

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.578 of 2014

Order Reserved on : 5.2.2019

Order Passed on : 19.3.2019

Sudhir Kumar, S/o Anand Prakash Patel, aged 38 years, R/o Village Bandora, P.S. and Tahsil Maalkharouda, District Janjgir-Champa, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through District Magistrate Janjgir, Civil and Revenue District Janjgir-Champa, Chhattisgarh

--- Respondent

For Applicant	:	Shri Ishwar Jaiswal, Advocate
For Respondent	:	Ms. Smriti Shrivastava, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. This revision has been preferred against the judgment dated 9.6.2014 passed by the 1st Additional Sessions Judge, Sakti, District Janjgir-Champa in Criminal Appeal No.48 of 2014 arising out of the judgment dated 18.2.2014 passed by the Judicial Magistrate First Class, Malkharouda, District Janjgir-Champa in Criminal Case No.259 of 2011, whereby the Judicial Magistrate First Class has convicted the Applicant under Section 324 of the Indian Penal Code and sentenced him with imprisonment till rising of the Court and with fine of Rs.1,000/- with default stipulation. The Appellate Court has affirmed the judgment of the Trial Court and dismissed the appeal.
2. Case of the prosecution, in brief, is that Complainant Hitesh Kumar (PW1) is a resident of Village Bandora. On 22.10.2011, with the

help of villagers, a dance competition was organised. Both the Complainant and the Applicant were sitting on the stage and watching the dance competition. After sometime, the Applicant stepped down from the stage and after going away to some distance from the stage he got a message sent that the persons sitting on the stage should get down from the stage. The Complainant raised an objection that when the Applicant himself was earlier sitting on the stage then later on why he was asking them to get down from the stage. On this, a dispute took place between the Applicant and the Complainant. Allegedly, the Applicant abused the Complainant in filthy language and also threatened him. The Applicant caught the neck of the Complainant with his both hands and thereafter catching the waist of the Complainant the Applicant dragged the Complainant down from the stage and beat him with hands and fists. As a result of the assault, the Complainant sustained nail injuries on his waist, stomach and back. First Information Report (Ex.P1) was lodged by the Complainant. Medical examination of the Complainant was done by Dr. R.P. Kurre (PW4). His report is Ex.P2 in which he found many scratch injuries of human nails on left side of the stomach and both sides of the neck. Statements of other witnesses were also recorded. On completion of the investigation, a charge-sheet was filed. The Judicial Magistrate First Class framed charges against the Applicant for offence punishable under Sections 294, 324 in the alternative Section 323 and Section 506 of the Indian Penal Code. As many as 7 witnesses were examined by the prosecution. On completion of the trial, the Trial Court convicted and sentenced the Applicant and the Appellate Court affirmed the judgment of conviction and sentence as mentioned in first

paragraph of this order. Hence, this revision by the Applicant.

3. Learned Counsel appearing for the Applicant submitted that the Court below has convicted the Applicant only on the basis of the statements of Complainant Hitesh Kumar (PW1) and Mitthulal (PW2), who is a closed relative of the Complainant. Since Mitthulal (PW2) is a closed relative of the Complainant and is thus an interested witness, his statement is not reliable. It was further submitted that there are material contradictions and omissions in the statements of both the above witnesses. Apart from this, other witnesses Shankarlal (PW3) and Mahendra Kumar (PW5) have not supported the case of the prosecution. It was also submitted that a previous enmity between the parties has been established, therefore, it is clear that the Applicant has falsely been implicated in the case. Hence, he prays for acquittal of the Applicant.
4. Learned Counsel appearing for the State supported the impugned judgment of conviction and sentence.
5. I have heard Learned Counsel appearing for the parties and perused the records with due care.
6. In his statement before the Court, Complainant Hitesh Kumar (PW1) has categorically stated that at the time of incident both he and the Applicant were present on the stage and thereafter the Applicant got down from the stage and after getting down of the Applicant a dispute took place between them in which the Applicant committed *marpeet* with him and by catching his waist he caused him to fall down. As a result of the assault, he suffered injuries on his stomach and other parts of his body by the nails of the Applicant.

7. Dr. R.P. Kurre (PW4), who medically examined Complainant Hitesh Kumar (PW1), has corroborated the above statement of the Complainant and has stated that on being examined he found nail injuries on the stomach and neck of the Complainant. The statement of the Complainant has also been duly corroborated by Mitthulal (PW2). Though Mitthulal is a relative of the Complainant, only on this ground his statement cannot be discarded.
8. Shankarlal (PW3) has also stated that a quarrel had taken place between the Complainant and the Applicant. Mahendra Kumar (PW5) has also stated that a *marpeet* had taken place between the Complainant and the Applicant. Both these witnesses have categorically admitted the fact that they were standing away from the place of incident, therefore they could not see who assaulted whom, but they have categorically stated that a quarrel and *marpeet* had taken place between the Complainant and the Applicant. Thus, from the statements of the above two witnesses also, it is established that an incident of quarrel and *marpeet* had taken place between the Complainant and the Applicant. Though there are some contradictions and omissions in the statements of Complainant Hitesh Kumar (PW1) and Mitthulal (PW2), they are not material.
9. Considering the above evidence available on record, I find that both the Courts below have rightly convicted the Applicant for the offence under Section 324 of the Indian Penal Code. I find no infirmity or illegality in the finding of conviction of the Applicant. Therefore, the conviction imposed upon the Applicant by the Courts below for the offence under Section 324 of the Indian Penal Code is affirmed.

10. As regards the sentence part, the Applicant has been imposed with imprisonment till rising of the Court and with fine of Rs.1,000/-, which is just and proper and, therefore, the sentence is also affirmed.
11. Consequently, the instant revision is dismissed.
12. Records of the Courts below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE