

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 296 of 2014**

1. Sanat Kumar Sahu S/o Late Tetku Ram Sahu Aged About 43 Years, R/o. Vill. Bhurkuni, P.S. Abhanpur, Civil And Rev. Distt. Raipur, C.G.
2. Gajju Sen S/o Lakhan Sen Aged About 45 Years, R/o Vill. Julum, P.S. Abhanpur, Civil And Rev. Distt. Raipur, C.G.

---- Applicants**Versus**

- State Of Chhattisgarh, Through : The District Magistrate Raipur C.G., Chhattisgarh

---- Respondent

For Applicants	:	Mr. R. K. Pali, Advocate.
For Respondent/State	:	Mr. Anil Tripathi, PL.

Hon'ble Smt. Justice Rajani Dubey**Order on Board****25/09/2019**

1. The present revision arises out of the impugned judgment of conviction and order of sentence dated 10.04.2014 passed by the learned Sessions Judge, Raipur, District- Raipur, C.G. in Criminal Appeal No. 31/2014 whereby, the learned appellate Court below has affirmed the conviction under Section 323 of IPC and modified the sentence of the accused/applicants as awarded by the learned Judicial Magistrate First Class Raipur, vide its judgment dated 20.01.2014 in Criminal Case No. 302/2010 for the offence punishable under Sections 294 and 323 (twice) of IPC and sentenced them to undergo S.I. for 3-3 months and to pay fine of Rs. 500/- -500/- and S.I. for 3-3 months and to pay fine of Rs. 500/- - 500/- each, respectively, plus default stipulation.
2. Brief facts of the case are that, on 26.03.2009 at about 3:00 pm., when complainant Vishnu Sahu was going towards the stage, at that time the applicants along with Kamlesh Sahu were sitting near Jitendra Pan Shop. After looking to the complainant, the accused/applicants called him and started abusing him on the

ground that the complainant had encroached over the government land. It is also alleged that the applicant No. 1 had assaulted with his knee over the private part of complainant and the other two Gajju and Kamlesh had assaulted him with hands and fist. The matter was reported to the police station Abhanpur on the same date and offence under Section 294, 323 and 506 were registered against the present applicants and Kamlesh. After completion of investigation, charge sheet was filed and charges were framed by the trial Court against accused/applicants under Sections 294 and 323 of IPC.

3. So as to hold the accused/applicant guilty, the prosecution has examined as many as 8 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 the parties, vide impugned judgment of conviction and order of sentence dated 20.01.2014, learned Judicial Magistrate First Class has convicted the accused/applicants for the offence punishable under Sections 294 and 323 (twice) of IPC and sentenced them to undergo S.I. for 3-3 months and to pay fine of Rs. 500/- - 500/- and S.I. for 3-3 months and to pay fine of Rs. 500/- - 500/- each, respectively, with default stipulation. This order was appealed by the applicants and in the appeal, learned Appellate Court acquitted the applicants for the offence 294 of IPC and affirmed the conviction of the applicants for the offence 323 of the IPC and modified the sentence as S.I. for 2 months and to pay fine of Rs. 1,000/- each, with default stipulation. Hence, the present revision.
5. Learned Counsel for the applicant 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 2009, and thereby more than one 11 years have rolled by since then. The applicant No. 1 is aged about 54 years and applicant No. 2 is aged about 56 years and they have already remained in jail for more than 15 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.

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 Vishnu Lal Sahu (PW-1), Ishwar Sahu (PW-2), Khorbahara (PW-3), Bodhin Bai (PW-4), Vishal Sahu (PW-5), Dr. M.S. Jouhari (PW-6), Jeevanrakhan (PW-7), and Johar Lal Patel (PW-8), established the involvement of the accused/applicants in the crime in question stands proved beyond reasonable doubt. This Court does not see any illegality in the findings recorded by appellate Court below as regards conviction of the applicants under Section 323 of IPC being so it is hereby maintained.
9. As regards sentence, keeping in view the facts that incident had taken place in the year 2009, and further that the applicants had already remained in jail for more than 15 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 bond shall stand discharged.

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