

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 726 of 2008

Order reserved on 21/02/2019

Order delivered on 28/08/2019

1. Bhushan Lal, Aged about 23 years, S/o. Shri Tiharu Diwan,
 2. Ude Ram, Aged about 28 years, S/o. Shri Tiharu Diwan,
- Both are resident of village Kukradhih, Police Station Tumgaon, Tahsil and District Mahasamund (C.G.)

-----Applicants

Versus

State of Chhattisgarh Through Police Station Tumgaon, Tahsil and District Mahasamund (C.G.)

-----Respondent

For the Applicants : Shri Jameel Akhtar Lohani, Advocate
For the Respondent : Shri Aman Kesharwani, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Judgment

By the judgment under challenge passed on 06.11.2008 by Sessions Judge, Mahasamund, in Criminal Appeal No. 106/2008, modifying the judgment of conviction and order of sentence dated 22-08-2008 passed by the Judicial Magistrate First Class, Mahasamund in Criminal Case No. 157/2007, convicting the accused/applicants under Section 323/34 and sentencing them to undergo RI for 1 month plus default stipulation.

2. Facts of the case, in brief, are that on 12.06.2007 at about 12.30 AM, in village Kukradhih, the work of road levelling was being

done by the village Sarpanch namely Jeevan Lal and as the floor of the house of the applicants was coming in the way, it was also required to be removed, which was objected to by applicant Bhushan. It is further alleged that the applicants also abused the village Sarpanch, accused Ude ram caught hold of the hands of the complainant whereas applicant Bhushan assaulted him with *lathi* causing injuries on head. FIR (Ex.P-1) was lodged by the complainant in Police Station Tumgaon against the applicants and the victim was sent for medical examination. After completion of investigation, charge sheet was filed against them and charge was framed accordingly.

3. Learned counsel appearing for the applicants argued that the judgment passed by the trial Court as well as the appellate Court is erroneous and contrary to the law. He further submits that this being the first offence alleged against the applicants, benefit of Probation of Offender Act may be extended to them, so that the service carrier of the accused Bhushan Lal may be protected. In support of his submission he also placed reliance on **Union of India v. State of Bihar 2005(CJ(SC) 1588**, **Bidhi Chand v. State of Himanchal Pradesh 2018 CJ (HP) 186** and **Sukhnandan v. State of M.P. (CG) 2002 CJ (Chh) 94**. State counsel however, supports the findings recorded by the both the Courts below.

4. Heard the State counsel and perused the evidence on record.

5. Having gone through the material on record in particular the evidence of PW-2, PW-3 and PW-4 who are the eyewitness to the incident it becomes apparent that the accused/applicants had opened an assault on the victim with the help of club causing

injuries on his head. This apart, evidence of PW-7 - the doctor who medically examined complainant and gave his report under Ex.P-4 also shows one lacerated wound on the parietal bone in the size of 1x1/2x1/4cm and tenderness was present. Furthermore, seizure witnesses being PW-3, PW-4 and PW-5 have also supported the case of the prosecution admitting their signatures on the seizure memo Ex. P-3. Overall evidence thus establishes the guilt of the accused/applicants under Section 323/34 IPC and being so the findings recorded by the Courts below as far as their conviction is concerned, are hereby maintained. However, the applicants are extended the benefit of the provisions of section 4 of the Probation of Offenders Act. It is, however, directed that the applicants shall execute bond of Rs. 10,000/- each for maintaining peace and good behaviour for a period of one year and if they violate any conditions of the bond, they may be called upon to surrender and serve the remaining part of sentence. With this observation, the revision is disposed.

Sd/-

(Vimla Singh Kapoor)
JUDGE