adjacent to his land there is a land of Vishambhar Maitri, and a civil dispute between Dev Kumar Patel and Vishambhar Maitri in this regard is pending before

Civil Court Sakti. At the time of construction of wall, Vishambhar Maitri came there and objected Dev Kumar not to built the wall and having heard that objection Dev Kumar Patel told him that let he be allowed to construct the wall. After some time, Vishambhar went to his house and came with his son Sewak Ram holding axe and spade. Thereafter, they started dismantling boring to which, Dev Kumar raised strong objection not to do that, and thereafter Vishambhar and Sewak started assaulting Dev Kumar as a result of which Dev Kumar sustained injuries over his head and left leg, thigh, middle of the knee and the right thigh. On this report, offence has been registered against the respondent Nos. 1 and 03. After completion of investigation, charge-sheet was filed and charges were framed against the respondents under Section 307 r/w Section 34 of IPC by the trial Court.

04. So as to hold the accused/applicant guilty, the prosecution has examined as many as 17 witnesses. Statements of the accused/respondents No. 1 & 2 were also recorded under Section 313 of the Cr.P.C. in which they denied the charges leveled against them and pleaded innocence and false implication in the case.

05. After hearing the parties, vide impugned judgment of conviction and order of sentence dated 23.11.2007, learned Sessions Judge has convicted and sentenced the respondents for the offence under Section 307 of IPC and sentenced them to undergo R.I. for 5 years and fine of Rs. 5,000/- each with default stipulation. This order was appealed by the respondents No. 1 & 2 and in the appeal, learned Appellate Court affirmed the conviction and sentence of the respondents under Section 307 of IPC. Hence this revision filed by the applicant complainant for enhancement of sentence.

06. Heard learned counsel for the parties and perused the material available on record including the impugned judgment.

07. Learned counsel for the applicant/ complainant submits that considering the act of the respondent No. 1 & respondent No. 2, the conviction & sentence awarded by the Court below is less and, therefore, the same may be enhanced. The learned Court below ought

to have awarded 10 years sentence and fine of Rs. 10,000/- each. The prosecution has recorded dying declaration of complainant which was not considered by the learned Sessions Judge. The learned Sessions Judge has committed gross error in awarding the sentence of 5 years only, after recording a categorically finding that the complainant has sustained grievous injuries, which may result into death.

08. None for accused/respondent Nos. 1 and 2.

09. Learned counsel for State/respondent No. 3 submits that the learned Court below has not committed any error in passing the impugned judgment of conviction and order of sentence. He further submits that respondent Nos. 1 and 2 has already served the jail sentence imposed upon them and has been released. A report dated 12.09.2019 received from Central Jail, Bilaspur has also been filed.

10. A bare perusal of the evidence of Bhirgu Das (PW-1), Sakuntala (PW/4)-wife of complainant, complainant Dev Kumar (PW-5) and Laxman Das (PW-6), eye-witnesses to the incident, goes to show that at the time of incident, when the complainant Dev Kumar was constructing wall, it is the respondent Nos. 1 & 2 who objected him and a quarrel took place between them, thereafter, respondents/accused No.1 and 2 went to their house and came with deadly weapon (axe and spade) and assaulted the complainant (PW-5) on his vital part head and other parts of body causing grievous hurt. The evidence of these witnesses not only corroborated with each other but also from the evidence of PW-9 (Dr. N. P. Mishra) who examined the injured and gave his report (Ext. P-14) noticing (i) Incise wound on right parietal frontal area, (ii) bruise on right forearm, (iii) incise wound on left thigh, (iv) contusion on left thigh and (v) bruise on right side of chest. The Doctor (PW/9) has also opined that the injuries sustained by the complainant/injured were fatal to life. The learned trial Court, relying on the evidence of these witnesses and the report of doctor, arrived at the finding of conviction. This Court do not find any illegality or infirmity in the order impugned warranting interference by this Court. The conviction of the applicant is well-founded.

11. So far as argument of learned counsel for the applicant that the trial Court has awarded less sentence to the accused/respondent Nos.1 and 2 under Section 307 IPC, whereas maximum punishment under the said section is upto 10 years, this Court does not find much force in his argument for the reason that the incident took place all of a sudden in a heat of passion. The accused/respondent Nos. 1 and 2 inflicted injuries on the body of injured/complainant. Had there been any intention on the part of the accused/respondent Nos.1 and 2, the whole picture would have been different. The trial Court, considering the nature of injuries, part on which inflicted and the weapon used, convicted and sentenced them to undergo R.I. for 5 years, which in the opinion of this Court, is just and proper.

12. As the accused/respondents have already undergone the sentence imposed upon them by the trial Court, this point too does not require any deliberation by this Court.

13. In view of the aforesaid discussion, the revision petition is liable to be dismissed and it is hereby dismissed.

Sd/-
(Rajani Dubey)
JUDGE