

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 1068 of 2018**

- Kamal Kumar Agarwal S/o Narayan Prasad, Sakin Agrasen Chowk, Sakti, District Janjgir-Champa (C.G.)

----Applicant**Versus**

1. Ashok Kumar Agarwal S/o Satya Narayan, aged 58 years.
2. Suresh Agrawal S/o Satyanarayan, aged 55 years.
3. Ashish Agrawal S/o Ashok Kumar, aged 27 years.
4. Kailash Agrawal S/o Satyanarayan, aged 53 years.

Address (Colly) Agrasen Chowk, Sakti, District Janjgir-Champa (C.G.).

---- Respondents

For Applicant	:	Shri Shreyankar Nande, Advocate.
For Respondents	:	Shri K.K. Pandey, Advocate.

Hon'ble Smt. Justice Rajani Dubey**Order On Board****20/08/2019**

01. The present revision petition is directed against the judgment and order dated 14.06.2018 passed by the First Additional Sessions Judge, Sakti, District Janjgir-Champa (C.G.) in Cr.A.No.78/2017 whereby the appellate Court while maintaining the conviction under Section 294 IPC and fine imposed thereunder with default stipulation, set aside the sentence of R.I. for 3-3 months imposed under Section 323/34 IPC and sentenced him till rising of the court with fine of Rs.1,000/- - Rs.1,000/-, in default of payment of fine amount to undergo S.I. for 1 - 1 months as awarded by the Judicial

Magistrate First Class, Sakti, District Janjgir-Champa convicting them under Sections 294 and 323/34 IPC with imposition of fine of Rs.500/- - Rs.500/- and to undergo R.I. for 3 - 3 months with fine of Rs.500/- - Rs.500/- respectively, with default stipulation vide order dated 31.10.2017 passed in Criminal Case No.146/2012.

02. Brief facts of the case are that on 03.12.2010 at around 11.00 am, complainant/applicant herein went to accused/respondents' medical shop and inquired with respect to laying of foundation of statue in his ancestral property i.e. Mansa Garden. The accused/respondents were enraged with this query made by the complainant/applicant and started abusing the applicant and used a series of cuss words while brutally beating the applicant and in addition to this they gave death threat. The complainant/applicant herein filed a report against all the accused/respondents at Police Station Sakti but the police refused to register an FIR, therefore, he filed a criminal case before the trial Court to prosecute them under Sections 294, 323 and 506 IPC and charge sheet was filed against accused/respondents under Sections 294 and 323/34 IPC.

03. After hearing the parties, the trial Court, vide its judgment and order dated 30.10.2017 has convicted the accused/respondents herein of the offence punishable under Sections 294 and 323/34 IPC and sentenced them as mentioned in para 1 of this judgment. This order was appealed by the accused/respondents herein and in the appeal, the learned appellate Court partly allowed the appeal of the accused/respondents. Hence, the present revision petition by the complainant/applicant herein, assailing the quantum of sentence.

04. Learned counsel for the applicant submits that the learned

Sessions Judge has failed to appreciate and analyze the section of IPC and punishment thereunder. The learned Sessions Judge has failed to consider the fact that the offence committed by accused/respondents is not for the first time. He further submits that the learned Judge has failed to appreciate that accused/respondents are in a habit of entering into fight and can be termed as habitual offenders. There are many other criminal cases of similar nature against respondents where the court found them guilty of the offence. He also submits that the learned Sessions Judge ought to have imposed a punishment of imprisonment so as to deter them from committing offences of similar nature in future. The learned Sessions Judge has failed to appreciate the evidence placed on record that accused/respondents have beaten the applicant in past, thereafter, an application for compounding of such offence was presented and accepted. Thus, it is clear that the respondents are nonchalant about their criminal and anti social acts which are in defiance of the Court's order and tend to repeat such offence of similar nature. He also submits that the quantum of punishment imposed is not in consonance with the nature of offence undergone. Hurt can be of various degrees and, in the present case, it is grave in nature as several areas of the body have been inflicted with blows which resulted in intense pain especially near the face and chest region of the body but the learned appellate Court has committed error by recording that the injuries undertaken by the applicant is of ordinary nature. The impugned order has been passed by the learned Sessions Judge on the basis of irrelevant considerations, whereas relevant considerations have been ignored.

05. On the other hand, learned counsel for accused/respondents supported the impugned judgment and order passed by the learned appellate Court.

