

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 328 of 2013

- Dayaram S/o Manaku Ram Sidar Aged About 48 Years R/o Village Bansdand, Thana Lailunga, Distt. Raigarh, Chhattisgarh

---- Applicant

Versus

- The State Of Chhattisgarh Through Distt. Magistrate, Raigarh, Chhattisgarh

---- Respondent

For Applicant	:	Shri Hemant Kumar Patel, Adv.
For Respondent/State	:	Shri I. Lakra, Dy. G.A.

Hon'ble Smt. Justice Rajani Dubey

Order On Board

17.07.2019

The present revision arises out of the judgment of conviction and order of sentence dated 04.05.2013 passed by the Learned First Additional Session Judge, Raigarh, in Cr. Appeal No. 31/2013, whereby the learned appellate Court below has affirmed the conviction and sentence of the accused/applicant as awarded by the learned Judicial Magistrate first Class, Ghargoda, District - Raigarh, vide its judgment dated 25.03.2013 in Cr. Case No. 608/2010 for the offence under Section 326 of the IPC, and sentenced him to undergo RI for two years along with fine of Rs. 500/-with default stipulation.

2. Brief facts of the case are that on 23.09.2010, at about 10.00 a.m., when complainant and Gopiram (PW-1) was taking care of their field, at that time the accused/applicant came there and started cutting

Sarai Tree with an axe from the land of complainant. The complainant reached there and prevented the applicant from cutting the tree. On this, the applicant started abusing the complainant with filthy language and also threatened him to life and assaulted the complainant Dhaneshwar with axe, due to which he sustained injury on his left fore arm. Thereafter, the FIR was lodged by the complainant against the applicant in police station Lailunga. After filing of charge-sheet, charges were framed against the accused/applicant under Sections 294, 506B and 326 of the IPC.

3. So as to prove the guilt of the accused/applicant, the prosecution has examined 11 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 impugned judgment of conviction and order of sentence dated 25.03.2013, learned Judicial Magistrate First Class has acquitted the applicant under Sections 294 and 506B and convicted him under Section 326 of the IPC, and sentenced him to undergo RI for two years along with fine of Rs.500/-, plus default stipulation. This order was appealed by the applicant and in the appeal, learned appellate Court has affirmed the conviction and sentence of the applicant. 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 2012 and thereby more than 07 years have rolled by since then, he is aged about 60 years, the applicant has already remained in jail for about more than one month and no useful purpose would be served in again sending him to jail. Therefore, it would be in the interest of justice if the sentence imposed on him may be reduced to the period already undergone by him. Learned counsel for the applicant placed reliance in the matter of **Ramprasad @ Ramnath Vs. State of Chhattisgarh**¹.

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 Gopiram (PW-1), Dhaneshwar Yadav(PW-2), Rajnikant Mishra(PW-10) and Dr. Yogeshwar Singh Sarthiya (PW-11), establishes 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 Courts below as regards conviction of the applicant under Section 326 of the IPC and sentenced him to undergo RI for two years along with fine of Rs. 500/-, being so they are hereby maintained.

9. As regards sentence, keeping in view the fact that the incident had taken place in the year 2012 and the applicant has already remained in jail for about one month and further considering the fact that the applicant has already faced a prolonged trial and suffered trauma of uncertainty arising out of his conviction by the Sessions Court, the revision is partly allowed. Conviction part of the impugned judgment is maintained. Applicant is reported to have remained in jail for a period of one month, his sentence is reduced to the period

1 2014 (4) C.G.L.J. 465

already undergone by him.

- 10. The applicant is on bail. His bail bond shall stand discharged.
- 11. Revision thus partly succeeds.

Sd/-
(Rajani Dubey)
JUDGE