

**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRR No. 638 of 2009**

1. Prabhat Kumar, S/o Late Nirmal Kumar, aged about 55 years,
2. Ravi Kumar, S/o Late Nirmal Kumar, aged about 45 years,

Both are resident of Nayapara, Kirtinagar, P.S. Tarbahar, District – Bilaspur, Chhattisgarh

**---- Applicants**

**Versus**

- State of Chhattisgarh, Through District Magistrate, Bilaspur, Chhattisgarh

**---- Respondent**

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| For Applicants       | : | Shri Rahil Kochar, Adv. |
| For Respondent/State | : | Shri Anurag Verma, PL   |

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**Hon'ble Smt. Justice Rajani Dubey**

**Order On Board**

**07.08.2019**

1. The present revision arises out of the judgment of conviction and order of sentence dated 22.12.2009 passed by the Learned Fourth Additional Sessions Judge, Bilaspur, in Cr. Appeal No. 77/2009, whereby the learned appellate Court below has affirmed the conviction and sentence of the accused/applicants as awarded by the learned Judicial Magistrate First Class, Bilaspur, vide its judgment dated 30.07.2009 in Cr. Case No. 147/2008 for the offence under Section 323/34(two times) of the IPC and sentenced them to undergo RI for six months and to pay fine of Rs.100/-, RI for six months and to pay fine of Rs.100/- and under Section 325/34 of the IPC and sentenced them to

undergo RI for six months and to pay fine of Rs.100/-, to each, respectively, with default stipulations.

2. Brief facts of the case are that complainant was working in Jindal Company, Raipur. On 10.07.2005, when he reached his home which is at Bilaspur, where his mother and father told him that accused/applicants Ravi and Prabhat came to their house in the night and they were also abusing them, so they made a report in the police station. At that time, the applicants came in his house and they were clubbed with *danda* and something in their hands and assaulted the complainant and his mother and father. Due to which, they sustained grievous injuries. The applicants also threatened them that if they will make complaint against them in the police station, they will kill the complainant. Thereafter, the FIR was registered by the complainant against the applicants. After completion of investigation charge-sheet was filed and charges were framed against the accused/applicants under Sections 294, 323, 506-B and 325/34 of the IPC.

3. So as to prove the guilt of the accused/applicants, the prosecution has examined 07 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 30.07.2009, learned Judicial Magistrate First Class has acquitted the applicants under Section 294, 506-B of the IPC and convicted them under Section 323/34 (two times) of the IPC and sentenced them to undergo RI for six months and to pay fine

of Rs.100/- and RI for six months and to pay fine of Rs.100/- (to each) and Section 325/34 of the IPC and sentenced him to undergo RI for six months and to pay fine of Rs.100/- to each, respectively, with default stipulations. This order was appealed by the applicants and in the appeal, learned appellate Court has affirmed the conviction and sentence of the applicants. Hence, the present revision.

5. Heard counsel for the parties and perused the material on record including the impugned judgment.

6. Counsel for the applicants submits that he is not pressing this 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 2005 and thereby more than 14 years have rolled by since then, applicant No.1 is aged about 65 years and applicant No.2 is aged about 55 years, they have already remained in jail for about fifteen days and no useful purpose would be served in again sending them to jail. Therefore, it would be in the interest of justice if the sentence imposed on them may be reduced to the period already undergone by them. Learned counsel for the applicant has also placed reliance in the matter of Ayub and others Vs. State of U.P.<sup>1</sup>

7. Learned State counsel has no objection to this preposition.

8. Having gone through the material on record and the evidence of the witnesses including Madho Singh (PW-1), Khuman Singh (PW-2), Mil Bai (PW-3), Rajju (PW-4) and Dr. A.S. Khan(PW-6) establishes the involvement of the accused/applicants in crime in question, this Court

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1 AIR 1994 SUPREME COURT 1064

does not see any illegality in the findings recorded by both the Courts below as regards conviction of the applicant under Sections 323/34, 323/34 and 325/34 of the IPC, being so they are hereby maintained.

9. As regards sentence, keeping in view the fact that the incident had taken place in the year 2005 and the applicant has already remained in jail for about 15 days and further considering the fact that the applicants have already faced a prolonged trial and suffered trauma of uncertainty arising out of their conviction by the Sessions Court, the revision is partly allowed and their sentence is liable to be reduced to the period already undergone by them. Conviction part of the impugned judgment is maintained.

10. The applicants are on bail. Their bail bond shall stand discharged.

11. Revision thus partly succeeds.

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