06. I have heard learned counsel for the parties and perused the material available on record.

07. The instant revision has been preferred by the complainant/applicant against lesser punishment of accused/respondents and question as to whether the revision is maintainable against this order of lesser punishment, Section 372 of CrPC is reproduced here which reads thus:-

372. No appeal to lie unless otherwise provided. - No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force :

¹[Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.]

08. Section 397 of the Code of Criminal Procedure empowers the High Court to call for records of the case to exercise its power of revision in order to satisfy itself as regards correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of such inferior court.

Section 397 of the Code of Criminal Procedure, 1973, reads thus:

397. Calling for records to exercise powers of revision.

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, - recorded or passed,

and as to the regularity of any proceedings of such inferior Court, any may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record. Explanation. - All Magistrates whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub - section and of section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

And Section 401 in The Code Of Criminal Procedure, 1973 reads thus,

401. High Court' s Powers of revisions.

[\(1\)](#) In the case of any proceeding the record of which has been called for by itself or Which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.

[\(2\)](#) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

[\(3\)](#) Nothing in this section shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction.

[\(4\)](#) Where under this Code an appeal lies and no

appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.

09. The Apex Court in the matter of **Roopendra singh Vs. State of Tripura and Another** reported in **(2017)13 SCC 612**, has held thus :

10. Section 372 Cr.P.C. has conferred upon a victim a substantive and independent right to maintain an appeal against acquittal. The widow of the deceased in the present matter comes within the definition of “victim” as incorporated in Section 2 (wa). Merely because leave to appeal was not granted to the State to prefer an appeal against acquittal, the appeal preferred by the victim informant ought not to have been rejected by the High Court summarily. We, therefore, set aside the order dated 28.06.2012 (Vacchalabai Mahadeo Artam Vs. State of Maharashtra, 2012 SCC Online Bom. 2124) passed by the High Court rejecting Criminal appeal preferred by the appellant and remit the matter to the High Court for fresh consideration. It will be open to the High Court to consider the matter for grant of leave to appeal to the appellant in the light of paras 17 and 18 of the decision of this Court in Satya Pal Singh Vs. State of MP (2015) 15 SCC 613:(2016) 3 SCC (Cri.) 307.

10. In a recent judgment of the Apex Court in the matter of **Mallikarjun Kodagali (dead) represented through Legal Representatives Vs. State of Karnataka and Others** reported in **(2019) 2 SCC 752**, it has been held thus:

74. Putting the Declaration to practice, it is quite obvious that the victim of an offence is entitled to a variety of rights. Access to mechanisms of justice and redress through formal procedures as provided for in national legislation, must include the right to file an appeal against an order of acquittal in a case such as the one that we are presently concerned with. Considered in this light, there is no doubt that the proviso to [Section 372](#) of the Cr.P.C. must be given life, to benefit the victim of an offence.

75. Under the circumstances, on the basis of the plain language of the law and also as interpreted by several High Courts and in addition the resolution of the General Assembly of the United Nations, it is quite clear to us that a victim as defined in [Section 2\(wa\)](#) of the Cr.P.C. would be entitled to file an appeal before the Court to which an appeal ordinarily lies against the order of conviction. It must follow from this that the appeal filed by Kodagali before the High Court was maintainable and ought to have been considered on its own merits.

76. As far as the question of the grant of special leave is concerned, once again, we need not be overwhelmed by submissions made at the Bar. The language of the proviso to [Section 372](#) of the Cr.P.C. is quite clear, particularly when it is contrasted with the language of [Section 378\(4\)](#) of the Cr.P.C. The text of this provision is quite clear and it is confined to an

order of acquittal passed in a case instituted upon a complaint. The word 'complaint' has been defined in [Section 2\(d\)](#) of the Cr.P.C. and refers to any allegation made orally or in writing to a Magistrate. This has nothing to do with the lodging or the registration of an FIR, and therefore it is not at all necessary to consider the effect of a victim being the complainant as far as the proviso to [Section 372](#) of the Cr.P.C. is concerned.

11. In the light of above judgment, it is clear that the revision petition filed by the complainant is not maintainable against the order of acquittal. The revision petition is accordingly dismissed. However, complainant is vested liberty to file special leave to appeal along with an appeal against the judgment of acquittal passed by the appellate court, if he so desires.

Sd/-

(Rajani Dubey)
JUDGE