

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 562 of 2008**

1. Dolamani, aged about 29 years, son of Shri Sadanand R/o village Baramkela, Thana-Baramkela, Teh - Sarangarh, District - Raigarh (C.G.)
2. Purushottam, aged about 29 years, son of Shri Krishnadas Vaishnaw, R/o village - Bar, Tehsil - Sarangarh, District Raigarh (C.G.)

----Applicants**Versus**

- State of Chhattisgarh Through - District Magistrate, Raigarh,(C.G.)

---- Respondent

For Applicants : Shri Roop Naik, Advocate.
 For State/Respondent: Shri Neeraj Mehta, P.L.

Hon'ble Smt. Justice Rajani Dubey**Order On Board****03/05/2019**

01. The present Revision petition is directed against the judgment and order dated 07.08.2008 passed by Additional Sessions Judge, Sarangarh, District Raigarh, in Cr.A. No.67/2005 modifying the judgment and order dated 03.05.2005 passed by Judicial Magistrate First Class, Sarangarh in Criminal Case No.343/1996 convicting the applicants under Sections 452, 186, 506-II, 323 r/w 149 and 365 IPC and sentencing them to undergo S.I. for 2 months 20

days with fine of Rs.1150/-, fine of Rs.50/-, fine of Rs.100/-, fine of Rs.50/- and S.I. for 2 months 20 days with fine of Rs.1150/-, plus default stipulation respectively.

02. Brief facts of the case are that on the date of incident i.e. on 18.04.1996, when complainant Nirmal Das (PW/1), who was working in the Postal Department in the capacity of E.D.D.A., was sorting some letters/parcels for its respective destination, at the relevant time, Mohan Agrawal of Dongripali along with his 3-4 friends came in white colour jeep, entered into Post Office hurling abuses, and Mohan told him to accompany them as he (complainant) was being called by the Inspector, to which he denied saying that he is doing official work. Thereafter, Mohan and his friends committed maarpeet with him and took him to Kalakhunta Forest and inquired from him as to who assaulted Thunku, how much money was given to inspector and asked him to give in writing. Further case of the prosecution is that when he refused to give in writing, they assaulted him, Mohan had pressed his neck and testicles. The complainant somehow managed to get free from the clutches of the applicants and informed the incident to Barik Babu of Baramkela Post Office. Thereafter, on 18.04.1996, a written report was lodged. Based on this report, offence under Sections 186, 353 and 365 IPC was registered against the applicants. Clothes of the complainant and jeep were seized vide Ex.P/3 and P/6 respectively. Complainant was medically examined by Dr. G. Sahu (PW/12) who gave his report in

Ex.P/7 noticing four abrasions on right elbow joint, left elbow joint, left shoulder and left side of neck. Test identification parade of the applicants was conducted vide Ex.P/4, and in the test identification parade, applicants were duly identified by complaint Nirmal Das. Spot map was prepared vide Ex.P/8 and P/9. During investigation, applicant Hem Kumar was reported to be absconded and rest of the applicants were arrested and charge sheet was filed.

03. After filing of the charge sheet, the trial Court framed the charge under Sections 186, 365, 294, 323 r/w 149, 452 and 506 Part-II IPC against the applicants.

04. So as to hold the accused persons guilty, the prosecution examined as many as 16 witnesses. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

05. Vide judgment and order dated 27.02.2008 the trial Magistrate has convicted the applicants under Sections 452, 186, 506 Part-II, 323 r/w 149 and 365 IPC. The judgment of the trial Court has been modified by the appellate Court vide impugned judgment dated 07.08.2008, hence this revision.

06. Learned counsel for the applicants submits that the applicant has been falsely implicated in the crime in question and the impugned judgment passed by the appellate Court

being contrary to the law is not sustainable. He further submits that both the Courts below have failed to appreciate the evidence properly and conclusion drawn in holding the applicants guilty of the offence under Sections 452, 186, 506 Part-II, 323 r/w 149 and 365 IPC is contrary to the evidence on record. It is next submitted that no test identification parade of the applicants was conducted and in the FIR lodged by the complainant name of applicants do not find place. It has also been submitted that in the Court itself, complainant and other prosecution witnesses have not deposed against the applicants. Lastly, it has been submitted that the finding of the learned trial judge is erroneous and looking to the allegation, conviction of the applicants cannot be sustained.

07. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the conviction of the applicants is in accordance with law and there is no infirmity in the same.

