

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 754 of 2019**

1. Sharda Pathak D/o Late Umashankar Pathak Aged About 40 Years R/o Village Jarhagaon, Police Station Jarhagaon, District-Mungeli, Chhattisgarh.
2. Satish Pathak S/o Late Umashankar Pathak Aged About 45 Years R/o Village Jarhagaon, Police Station Jarhagaon, District-Mungeli, Chhattisgarh.

---- Applicants**Versus**

- State Of Chhattisgarh Through Station House Officer, Police Station Jarhagaon, District- Mungeli, Chhattisgarh.

---- Respondent

For Applicants	: Shri Praveen Das, Advocate
For Respondent/State	: Shri Wasim Miyan, PL

Hon'ble Smt. Justice Rajani Dubey**Order On Board****04/07/2019**

The present revision arises out of the impugned judgment of conviction and order of sentence 80dated 10.4.2019 passed by the learned Sessions Judge, Mungeli in Cr.A. No. 2/18 whereby the learned appellate court below has confirmed the conviction and sentence of the applicants as awarded by the learned Judicial Magistrate First Class, Mungeli vide its judgment dated 31.5.18 in Cr. Case No. 156/2015 for the offence punishable under Sections 323/34 and 323/34 IPC and sentenced them to imprisonment till rising of the court and pay fine of Rs. 700/- on each count with default stipulations.

2. Brief facts of the case are that appellant No.1 gave her land on lease to complainant Sanket Samuel, who was running a water plant over the said land. On 1.10.2014, at about 6.00 p.m., applicants and their mother along with one Sonu Pathak, came to the water plant and started abusing him in a filthy language to vacate the said land. It is stated that they have also assaulted the complainant with hands and fists. The quarrel was intervened by one Raj Abhishek who too, was assaulted. The matter was reported at Police Station Jarhagaon and offence under Sections 294, 506, 323, 34 were registered against the applicants and their mother. After completion of investigation, charge sheet was filed and charges were framed against the applicants and other accused under Sections 294, 506 Part II, 323/34 and 324/34 IPC.

2. So as to prove the guilt of the accused/applicants, prosecution has examined 8 witnesses. Statement of the accused/applicants were also recorded under Section 313 Cr.P.C. in which they denied the charges levelled against them and pleaded their innocence and false implication in the case.

3. After hearing the parties, vide judgment of conviction and order of sentence dated 31.5.2018, learned Judicial Magistrate First Class has acquitted one accused Shanti Devi of the charges under Sections 323/34 and 323/34 IPC but has convicted the present applicants and sentenced them to imprisonment till rising of the court with fine of Rs. 700/- on each count. This order was appealed by the applicants in the appellate court which was confirmed. Hence, the present revision.

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

5. Counsel for the applicants submit that the learned court below has erred in facts and law while passing the impugned judgment. The court below has failed to observe that the trial court has not appreciated the evidence in accordance with law. Learned appellate court has also overlooked the material facts that complainant has also been prosecuted in a counter case lodged by the applicants and he too, has been convicted. Applicants were not aggressors and they were simply insisting on the complainant for vacating their land but the learned courts below have failed to appreciate these aspects. Lastly, he submits that the applicant No.1 is a Government servant and if the conviction and sentence are maintained, it would affect his service career.

6. On the other hand, supporting the impugned judgment, it has been argued by the State that the conviction of the applicants/accused is strictly in accordance with law and there is no infirmity in the same.

7. Having gone through the material on record and the evidence of the witnesses including Sanket Samuel (PW-1), Honey @ Raj (PW-2), Shailendra (PW-3), Mohit Thakur (PW-4), Gomed Das (PW-5) and Dr.S.P.Baghel (PW-6) which establishes the involvement of the accused/applicants in the crime in question. This Court does not see any legality in the findings recorded by the courts below. As regards conviction under Sections 323/34 and 323/34 IPC, they are hereby maintained. As regards sentence, taking into consideration the circumstance of the case, nature of offence and the character of the applicants, their antecedents and the fact that the applicant No.1 is a government servant, instead of sentencing at once to any punishment,

they are ordered to be released on probation of good conduct on their furnishing personal bond in the sum of Rs. 20,000/- each with one surety in the like sum to the satisfaction of the trial court for a period of one year to appear and receive sentence when called upon and in the meantime they shall keep peace and be of good behaviour. The order on sentence is modified to the extent as stated above. However, the conviction of the applicant No.1 should not affect his service.

Sd/-
(Rajani Dubey)
Judge