

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 542 of 2019

1. Santosh Patel, S/o Khelan Singh Patel Aged About 43 Years R/o Village Banranka, Police-Station-Than, Khamhariya, District-Bemetara, Chhattisgarh.

---- Applicant

Versus

1. State of Chhattisgarh Through District Magistrate, Bemetara, District-Bemetara, Chhattisgarh.
2. Lekhram @ Golu S/o Ramji Sahu Aged About 30 Years Occupation Kastkar, R/o Village Banranka, Police Station-Than, Khamhariya, District-Bemetara, Chhattisgarh.

---- Respondents

For applicant	:	Mr. Lavkush Kumar Sahu, Advocate.
For State/Respondent No.1:	:	Mr. C.B. Kesharwani, Panel Lawyer.
For respondent No.2	:	Mr. Maneesh Sharma & Mr. Pragalbha Sharma, Advocates.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

18/11/2019

Heard.

1. This criminal revision petition has been filed against the judgment dated 14.3.2019 passed by the Sessions Court, Bemetara, District-Bemetara (CG) in Criminal Appeal No.93/2018 whereby conviction of respondent No.2 under Section 326 of IPC has been converted into Section 324 of IPC and sentence of fine of Rs.5,000/- has been imposed.
2. It is submitted by the counsel for applicant that the appellate Court has committed an error in holding that the offence under Section 326 of IPC was not committed. There is clear evidence of victim Santosh

Patel PW-1 that he was assaulted by respondent No.2 with a sickle, a sharp edged weapon, and injured him grievously. This version of the applicant not only supported by the other prosecution witnesses but also remained unrebutted in the cross-examination by the defence.

Dr. G.S. Thakur PW-8 has very clearly mentioned in his report Ex.-P/5 that he has noticed one injury on the middle finger of right hand of applicant caused by sharp edged weapon, which was almost severed, and he had advised for x-ray examination. He has also given statement on the basis of X-ray report Ex.P-6 that X-ray report disclosed fracture, which is a bony injury. Hence, the injury which was caused to the victim by sharp edged weapon, comes within the definition of 'grievous injury' as defined in Section 320 of IPC.

Without there being any scope for conversion of conviction under Section 302 to 324 of IPC, the judgment so passed by the appellate Court is unsustainable, therefore, it is prayed that the judgment of conviction and order of sentence passed by the appellate Court be set aside and the judgment passed by the trial Court be restored. Reliance has been placed on the judgment of Supreme Court Ganesha v. Sharanappa & another, reported in (2014) 1 SCC 87.

3. Learned counsel for respondent No.1/State opposes the petition and the submissions made by the counsel for applicant.
4. Learned counsel for respondent No.2 also opposes the petition and the submissions made. He submits that the revision filed by the applicant is not maintainable. If the applicant is aggrieved by the judgment of acquittal passed by the appellate Court, he has the remedy of filing appeal under Section 372 of CrPC, but without resorting to the said remedy, he has directly filed this revision petition before this Court, which is not maintainable. Reliance has been placed on the judgment of this Court dated 27.9.2019 passed in a batch of revision petitions, leading case of which was CRR No.1105 of 2018.
5. It is also argued that the appellate Court has drawn correct conclusion in the case for the simple reason that the victim himself has not made any statement regarding grievous injury caused to him. Hence, the order modifying conviction of respondent No.2 is legally and factually

sustainable.

6. I have heard both the parties and perused the documents on record.
7. On perusal of the record of the trial Court, it is found that there is evidence present that the victim was assaulted by a sharp edged weapon causing injury to him was caused to the victim, which was covered under the expression 'grievous hurt' as defined under Section 320 of IPC. Hence, I am not in agreement with the findings recorded by the appellate Court for the reason that the victim may not have been able to explain about the injuries but there is witness namely Heeralal Patel PW-3, who had seen injury on the finger of the victim and according to the doctor, who examined the victim on the same day, he noticed grievous injury of the victim. Thus, there was sufficient evidence including the evidence i.e. X-ray report, to support the victim.
8. The main issue raised by the respondent side is that this Court cannot convert the judgment of acquittal into conviction in view of the provision under Section 401(3) of CrPC. Reliance is place on the judgment of Hon'ble Supreme Court in the matter of Ganesha (supra) wherein Hon'ble Supreme Court has observed in para-8, 9, 10 & 11 as under:-

"8. Having appreciated the rival submissions we find substance in the submission of learned counsel for the appellant. [Section 401](#) of the Code of Criminal Procedure, for short 'the Code', confers power of revision to the High Court, same reads as follows:

"401. High Court's powers of revision.- (1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by [sections 386, 389, 390](#) and [391](#) or on a Court of Session by [section 307](#) and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by [section 392](#).

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.”

9. From a plain reading of sub-section (1) of [Section 401](#) of the Code it is evident that the High Court, while exercising the powers of revision, can exercise any of the powers conferred on a court of appeal including the power under [Section 386](#) of the Code, relevant portion whereof reads as follows:

“386. Powers of the Appellate Court. – After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and in case of an appeal under [section 377](#) or [section 378](#), the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may –

a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;”

10. [Section 386 \(a\)](#) thus authorizes the appellate court to reverse an order of acquittal, find the accused guilty and pass sentence on the person found guilty. However, sub-section (3) of [Section 401](#) of the Code contemplates that the power of revision does not authorize a High Court to convert a finding of acquittal into one of conviction. On the face of it, the High Court while exercising the powers of revision can exercise all those powers which have been conferred on the court of appeal under [Section 386](#) of the Code but, in view of sub section (3) of [Section 401](#) of the Code, while exercising such power, cannot convert a finding of acquittal into one of conviction.

11. However, in a case where the finding of acquittal is recorded on account of misreading of evidence or non-consideration of evidence or perverse appreciation of evidence, nothing prevents the High Court from setting aside the order of acquittal at the instance of the informant in revision and directing fresh disposal on merit by the trial court. In the event of such direction, the trial court shall be obliged to re-appraise the evidence in light of the observation of the revisional court and take an independent view uninfluenced by any of the observations of the revisional court on the merit of the case. By way of abundant caution, we may herein observe that interference with the order of acquittal in revision is called for only in cases where there is manifest error of law or procedure and in those exceptional cases in which it is found that the order of acquittal suffers from glaring illegality, resulting into miscarriage of justice. The High Court may also interfere in those cases of acquittal caused by shutting out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue has been overlooked. In such an exceptional case, the High Court in revision can set aside an order of acquittal but it cannot convert an order of acquittal into that of an order of conviction. The only course left to the High Court in such exceptional cases is to order re-trial.

10. Therefore, in view of the above observations made by the Supreme Court and the interpretation made regarding the revisional powers of the High Court, I am of this view that although while exercising the powers of revision this Court cannot convert a judgment of acquittal into one of conviction, but the impugned judgment can be set aside and re-trial can be ordered. In the particular case, the judgment under challenge is of the appellate court and not of the trial Court, hence, an order of reconsideration of the appeal can be passed in view of the principles laid down in Ganesha's case (supra).

11. Accordingly, this revision petition is allowed. Impugned judgment passed by the learned Sessions Judge, Bemetara is hereby set aside and the matter is remanded back to the appellate Court concerned to reconsider the appeal and decide it afresh in accordance with law.

Sd/-

(Rajendra Chandra Singh Samant)
Judge