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

09. Nirmal Das (PW/1) is the complainant. He has stated in his evidence that when he was discharging his official duty in Post Office, Mohan and his other friends, whose name he does not know, came to him and forcibly took him along with them saying that he was called by Inspector. When he refused to go with them, applicant Hem Kumar assaulted him. Accused Mohan also threatened the Post Master saying that if he tries to

save him (this witness), the post office would be set on fire. This witness has identified other accused/applicants namely Sandeep Agrawal, Mohan Lal, Dolamani Nayak and Hem Kumar Patel only in the Court. He has further stated that the accused/applicants committed maarpeet with him in the jeep. Mohan had pressed his neck and asked him as to who committed murder of Thunku and forced him to give it in writing, to which he (this witness) said that he has no information in this regard. Due to assault, he became unconscious. In para 3, he has stated that when he regained consciousness, he lodged written report in police station, vide Ex.P/1, followed by registration of FIR in Ex.P/2. This witness has also stated that test identification parade was conducted vide Ex.P/4 and he had duly identified the accused/applicant. Further, in para 5 of examination-in-chief, this witness states that applicant Purushottam was not present at the time of incident, he was sitting inside the jeep. He further states that he has seen applicant Purushottam first time in the Court and the police did not ask him for identification parade of Purushottam. This witness, in para 6, also went on to state that while lodging the report, he did not know as to how many accused persons were there and he identified only Mohan. In cross-examination, he stated that dead body of Thunku, the son of Mohan, was recovered from the house adjacent to his house and, therefore, he was inquiring from him as to who killed his son. He has also stated that the accused/applicants

who were sitting in back seat of the Jeep were demanding his written statement, whereas the applicants sitting in front seat were quiet, one of them was Purushottam and one driver, with whom he has no complaint. A bare perusal of his entire statement reveals that he is not consistent while deposing and there is contradiction in his statement as to who assaulted him.

10. Ketan (PW/3) is the postman, who at the relevant time, was present there. He has stated that while he and Nirmal Das were doing their official work, Mohan and his four friends reached there and applicant Dolamani said to Nirmal Das that Thana Incharge has called him, to which Nirmal Das refused to come. He has further stated that applicant Dolamani assaulted Nirmal Das, as a result of which Nirmal Das fell down on the ground. It is relevant to note here that this witness has identified applicants namely Purushottam, Dolamani, Sandeep and Mohan first time in the Court.

In para 5 of his cross-examination, he states that no test identification parade was conducted by the police before him. He admits that except Mohan, he does not know anyone. In para 13, this witness states that no interruption was caused even after arrival of the applicants. He is not aware as to what had happened outside the post office. Further, in para 14, this witness admits that he has seen the applicants first time in the Court. A suggestion that he could identify the applicants as they are present in the dock, has been accepted.

11. Bansidhar Sidar (PW/15) is the Head Constable. He has

stated that he had carried out the investigation of the matter and having found the evidence against accused/applicants, he prepared final report. This witness, in para 14 of his cross-examination, has stated that neither in the FIR (Ex.P/2) nor in the 161 Cr.P.C. statement, name of applicant Purushottam finds place.

12. Close scrutiny of the evidence makes it clear that when complainant Nirmal Das was discharging his duty in post office, Mohan Agrawal of village Dongripali along with four other accused came there, assaulted, threatened and took him along with them to forest and forcibly demanded his written statement as to who killed Thunku, the son of Mohan Agrawal. The complainant PW/1, in his Court statement, has stated the except Mohan, he does not know anyone, and has stated that applicant Purushottam has assaulted him, but then this Court finds from the evidence of Postman Ketan (PW/3) wherein he has stated that applicant Dolamani had assaulted Nirmal Das. Both the witnesses PW/1 and PW/3 have admitted that they have identified the applicants first time in the Court and PW/3 has emphatically stated that no test identification parade was conducted before him, and there is contradiction in their Courts statement also. Most importantly, the name of applicants do not find place either in the FIR or in the 161 Cr.P.C. statement of the witnesses. Thus, from the evidence available on record it is clear that the prosecution has not succeeded in proving its case beyond reasonable doubt that it is the applicants who had

obstructed public servant in discharge of public functions, voluntarily caused hurt, kidnapped or abducted, committed house trespass after preparation for hurt, assaulted or wrongfully restraint and committed criminal intimidation. Considering the entire evidence adduced by the prosecution, this Court finds it difficult to uphold the conviction of the applicants Dolamani (A-1) and Purushottam (A-2) under Sections 186, 323 r/w 149, 356, 452 and 506 Part-II IPC.

13. In the result, the revision is allowed. The impugned judgment dated 07.08.2008 so far as it relates to Dolamani (A-1) and Purushottam (A-2) is hereby set aside and they are acquitted of the charges levelled against them. The accused/applicants are on bail. Their bail bonds shall stand discharged.

Sd/-

(Rajani Dubey)
JUDGE

vijay