

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 824 of 2008

Rajkumar, age – 34 years, S/o Shri Ramjeet Upadhyay, R/o Ward No. 17,
P.S. Pithora, District – Mahasamund, C.G.

---- Applicant

Versus

State of Chhattisgarh, Through P.S. Pithora, District – Mahasamund, C.G.

---- Respondent

For Applicant	:	Shri J.A. Lohani, Adv.
For Respondent/State	:	Shri Anand Verma, Dy. G.A.

Hon'ble Smt. Justice Rajani Dubey

Order On Board

03.05.2019

The present revision arises out of the impugned judgment of conviction and order of sentence dated 19.12.2008 passed by the learned Sessions Judge, District – Dhamtari, C.G. in Cr. Appeal No. 135/2008, whereby the learned appellate Court below while maintaining the conviction of the applicant modified the sentence as awarded by the learned Judicial Magistrate First Class, District – Mahasamund, vide its judgment dated 26.11.2008 in Cr. Case No. 230/2008 for the offence punishable under Section 326 and sentenced him to undergo RI for one year and to pay fine of Rs.500/-, under Section 294 of the IPC sentenced him to undergo RI for three months and to pay fine of Rs. 200/-, with default stipulations.

2. Brief facts of the case are that on 22.06.2008, at about 16.30 p.m., the complainant Sushil Dewangan who run tea and betal shop, the applicant visit his shop and interfere the complainant while he was

taking Rs.30/- from his customer, the applicant snatched 30 rupees from his hand and abused him and cut his ear by his teeth, due to which the complainant got grievous injuries and he lodged the FIR against accused/applicant. After completion of investigation, charge-sheet was filed and charges were framed against the accused/applicant under Sections 294 and 326 of the IPC by the trial Court.

3. So as to prove the guilt of the accused/applicant, the prosecution has examined 06 witnesses. Statement of the accused/applicant was also recorded under Section 313 of the Cr. P.C. in which he denied the charges leveled against him and pleaded innocence and false implication in the case.

4. After hearing the parties, vide judgment of conviction and order of sentence dated 26.11.2008, learned Magistrate has convicted the accused/applicant under Sections 294 and 326 of the IPC and sentenced him to undergo RI for three months and to pay fine of Rs.200/-, and RI for three years and to pay fine of Rs.300/- with default stipulations. On appeal, the conviction has been maintained but the sentence awarded under Section 326 of the IPC, has been reduced to one year and to pay fine of Rs.500/-, with default stipulation. Hence, the present revision.

5. Heard counsel for the parties and perused the material on record including the impugned judgment.

6. Counsel for the applicant submits that he is not pressing this revision as 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

2008 and thereby about 10 years have rolled by since then, he is aged about 50 years, the applicant has already remained in jail for about one month and no useful purpose would be served in again sending him to jail. Therefore, it would be appropriate in the interest of justice if the sentence imposed upon him may be reduced to the period already undergone by him.

7. Learned State counsel has no objection to this proposition.

8. Having gone through the material on record and the evidence of the witnesses including Sushil Dewangan (PW-1), Dr. Smt. Tara Agrawal (PW-5) and Kapishwar Pushkar (PW-6) established the involvement of the accused/applicant in the crime in question. This Court does not see any illegality in the findings recorded by both the Court below as regards conviction of the applicant under Section under Sections 294 and 326 of the IPC being so it is hereby maintained.

9. As regards sentence, keeping in view the fact that the incident had taken place in the year 2008 and further that the applicant has already remained in jail for about one month, no useful purpose would be served in again sending him to jail at this stage and the ends of justice would be served if he is sentenced to the period already undergone by him with a direction to pay additional fine of Rs.5000/-.

10. In view of the above, the revision is partly allowed. While maintaining the conviction of the applicant, his jail sentence is reduced to the period already undergone by him. However, he is directed to pay an additional fine of Rs.5000/- within six months from today, failing which he shall have to undergo RI for two months. The fine amount so deposited by the applicant before the Trial Court be paid to the

complainant Sushil Dewangan, after due verification by the trial Court.
The applicant is reported to be on bail. His bail bond shall stand
discharge.

yasmin

Sd/-
(Rajani Dubey)
Judge