

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 531 of 2017

- Motu @ Mehattar, S/o Ramsai Chouhan, Aged About 26 Years, R/o Village- Nawapali, Police Station- Chakradharnagar, District- Raigarh, Chhattisgarh

---- Applicant

Versus

- State of Chhattisgarh, Through The District Magistrate, Raigarh, Chhattisgarh

---- Respondent

For Applicant	:	Shri Anil Tripathi, Adv.
For Respondent/State	:	Shri Priyank Rathi, PL

Hon'ble Smt. Justice Rajani Dubey

Order On Board

01.07.2019

The present revision arises out of the impugned order and judgment of conviction and order of sentence dated 30.09.2016 passed by the learned 3rd Additional Sessions Judge, Raigarh, in Cr. Appeal No. 94/2016, whereby the learned appellate Court has confirmed the conviction and sentence of the accused/applicant as awarded by the learned Judicial Magistrate First Class, Raigarh, vide its judgment dated 27.07.2016 in Cr. Case No. 797/2006 for the offence under Section 326/34 of the IPC and sentenced him to undergo RI for two years and to pay fine of Rs. 2,000/-, plus default stipulations.

2. Brief facts of the case are that on the date of incident i.e. 26.11.2006, some villagers went to Bhanwarkhol Jungle for picnic. While taking lunch, the present applicant and co-accused Ghurau started quarreling with each other, which was opposed by Dukalu, as a

result of which, the applicant got annoyed and chased Dukalu carrying axe in his hand. When Mantosh tried to snatch the axe, he was assaulted by the applicant with axe, due to which Mantosh sustained grievous injuries in his hand. The FIR was lodged in the police station by complainant Mantosh against the applicant and other co-accused. After filing of charge-sheet, charges were framed against the accused/applicant and other co-accused under Section 326/34 of the IPC.

3. So as to prove the guilt of the accused/applicant, the prosecution has examined 9 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 27.07.2016, learned Magistrate has acquitted the other co-accused Mangtu @ Durgesh and convicted the present applicant for the offence under Section 326/34 IPC and sentenced him to undergo RI for two years and to pay fine of Rs. 2000/-. This order was appealed by the applicant and in the appeal, learned appellate Court has confirmed 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

2006 and thereby more than 13 years have rolled by since then, he is aged more than 40 years, the applicant has already remained in jail for about 21 months 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.

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 Mantosh Kumar (PW-3), Dukalu Chauhan(PW-4), Dr. Sunil Ratre (PW-6), Dr. Anil Kumar Tirki (Pw-7) and Chaindas Mahant (PW-8), established 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 Court below as regards conviction of the applicant under Section 326/34 of the IPC, being so they are hereby maintained.

9. As regards sentence, keeping in view the fact that the incident had taken place in the year 2006 and further that the applicant has already remained in jail for about 21 months, 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 21 months, his sentence is reduced to the period already undergone by him.

10. Revision thus partly succeeds.

Sd/-
(Rajani Dubey)
Judge