

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 743 of 2008

1. Butu @ Trinath, S/o Kavinath, 37 years.
2. Hemu @ Hemsingh, S/o Kamlu Ram, 43 years.
3. Amar S/o Kavinath, 30 years.
4. Chura @ Vishal S/o Sonuram, 32 years,
All R/o. Village Biringpal, P.S. Parpa, District Bastar, CG.

---- Applicants

Versus

State of Chhattisgarh through District Magistrate Jagdalpur, District Bastar, CG.

---- Respondent

For Applicants	: Shri Prafull Bharat , Advocate and Shri Keshav Dewangan, Advocate
For State/Respondent	: Shri Aman Kesharwani, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

13/03/2019

Case of the prosecution in brief is that on 12.09.1998 at about 5:30 PM when complainant Dhansingh (PW-1) was sitting in his cycle shop after returning from forest, the accused/applicants came inside his shop and started assaulting him with slipper, hands and fists and butt of axe on various parts of his body saying that he had cut the Neelgiri tree on the pretense of medicine. They are also alleged to have tied him down and kept him in captivity for whole night. On the basis of FIR the offences under Sections 452, 342, 323 and 506/34 IPC were registered against them and after completion of investigation charge-sheet was filed, charge was framed and the trial commenced.

2. The trial Court vide judgment dated 01.09.2006 passed in Criminal Case No.519/2004 held the accused/applicants guilty under Sections 452, 323 and 342/34 IPC and sentenced each of them to undergo RI for 6 months with fine of Rs.500/- u/s 452, RI for 3 months with fine of Rs.500/- u/s 323 and

RI for 3 months with fine of Rs.500/- u/s 342 IPC plus default stipulation. Learned lower appellate Court has also confirmed the judgment of trial Court vide judgment impugned passed in Criminal Appeal No.34/2006.

3. Counsel for the accused/applicants submits that though the witnesses examined by the prosecution have not supported the seizure yet the Court below has committed an error of law by holding them guilty for the offences alleged against them. He further submits that the witnesses have exaggerated their version but the Court below has ignored the same and held the accused/applicants guilty, which is not proper. State counsel however supports the judgment impugned.

4. Having seen the evidence of the victim PW-1 this Court has no hesitation to say that the prosecution has proved its case beyond reasonable doubt. The complainant has categorically stated that on the date of incident the accused/applicants forced themselves into his cycle shop and saying as to why he had cut the Neelgiri tree, opened an assault at him by hands and fists, slippers and the axe butt. Though the seizure witnesses have not specifically stated about the seizure made, yet they have admitted their signatures on the seizure memo. The doctor (PW-3) who examined the victim vide his report Ex.P-2 has also supported the case of the prosecution stating that he noticed swelling of various diameters on several parts of his body. Thus the act of the accused/applicants in forcing themselves into the cycle shop of the complainant and opening an assault at him is established beyond reasonable doubt. Both the Courts below appear to be fully justified in arriving at the conclusion that the accused/applicants were actively involved in the commission of the offences alleged against them. No illegality appears to find place in the conviction part of the judgment impugned and being so, it is hereby maintained.

5. As regards sentence, looking to the various mitigating factors standing in support of the applicants such as lapse of considerable long span of time since the occurrence, the number of days spent by them in detention which in

this case comes to 1 month 4 days and that by now bunch of responsibilities must have fallen in their share to be taken care of, this Court thinks it in the interest of justice to reduce their sentence to the period already undergone. Order accordingly.

6. With the above, the revision is thus allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi/Ajay