

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 1071 of 2015**

1. Mohammad Masuk S/o Aasif Mohammad, Aged About 35 Years, Resident Of Pailesh Road, Koshtapara, P. S. Raigarh, District - Raigarh, Chhattisgarh.
2. Rajkumar Kesarwani S/o Rameshwar Prasad Kesarwani, Aged About 44 Years, Resident Of Pailesh Road, Koshtapara, P.S. Raigarh, District - Raigarh, Chhattisgarh.

---- Applicants**Versus**

1. State Of Chhattisgarh, Through : The District Magistrate, Raigarh, District - Raigarh, Chhattisgarh.
2. Satish Saraf S/o Late Baldeo Prasad Saraf, Aged About 54 Years, Resident Of Pailesh Road, Koshtapara, P.S. Raigarh, District - Raigarh, Chhattisgarh.

---- Respondents

For Applicants : Ms. Varsha Sharma, Adv.
 For Respondent No. 1/State : Mr. Anil Tripathi, PL.
 For Respondent No. 2 : Mr. Shoumitra Kesharwani, Adv.

Hon'ble Smt. Justice Rajani Dubey**Order on Board****05/09/2019**

1. The present revision arises out of the impugned judgment of conviction and order of sentence dated 30.11.2015 passed by the learned 3rd Additional Sessions Judge, Raigarh, District-Raigarh in Cr. Appeal No. 31/2015 whereby, the learned appellate Court below has affirmed the conviction and sentence of the accused/applicants for the offence under Section 325 read with Section 34 of the IPC and sentenced them to undergo R.I. for 1-1 month with fine of Rs. 500/- - 500/- each, plus default stipulation. Whereby the learned Judicial Magistrate First Class, Raigarh, vide its judgment dated 09.04.2015 in Criminal Case No. 04/2013 acquitted the applicants from the charges under Section 325 read with Section 34 of the IPC.

2. Brief facts of the case are that on 08.10.2004 complainant Satish Saraf lodged a report that when he was returning from the village with

confectionery items, at that time the accused/applicants came there and assaulted him with hands and abused him. Based on this, a criminal case was registered against the present applicants. After completion of investigation, charge sheet was filed and charges were framed against the applicants.

3. So as to hold the accused/applicants guilty, the prosecution has examined as many as 5 witnesses. Statement of the accused/applicants were also recorded under Section 313 of the Cr.P.C. in which they denied the charges leveled against them and pleaded innocence and false implication in the case.

4. After hearing learned counsel for the parties, trial Court acquitted the applicants/accused under Section 325 read with Section 34 of the IPC. This order was appealed by the complainant and in the appeal, learned Appellate Court below by impugned judgment dated 30.11.2015 convicted the applicants/accused under Section 325 read with Section 34 of the IPC and sentenced them to undergo R.I. for 1-1 month with fine of Rs. 500/- - 500/- each, plus default stipulation. Hence, the present revision.

5. Learned counsel for the applicants submits that he is not pressing the revision so 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 2004, and thereby more than 15 years have rolled by since then and the applicants have already remained in jail for more than 10 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 the applicants may be reduced to the period already undergone by them.

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

7. Learned counsel for the respondent No. 2 opposes the preposition made by counsel for the applicants. He placed reliance on *Labh Singh And Others Vs. State of Haryana and Another Passed in (2012) 11 Supreme Court Cases 690*. and the judgment of this Court in *CRA No. 917 of 2001, State of Chhattisgarh Vs. Dr. C.P. Agre case*.

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

9. Having gone through the material on record and the evidence of the

witnesses Dr. Anil Kushwaha (PW-1), Satish Saraf (PW-2), Shankar Butani (PW-3), Dr. D.K. Tandon (PW-4), and L.R. Bhagat (PW-5), establishes involvement of the accused/applicants in the crime in question beyond reasonable doubt. This Court does not see any illegality or infirmity in the findings recorded by appellate Court below as regards conviction of the applicants under Section 325 read with Section 34 of IPC being so it is hereby maintained.

10. Present being not a case where the victim had succumbed to death but the victim had suffered injuries and this is 15 years old incident. The accused/applicants have suffered jail sentence for some period and sending them again to jail after a lapse of about 15 years, in the facts and circumstances of this case would not be justified. So, each of the applicants are directed to pay Rs. 25,000/- - 25,000/- to the complainant within a period of six months from today. The amount shall be deposited before the Court concerned and the Court shall disbursed the same amount to the complainant in accordance with law. As regards sentence, keeping in view the facts that incident had taken place in the year 2004, and further that the applicants have suffered jail sentence for more than 10 days, therefore, their sentence is liable to be reduced to the period already undergone by them.

11. If the deposits are not made as directed by each of the applicants/accused, sentence awarded to them by the learned appellate Court shall stand revived and they shall be taken into custody to serve remainder of the sentence.

12. In view of the above consideration, the revision is accordingly partly allowed with the aforesaid modification and direction.

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