

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 1127 of 2016**

1. Basant Lal Yadav S/o Punu @ Jeetram Yadav, aged about 55 years, by Caste - Yadav, R/o village - Dharashiv, Thana & Tahsil - Nawagarh, Civil & Revenue, District Janjgir-Champa (C.G.)
2. Manish Kumar Yadav S/o Shri Basant Lal Yadav, aged about 20 years, by Caste Yadav, R/o village Dharashiv, Thana & Tahsil - Nawagarh, Civil & Revenue District Janjgir-Champa (C.G.)

----Applicants**Versus**

- State of Chhattisgarh Through : The District Magistrate, Janjgir, District Janjgir-Champa, Chhattisgarh.

---- Respondent

For Applicants	:	Shri Sunil Sahu, Adv.
For Respondent/State	:	Shri B.L. Sahu, P.L.

Hon'ble Smt. Justice Rajani Dubey**Order on Board****23/09/2019**

01. This criminal revision is directed against the order dated 02.12.2016 passed by the learned Sessions Judge, Janjgir-Champa (C.G.), in Criminal Appeal No.88/2016, whereby the learned appellate Court below has affirmed the conviction and sentence of the applicants under Sections 323/34 and 325/34, as awarded on 28.06.2016 by the Judicial Magistrate First Class, Nawagarh, District Janjgir-Champa (C.G.) in Criminal Case No.476/2015.

02. Brief facts of the case are that on 10.11.2015, complainant Dharmin Bai Yadav made a written report at Police Station Nawagarh, District Janjgir-Champa alleging therein that on the very day at about 8.30 am, when her husband Ishwarlal Yadav was sitting in the courtyard of the house, applicant Basantlal Yadav (A-1), whose house situated in front of their house, came there hurling abuses and some dispute with regard to parking of the vehicle took place between them. At the relevant time, applicant Manish Yadav (A-2), son of applicant Basantlal Yadav (A-1), also come there and joined his father. Thereafter, applicant Basantlal Yadav (A-1) assaulted Ishwarlal Yadav by club and his son Manish Yadav (A-2) by hands and fists. When Dharmin Bai Yadav tried to intervene the matter, she was also assaulted by the applicants by hands and fists. Based on which, FIR (Ex.P/10) was registered against the applicants for the offence punishable under Sections 294, 506, 323, 34 IPC. After medical examination of the injured persons and after completion of investigation, the charge sheet was filed against the accused/applicants.

03. So as to hold the accused/applicants guilty, the prosecution has examined as many as 09 witnesses. Statements of the accused/applicants were also recorded under Section 313 of CrPC, in which they denied the circumstances appearing against them and pleaded innocence and false implication in the case.

04. Learned Magistrate having perused the material before it while acquitting the applicants of the charge under Sections 294 and 506 IPC, convicted them under Sections 323/34, 325/34 IPC and sentenced them to undergo R.I. for 3-3 months with fine of Rs.200/- – Rs.200/- and R.I. for 1-1 year with fine of Rs.200/- - Rs.200/-, plus default stipulation respectively. This order was appealed by the applicants and, in the appeal, the learned Appellate Court has affirmed the conviction and sentence of the applicants as described above. Hence, the present revision.

05. Learned counsel for the applicants submits that the Courts below have committed an error in convicting and sentencing the accused/applicants as mentioned above though the evidence led by the prosecution was lacking and, therefore, the same may be set aside.

06. State counsel, however, supports the findings recorded by the Court below.

07. Heard learned counsel for the parties and perused the judgment impugned and the evidence available on record carefully.

08. Evidence of injured Ishwarlal Yadav (PW/2) goes to show that on the date of incident, applicant Basantlal Yadav (A-1) was hurling abuses loudly which was objected by him then the applicant said that he is giving abuse to him (this witness). When this witness went to the applicant, he caught hold of him and tossed. In the meanwhile, applicant Manish Kumar

(A-2), son of Basantlal, also came there and both of them assaulted him with club and hands & fists as a result of which he sustained injuries on his head and got his right ribs fractured. Evidence also goes to show that the report was lodged by his wife complainant Dharmin Bai Yadav (PW/1), who has almost made similar statement as has been made by Ishwarlal Yadav (PW/2). In cross-examination, these witnesses remained firm and nothing could be elicited from their statements to discredit their testimonies. The evidence of these witnesses is well corroborated by the evidence of Bhuwaneshwar Yadav (PW/4) more particularly by the evidence of Dr. N.K. Sahu (PW/7) who examined injured Ishwarlal Yadav (PW/2) and complainant Dharmin Bai Yadav (PW/1) & gave his reports (Ex.P/6 and P/7) respectively noticing scratch mark of 3 x 1 cm on left arm, mild tenderness and pain on left shoulder and swelling on left cheek of complainant/injured Dharmin Bai (PW/1) and lacerated wound on right occipital temporal region, contusion of 4 x 3 cm on right side of back, contusion of 6 x 2 cm on left side of back and scratch mark of 2 x 1 cm on nose of injured Ishwarlal Yadav (PW/2). This witness also noticed fracture of ribs of Ishwarlal Yadav (PW/2). The evidence of these witnesses is sufficient to draw an inference that it is the applicants who assaulted the Ishwarlal Yadav (PW/2) and his wife Dharmin Bai (PW/1). This Court is of the opinion that the conviction recorded by both the Courts below as described above is

strictly on the basis of evidence on record and there is nothing worth interference with the same. Conviction is thus maintained.

09. As regards sentence, keeping in view the facts that the incident had taken place in the month of November, 2015 and thereby more than 05 years have rolled by since then and further that the applicants have already remained in jail for more than 43 days. This Court is of the opinion that no useful purpose would be served in sending them back to jail at this stage and the ends of justice would be served if they are sentenced to the period already undergone by them with imposition of fine of Rs.5,000/-.

10. In view of the aforesaid discussion, the revision is partly allowed. While maintaining the conviction of the applicants, they are sentenced to the period already undergone by them. However, they are directed to pay fine of Rs.5,000/- within eight months, in default of payment of fine amount, the applicants shall have to undergo R.I. for 2-2 months. The trial Court to disburse the fine amount, so deposited by the applicants, to the injured Ishwarlal Yadav (PW/2) and Dharmin Bai Yadav (PW/1), after due verification by it. The applicants are reported to be on bail. Their bail bonds shall stand discharged.

Sd/-

(Rajani Dubey)
JUDGE