

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 430 of 2008

Daud Pathar, S/o Lajar Pathar, aged about 25 years, Caste -
Uraon, Resident of – N. (wrongly mentioned S.) T.P.C. Colony, Darri
Korba, Tahsil Khatghora, District Kora(CG)

---- Applicant

Versus

State of Chhattisgarh through The Collector Korba (C.G.)

--- Respondent

For Applicant : Shri Dharmesh Shrivastava, Advocate

For Respondent : Shri Aman Kesharwani, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

24/06/2019

FIR (Ex.P-1) lodged by Gopal Rai (PW-1) goes to show that on 09.10.2000 when he being the driver of a bus plying in between Jail Gaon and Kharsiya, had come down to Deogaon, the accused/applicant along with co-accused Rajesh Toppo approached them and started demanding money for consuming liquor and fish from PW-2 – the helper of the said bus. When PW-2 expressed his inability to part with the said amount, the accused/applicant and the co-accused started hurling abuses at him and also inflicted injuries to him with the help of club. Thereafter when PW-1 came to intervene in the matter, the accused/applicant and his colleague abused him also and opened an assault with club and iron rod. Not only this, they also threatened PW-1 and PW-2 of being further assaulted if they again turned up to their village. After investigation including medical examination of PW-1 and PW-2 *challan* was filed against the accused/applicant and his associate followed by framing of charge under Sections 294, 323, 325/34 and 506-B IPC.

2. Learned Magistrate vide judgment dated 04.04.2008 found the complicity of the accused in the crime in question fully established and thus convicted both of them under Sections 323 and 325 IPC with

imposition of sentence of RI for 6 months with fine under each count. Learned lower Appellate Court by the judgment impugned dated 17.06.2008 though maintained the conviction of the accused/applicant but slashed the jail sentence to RI for 3 months from that of 6 months keeping the sentence under Section 325 IPC as it is. Hence this revision.

3. Having heard counsel for the parties and perused the material on record in particular the evidence of injured (PW-1 and PW-2) as also the Doctor (PW-5) who did their medical examination, this Court has not hesitation to say that PW-1 and PW-2 had been quite consistent right from the beginning in stating that when the demand raised by the accused/applicant for enjoying liquor and fish was turned down by PW-2, the accused/applicant and his associate started hurling abuses and opening assault with club on him. Record also shows that when PW-1 came to the rescue of PW-2, he too was not spared and was subjected to similar treatment of abuses and assault with the help of club and rod. Doctor (PW-5) who medically examined PW-1 and PW-2 also supported the prosecution stating that though the injuries suffered by PW-2 were simple in nature yet PW-1 had suffered fracture on his left ulna including other injuries on various parts of his body such as hand, head etc.. Seizure of iron rod was also effected under Ex.P-3. Thus the entire material on record leads to an irresistible conclusion that it is the accused/applicant who was actively involved in commission of the crime in question and, therefore, the finding of conviction recorded by both the Courts below do not suffer from any illegality or infirmity. It is hereby maintained.

4. However taking into consideration the fact that the incident had occurred about 19 years back and that the accused/applicant has already suffered a lot by facing prolonged prosecution and also spending in jail for a period of more than a fortnight, this Court feels it in the interest of justice not to send him inside at this belated stage and thereby reduce the

sentence imposed on him to the period for which he has already spent behind the bars. Ordered accordingly.

5. Revision is thus allowed in part.

Sd/-
(Vimla Singh Kapoor)
Judge

Jyotishi/Ajay