

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 318 of 2011**

1. Budhwar Singh S/o Laxman Singh Aged about 47 years, R/o Aamgaon, Dipka, District-Korba, Chhattisgarh.
2. Ishwar Alias Itwar S/o Budhwar Singh Aged About 27 Years, R/o Aamgaon, Dipka, District- Korba, Chhattisgarh.

---- Applicants**Versus**

- State Of Chhattisgarh, Through : District Magistrate, Korba, District Korba, Chhattisgarh.

---- Respondent

For Applicants	:	Mr. Sourabh Sharma, Adv.
For Respondent/State	:	Mr. Anurag Verma, PL

Hon'ble Smt. Justice Rajani Dubey**Order on Board****27.08.2019**

1. The present revision arises out of the impugned judgment of conviction and order of sentence dated 27.05.2011 passed by the learned Additional Sessions Judge, Katghora, District- Korba, C.G. in Criminal Appeal No. 41/2010 whereby, the learned appellate Court below has confirmed the conviction and sentence of the accused/applicants as awarded by the learned Judicial Magistrate First Class, Katghora, vide its judgment dated 15.09.2010 in Criminal Case No. 238/2009 for the offence under Section 323 of IPC and sentenced them to undergo R.I. for 3-3 months with fine of Rs. 1,000/- Rs. 1,000/-, plus default stipulation.
2. Brief facts of the case are that on 09.03.2009 at 11:00 pm. the applicants/accused assaulted Basant & Gouri Shankar with *lathi* and abused and threaten them to cause death in public place. Thereafter, FIR lodged against applicants/accused persons. After completion of investigation, charge sheet was filed and charges were framed by the trial Court against accused/applicants under Sections 294, 323 and 506-B of the IPC.

3. So as to hold the accused/applicants guilty, the prosecution has examined as many as 8 witnesses. Statement of the accused/applicants 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.
4. After hearing the parties, vide impugned judgment of conviction and order of sentence dated 15.09.2010, learned Judicial Magistrate has acquitted the applicants/accused from the offence under sections 294 and 506-B and has convicted and sentenced the accused/applicants for the offence under Section 323 of IPC and sentenced them to undergo R.I. for 6-6 months and to pay fine of Rs. 1,000/- - Rs. 1,000/-. This order was appealed by the applicants and in the appeal, learned Appellate Court has modified the conviction and sentence of the applicants as to undergo R.I. for 3-3 months and fine of Rs. 1,000/- - Rs. 1,000/-. Hence, the present revision.
5. Counsel for the applicants submits that he is not pressing the revision so far as it relates to the conviction part of the judgment and would confine his argument to the sentence part thereof only. According to him, the incident is said to have taken place in the year 2009, and thereby more than 10 years have rolled by since then. Applicant No. 1 is aged about 60 years and applicant No. 2 is aged about 40 years. The applicants have already remained in jail for more than 20 days, and no useful purpose would be served in again sending them to jail, therefore, in the interest of justice, it would be appropriate if the sentence imposed upon them may be reduced to the period already undergone by them.
6. Heard learned counsel for the parties and perused the material on record including the impugned judgment.
7. Learned counsel for the State has no objection to this preposition.
8. Having gone through the material on record and the evidence of the witnesses Basant (PW-1), Ganeshi Bai (PW-2), Gouri Shankar (PW-3), Dineshi Bai (PW-4), Tikaitram (PW-5), Dr. A.N. Kanwar (PW-6), A.K. Khandekar (PW-7), and R.K. Pandey (PW-8), established the involvement of the accused/applicants in the crime in question beyond reasonable doubt. This Court does not see any illegality in the findings recorded by both the Courts below as regards conviction of the applicants under Section 323 of IPC being so it is hereby maintained.

9. As regards sentence, keeping in view the facts that incident had taken place in the year 2009, and further that the applicants have already remained in jail for more than 20 days, therefore, their sentence is liable to be reduced to the period already undergone by them.
10. In view of the above consideration, the revision is partly allowed. While maintaining the conviction of the applicants, they are sentenced to the period already undergone by them. The applicants are on bail. Their bail bonds shall stand discharged.

**Sd/-
(Rajani Dubey)
JUDGE**