

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 386 of 2010

- Ghanshyam Patanwar

---- Applicant

Versus

- State Of Chhattisgarh

---- Respondent

Post for pronouncement of the order on 14.11.2019

**Sd/-
JUDGE**

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on : 14.08.2019****Order Delivered on : 14/11 /2019****CRR No. 386 of 2010**

- Ghanshyam Patanwar S/o Ram Sharan Patanwar R/o Vill. Dhaniya Ps Seepat, Bilaspur

---- Petitioner**Versus**

- State Of Chhattisgarh

---- Respondent

For Applicant	: Shri Arvind Kumar Dubey, Advocate
For Respondent/State	: Shri Anurag Verma, PL

Hon'ble Smt. Justice Rajani Dubey**C A V Order****14/11/2019**

The applicant in this revision is assailing the legality, validity and propriety of the impugned judgment and order dated 29.07.2010 passed by Fifth Additional Sessions Judge, Bilaspur in Cr.A. No. 43/2010, arising out of Cr. Case No.62/2010 passed by the Judicial Magistrate First Class, Bilaspur whereby the court below has acquitted him of the charge under Section 325 IPC but has convicted him under Section 323 IPC and sentenced to undergo RI for 6 months with fine of Rs. 500/-.

2. Facts of the case in brief are that on 22.08.06, complainant

Munna Lal lodged a report alleging that partition of the land has taken place between the brothers and brother of the complainant namely Sitaram has occupied 15 decimal of his land, case was filed before the Tahsildar, Seepat and order has been passed in his favour but his brother is not willing to vacate the land and is abusing and threatening to assault him. It is stated that on the date of incident, his brother Sitaram came along with his son Bablu and another brother Ghanshyam (present applicant) to him and started abusing him and assaulted with club and caused injury. While framing the charge, trial Judge has framed charge against the applicant and co-accused persons under Sections 294, 506, 323 and 325/34 IPC.

3. Prosecution has examined 6 witnesses in support of its case. Statement of the accused/applicants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the charges levelled against them and pleaded false implication in the case.

4. After hearing the parties, vide impugned judgment and order dated 13.05.2010, learned Magistrate has convicted the accused/applicant for the offence under Section 325 IPC and has sentenced to undergo RI for one year and fine of Rs. 500/-. This order was appealed by the applicant and in the appeal, learned appellate Court has acquitted the other two accused of the charges levelled against them but has convicted the present applicant under Section 323 IPC and sentenced to undergo RI for six months and fine of Rs. 500/-. Hence, the present revision.

5. Counsel for the applicant submits that the appellate court has given an erroneous finding by not considering the case that there was no intention or motive to assault the complainant. He submits that the appellate court has also not considered the statement of the doctor Rajesh Kumar (PW-3) who has stated that the injury found on the body of the complainant were simple in nature and that too were caused by hands and fists, therefore the order is bad and liable to be set aside.

6. On the other hand, counsel for the State has supported the judgment impugned.

7. Heard counsel for the parties and perused the material available on record.

8. Complainant Munna Lal (PW-1) has stated that on the date of incident, at about 3.30 p.m., when he was going to bring back the cows, near the pond, applicant started abusing him and assaulted with club on his head as a result of which he fell unconscious. Thereafter the report was lodged.

9. Counsel for the applicant submits that he is not pressing the revision as 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 2006 and thereby more than 13 years have rolled by since then, he is aged more than 60 years, the applicant has already remained in jail for about 10 days, no useful purpose would be served in again

sending him to jail, therefore it would be in the interest of justice if the sentence imposed on him is reduced to the period already undergone by him. To this, counsel for the State has no serious objection.

10. Thus, taking into consideration the fact that the incident had taken place in the year 2006 and further that the applicant has already remained in jail for about 10 days, the revision is partly allowed. Conviction part of the impugned judgment is maintained. Applicant is reported to have remained in jail for a period of 10 days, his sentence is reduced to the period already undergone by him.

11. Revision thus partly succeeds.

Sd/-

(Rajani Dubey)
Judge