

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 378 of 2005**

1. Shekhar Khare (**Deleted**) As Per Honble Court dated 25/04/2018.
2. Atish Kumar, S/o Shri Manmohan Khare, aged about 19 years,
3. Ashok Kumar, S/o Shri Manmohan Khare, aged about 30 years,
All R/o Qtr. No. C.H. 222, Katarinar, P.S. Bankimongara, District
Korba (CG)

---- Applicants**Versus**

The State of Chhattisgarh through District Magistrate, District
Korba (C.G.)

--- Respondent

For Applicants : Shri Dharmesh Shrivastava, Advocate

For State/Respondent : Shri Aman Kesharwani, PL

Hon'ble Smt. Justice Vimla Singh Kapoor**Order On Board****06/02/2019**

Complainant Prakash Khadiya (PW-1) lodged a report (Ex. P-1) stating that on 02.09.2002 at about 7:30 PM the accused/applicants gained an entry into his house and branding his wife Barkha (PW-2) as witchcraft started abusing and thrashing him. Accused - Atish is said to have assaulted him with club and rod whereas accused - Ashok is said to have assaulted him with hands and fists. It is alleged that when PW-2 came to intervene in the matter, accused - Ashok had dragged her by hair and threw her down. He also trampled the foot of PW-1 and PW-2 by shoe worn by him. The incident is said to have been witnessed by the people of neighborhood also. On the report so lodged, offences under Sections 452, 294, 506 and 323 read with 34 IPC were registered against the accused/applicants, PW-1 and PW-2 were sent for medical examination, and after completion of investigation the charge sheet was laid against them.

2. Learned trial Court vide judgment dated 28.01.2005 passed in Criminal Case No.131/2004 convicted the accused/applicants under

Sections 452/34 and 323/34 IPC and sentenced each of them to undergo RI for one year with fine of Rs.500/- under Section 452/34 and to pay fine of Rs.100/- under Section 323 read with 34 IPC. In appeal, the conviction of the accused/applicants as arrived at by the trial Court has been maintained but the sentence of RI for one year has been reduced to that of six months under Section 452/34 IPC. However, the fine sentence under this section and the sentence under Section 323/34 IPC has been maintained vide judgment dated 30.08.2005 which is under challenge in this revision petition.

3. Counsel for the accused/applicants submits that findings recorded by the lower appellate Court are based on the evidence of the interested witnesses who happen to be husband and wife and, therefore, they are bad in law. He further submits that while passing the judgment impugned the lower appellate Court has ignored the evidence of Balwant (PW-3) who has not supported the case of the prosecution. Even Gaurav Chandra (PW-5) – the witness to seizure, according to the counsel for the applicants, has not supported the case of the prosecution but yet the Court below has fallen in error in not considering the same.

4. State counsel however supports the judgment impugned and submits that the judgment under challenge is well reasoned and no interference with the same is required to be made.

5. PW-1, PW-2 and PW-4 have duly supported the case of the prosecution stating the manner in which the accused/applicants entered their house and started abusing and thrashing PW-1 and PW-2 with the help of club and rod. Even the seizure of club has been made from the deceased – accused No.1 Shkhar Khare under Ex. P-2. PW-6 while supporting the case of the prosecution has also stated that a bamboo stick was seized from accused/applicant Shekhar. Dr. S. Chatterjee (PW-7) who medically examined PW-1 and PW-2 has stated that he noticed

swelling and contusion on the head of PW-1 vide report Ex.P-8 and bruises on the left toe of PW-2 vide report Ex.P-9. Thus the evidence on record clearly speaks about the act of the accused/applicants who at the relevant time had entered the house of the PW-1 and PW-2 and caused injuries to them branding PW-2 as witchcraft. No illegality has come to the notice of this Court which could warrant any interference with the judgment impugned as far as it pertains to the conviction of the accused/applicants. Being so, it is hereby maintained.

6. As regards sentence, considering the fact that the incident had taken place in the year 2002 involving the passage of about 17 years therefrom and further that as the accused/applicants have already remained in jail for about a week, this Court is of the opinion that no useful purpose is going to be served by sending them to jail at this stage. Accordingly, the sentence imposed on the accused/applicants is reduced to the period already undergone.

7. Revision is thus allowed in part.

**Sd/-
(Vimla Singh Kapoor)**

Judge