

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 436 of 2010**

1. Rishikeshwar S/o Munu Yadav, aged about 32 years,
2. Jagarnath S/o Munu Yadav, aged about 26 years,
3. Rameshwar S/o Munu Yadav, aged about 41 years,
4. Jaidhar S/o Munu Yadav, aged about 46 years,
All R/o village Mundadih, P.S. Farshabahr, District Jashpur (C.G.)
5. Jayo S/o Khasru Yadav, aged about 61 years, R/o. Village Kardega, Police Station Tapkara, District Jashpur (C.G.)

---- Applicants**Versus**

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

---- Respondent

For Applicants	:	Shri A.K. Prasad, Advocate
For Respondent/State	:	Shri Subhash Yadav, Dy. A.G.

Hon'ble Smt. Justice Rajani Dubey**Order On Board****06.05.2019**

1. The present revision arises out of the impugned judgment of conviction and order of sentence dated 19/08/2010 passed by the Additional Sessions Judge, Camp Court, Kunkuri, district Jashpur, in Cr. Appeal No. 07/2008 whereby, the learned appellate Court below has modified the conviction and sentence of the accused/applicants as awarded by the learned Judicial Magistrate First Class, Kunkuri, vide its judgment dated 28/08/2008 in Criminal Case No. 583/2008, acquitting the applicants of the offence under Sections 452, 323/149, 506-B and 147 of IPC, and convicting them under Section 5 of Chhattisgarh Tonahi Pratadna Nivaran Act and sentenced them to undergo S.I. for 3 months with fine of Rs. 100/- each, plus default

stipulation.

2. Brief facts of the case are that a charge-sheet was filed against the applicants alleging in it that on 27.01.2007 at about 1 AM, they committed house tress pass in the house of complainant Puran, called Ambika Bai, the wife of complainant, Tonhi, applicant Jagarnath assaulted on her head by hands and fists, and threatened for dire consequences while objecting him to dig her house.

3. So as to hold the accused/applicants guilty, the prosecution has examined as many as 07 witnesses. Statement 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 28/08/2008, learned Judicial Magistrate, First Class, has convicted the applicants under Sections 452, 147, 323/149, 506-B IPC and Section 5 of Chhattisgarh Tonahi Pratadna Nivaran Act and sentenced them to undergo S.I. for 3 months with fine of Rs. 100/-, S.I. for 1 month, S.I. for 1 month, S.I. for 3 months and S.I. for 3 months each respectively. This order was appealed by the applicants and in the appeal, learned Appellate Court has modified the conviction and sentence of the appellant as mentioned above in para 1 of this order. 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 more than 11 years have rolled by since then. Applicants Rishikeshwar, Jagarnath, Rameshwar, Jaidhar & Jayo are aged about 45 years, 40 years, 53 years, 60 years and 72 years respectively. The applicants have already remained in jail for 7 days, 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. Learned counsel for the State has no objection to this preposition.

8. Having gone through the material on record and the evidence of the witnesses Pooran Yadav (PW-1), Ambika Bai (PW-2), Nityanand Ram (PW-4), Padma Bai (PW-5), and Prahlad Rathore (PW-7) involvement of the accused/applicants in the crime in question stands proved beyond reasonable doubt. This Court does not see any illegality in the impugned judgment dated 19/08/2010 convicting the applicants.

9. As regards sentence, keeping in view the facts that incident had taken place in the year 2007, and further that the applicants had already remained in jail for 7 days, therefore, 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 applicants, they are sentenced to the period already undergone by them.

Sd/-
(Rajani Dubey)
JUDGE