

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 318 of 2013**

1. Jitendra @ Jeetan S/o Ishwar Yadav Aged About 29 Years, R/o Piproul, P.S. Ramanujganj, Civil And Revenue District- Balrampur, Chhattisgarh.
2. Narayan S/o Sobran Aged About 28 Years, R/o Piproul, P.S. Ramanujganj, Civil And Revenue District- Balrampur, Chhattisgarh.
3. Ishwar S/o Parban Yadav Aged About 40 Years, R/o Piproul, P.S. Ramanujganj, Civil And Revenue District- Balrampur, Chhattisgarh.
4. Dharmdev S/o Lachuman Yadav Aged About 32 Years, R/o Piproul, P.S. Ramanujganj, Civil And Revenue District- Balrampur, Chhattisgarh.
5. Inder S/o Parban Yadav Aged About 45 Years, R/o Piproul, P.S. Ramanujganj, Civil And Revenue District- Balrampur, Chhattisgarh.

---- Applicants**Versus**

- State Of Chhattisgarh, Through : P.S. Ramanujganj, District- Balrampur, Chhattisgarh.

---- Respondent**CRR No. 330 of 2013**

- Vijay Yadav S/o Ishwar Yadav Aged About 27 Years, R/o Village Piproul, P.S. Ramanujganj, Civil And Rev. District Balrampur- Ramanujganj, Chhattisgarh.

---- Applicant**Versus**

- State Of Chhattisgarh, Through : P.S. Ramanujganj, District Balrampur -Ramanujganj, Chhattisgarh.

---- Respondent

For Applicants	:	Mr. Rahul Mishra, Advocate.
For Respondent/State	:	Mr. Wasim Miyan, PL.

Hon'ble Smt. Justice Rajani Dubey**Order On Board****26/09/2019**

1. Since the aforesaid Criminal Revisions arise out of the same judgment dated 07.05.2013, they are being disposed of by this common order.

2. The present criminal revisions arise out of the impugned judgment of conviction and order of sentence dated 07.05.2013 passed by the learned Additional Sessions Judge, Ramanujganj, District-Balrampur in Cr. Appeal No. 105/2008 whereby, the learned appellate Court below has affirmed the conviction and sentence of the accused/applicants as awarded by the learned Judicial Magistrate First Class, Ramanujganj, vide its judgment dated 15.07.2008 in Criminal Case No. 247/2006 for the offence punishable under Sections 148, 294, 506-B and 324/149 of IPC and sentenced them to undergo S.I. for 3-3 months, to pay fine of Rs. 200/- - 200/-, S.I. for 6-6 months with fine of Rs. 100/- - 100/-, and S.I. for 6-6 months with fine of Rs. 200/- - 200/- respectively, plus default stipulation.

2. Brief facts of the case are that on 17.05.2006 at about 8 pm., when complainant namely Ashok Yadav was coming after selling Tendupatta, the present applicants with common intention, abuses and assaulted by hands, fist and *lathi*, It was further alleged that the co-accused Jitendra assaulted the complainant with knife on his stomach and complainant sustained grievous injury. Thereafter, report was lodged against applicants. After completion of investigation, charge sheet was filed and charges were framed against accused/applicants under Sections 294, 148, 506-B and 324/149 of the IPC.

3. So as to hold the accused/applicants guilty, the prosecution has examined as many as 7 witnesses. Applicants have examined one witness in their defence. Statement of the accused/applicants were also recorded under Section 313 of the Cr.P.C. in which they denied the circumstances appearing against them and pleaded innocence and false implication in the case.

4. After hearing the parties, vide impugned judgment of conviction and order of sentence dated 28.01.2011, learned Judicial Magistrate has convicted and sentenced the accused/applicants for the offence punishable under Sections 148, 294, 506-B and 324/149 of IPC and sentenced them to undergo S.I. for 3-3 months, to pay fine of Rs. 200/- - 200/-, S.I. for 6-6 months with fine of Rs. 100/- - 100/-, and S.I. for 6-6 months with fine of Rs. 200/- - 200/- respectively, plus default stipulation. This order was appealed by the applicants and in the appeal, learned Appellate Court has

affirmed the conviction and sentence of the applicants. Hence, the present revision.

5. Learned Counsel for the applicants submits that impugned judgment is contrary to law and evidence available on record and deserved to be set aside. The judgment passed by the learned trial Court also suffers from material irregularity and the findings recorded by the trial court are perverse and, therefore, the same is also liable to be set aside. Both the Courts below have committed serious error of law by overlooking the fact that all the witnesses are interested and no independent witness has supported the version of prosecution. Both the Courts below have ignored the act that seizure witnesses have not supported the prosecution case and turned hostile. According to him, the incident is said to have taken place in the year 2006, and thereby more than 14 years have rolled by since then. The applicants have already remained in jail for more than 8 days, and applicant Vijay Yadav has remained in jail for more than 25 days and no useful purpose would be served in again sending them to jail, therefore, in the interest of justice, it would be appropriate if the sentence imposed upon them may be reduced to the period already undergone by them. He further submits that in CRR No. 318/2003, the present applicant No. 4 Dharamdev is a Government Servent.

6. Learned counsel for the State has no objection to this proposition.

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

8. Having gone through the material on record and the evidence of the prosecution witnesses Ashok Yadav (PW-1), Pragas (PW-2), Prabhu Yadav (PW-3), Kailash Yadav (PW-4), Dr. Sanjeev Ranjan (PW-5), Visheshar Yadav (PW-6) and Murlidhar Tiwari (PW-7), established the involvement of the accused/applicants in the crime in question beyond reasonable doubt. This Court does not see any illegality in the findings recorded by both the Courts below as regards conviction of the applicants under Sections 148, 294, 506-B and 324/149 of IPC being so they are hereby maintained.

9. As regards sentence, keeping in view the facts that incident had taken place in the year 2006, and further that the applicants

had already remained in jail for more than 8 days and applicant Vijay Yadav remained in jail for more than 25 days, therefore, their sentence is liable to be reduced to the period already undergone by them.

10. In view of the above consideration, the revision is partly allowed. While maintaining the conviction of the applicants, they are sentenced to the period already undergone by them. The applicants are on bail. Their bail bonds shall stand discharged.

11. However, looking to the peculiarity of the fact involved, this Court feels it necessary to observe that the conviction of applicant Dharamdev shall not affect his service carrier.

**Sd/-
(Rajani Dubey)
JUDGE**