

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No.197 of 2009**

1. Visheshar Mali S/o Shyam Sunder Mali, aged about 53 years,
 2. Suresh Kumar Mali S/o Visheshar Mali, Aged about 25 years,
- Both are R/o Village- Mokhaguda, P.S. - Deobhog, District Raipur (C.G.)

---- Applicants**Versus**

- State of Chhattisgarh, through the District Magistrate, District- Raipur (C.G.)

---- Respondent

For Appellants	:	Shri Shivendu Pandya, adv.
For Respondent/State	:	Shri Wasim Miya, PL

Hon'ble Smt. Justice Rajani Dubey**Order On Board****09.07.2019**

1. The present revision arises out of the impugned judgment of conviction and order of sentence dated 06.03.2009 passed by the learned Additional Sessions Judge, Gariyaband, District- Raipur (C.G.) in Cr. Appeal No. 11/2009 whereby, the learned appellate Court below has confirmed the conviction and sentence of the accused/applicants as awarded by the learned Judicial Magistrate First Class, Deobhog, (C.G.) vide its judgment dated 28.01.2009 in Criminal Case No. 15/2007 for the offence under Section 325/34 of IPC and sentenced them to undergo R.I. for six months with fine of Rs. 1,000/- each, plus default stipulation.

2. Brief facts of the case are that on 25.01.2007, when complainant Ravidhar was digging in front of his house for constructing varnada/parchhi, accused/applicants came to the place of incident and

hurled abuses, threatened and also assaulted him by way of hands, due to which one tooth of the complainant was broken. An FIR was registered against the accused/applicants. After completion of investigation, charge-sheet was filed and charges were framed against the applicants under Sections 294, 506 Part-II & 325/34 of IPC.

3. So as to hold the accused/applicants guilty, the prosecution has examined as many as 06 witnesses. Statements of the accused/applicants were also recorded under Section 313 of the Cr.P.C. in which they denied the charge 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 28.01.2009, learned Judicial Magistrate First Class has acquitted the applicants under Sections 294, 506 Part-II and convicted them under Section 325/34 of IPC and sentenced the applicants to undergo RI for six months and to pay fine of Rs. 1,000/- each. This order was appealed by the applicants and in the appeal, learned Appellate Court has confirmed the conviction and sentence of the appellants. Hence, the present revision.

5. Heard learned 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 the revision so 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 2007, and thereby near about 12 years have rolled by since then. Visheshar Mali (Applicant No.1) and Suresh Kumar Mali (Applicant No.2) are aged about 65 years and 35 years respectively. The applicants have already remained in jail for about two and a half months, and no useful purpose would be served in again sending them to jail, therefore, in the interest of justice, it would be appropriate if the sentence imposed upon them may be reduced to the period already undergone by them.

7. On the other hand, supporting the impugned judgment, learned

counsel for the State submits that the Court below was fully justified in committing and sentencing the applicants.

8. Having gone through the material on record and the evidence of the witnesses Ravidhar (PW-1), Dr. Anju Sonwani (PW-2), Sitaram (PW-3), Dhaniram (PW-4) & Hariram (PW-5), involvement of the accused/applicants in the crime in question stands proved beyond reasonable doubt. This Court does not see any illegality in the findings recorded by both the Courts below as regards conviction of the appellants under Section 325/34 of IPC.

9. As regards sentence, keeping in view the facts that incident had taken place in the year 2007, and further that the appellants had already remained in jail for about two and a half months and no useful purpose would be served in again sending them jail and their sentence is liable to be reduced to the period already undergone by them.

10. In view of the above consideration, the revision is partly allowed. While maintaining the conviction of the appellant, they are sentenced to the period already undergone by them. The applicants are reported to be on bail. Their bail bonds shall stand discharged.

Sd/-
(Rajani Dubey)
JUDGE