

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.R. No. 47 of 2018

- Devendra Sahu, Son of Mangturam Sahu, aged about 26 years, R/o. Village Tendubhata, P. S. and Tahsil Janjgir, District Janjgir- Champa, Chhattisgarh.

---- Applicant

Versus

- State of Chhattisgarh, Through : S.H.O., Police Station -Janjgir, District Janjgir- Champa, Chhattisgarh.

-----Respondent

For Applicant : Mr. Ravindra Sharma, Advocate

For Respondent/State : Mr. Shrikant Kaushik, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

06/03/2020

1. This revision petition has been brought challenging the legality, propriety and correctness of the judgment dated 07.12.2017, passed in Criminal Appeal No.109/2017, by the learned Sessions Judge, Janjgir, District – Janjgir-Champa (C.G.), by which the learned Sessions Judge has upheld the conviction against the applicant under Section 327/149 of the Indian Penal Code (in short 'the IPC') and converted the conviction under Section 458 of I.P.C. to Section 452 of the Indian Penal Code sentenced for both the offences till the rising of the Court and fine of Rs.200/- for each of the offence with default stipulations.
2. According to the prosecution case on 12.03.2013, the applicant and other co-accused persons came to the complainant Ganesh Prasad

Jaiswal asking for donation of Rs.1500/-. When the complainant denied the same, the applicant and others gave him threatening and returned on 12.03.2013 at about 9.30 PM, the applicant and others entered into the house of the complainant by breaking open his door then slapped the complainant, used abusive words and one co-accused also attempted to assault the complainant with knife. On written complaint filed by the complainant, FIR was lodged. The case was investigated and charge-sheet has been filed before the trial Court.

3. The applicant and others were charged for the offences under Section 147, 148, 458, 294, 506-II, 327/149 of the IPC. The applicant and others denied the charges and prayed for trial. The prosecution examined 8 witnesses on its behalf. On examining the applicant and others under Section 313 of the Cr.P.C., they denied all the incriminating evidence against them and pleaded innocence and false implication. One witness was examined in defence. On completion of trial, judgment has been delivered, in which the applicants and other stands convicted for the offence under Section 147, 148, 506-I, 327/149 and Section 458 of the Indian Penal Code and sentenced with fine Rs.200/- for the offence under Section 147, 148 and 506-I of the I.P.C. each and for the offence under Section 327/149 and 458 of the IPC sentenced till rising of the Court and fine of Rs.200/- for both the offences, with default stipulations.
4. The appeal preferred by the applicant has been decided by the impugned order, in which the conviction of the applicant has been upheld in the offences mentioned hereinabove and he has been

acquitted from the rest of the offences.

5. It is submitted by the learned counsel for the applicant that the learned appellate Court has not correctly decided the appeal. In paragraph -12 of the impugned judgment after appreciating the evidence, the learned appellate Court has held that the trial Court has erred in holding the conviction against the applicant under Section 327/149 of the IPC. Despite this finding, in the operative para of the impugned judgment in paragraph -19, the learned appellate Court has upheld the conviction under Section 327/149 of the IPC, however, the sentence imposed was modified. It is also submitted that the conviction under Section 452 of the Indian Penal Code is also not at all made out as there is no evidence in this respect. Hence, this revision petition be allowed and the conviction against the applicant be set-aside.
6. State counsel opposes the petition and the submission made in this respect. It is submitted that no error has been committed by the appellate Court in holding the conviction against the applicant under Section 327/149 and Section 452 of the Indian Penal Code and sentenced him accordingly. There is evidence present in the record of the trial Court to substantiate the commission of offence, which have been found proved, therefore, the revision petition is without any substance.
7. I have heard the learned counsel for both the parties and perused the documents placed on record.
8. On perusal of the impugned judgment, it is found that although the

learned appellate Court appreciated the evidence of the witnesses, the observation was made in paragraph 12 that the learned Court has erred in convicting the applicant under Section 327/149 of the IPC. It is concluded that the learned trial Court has committed an error in convicting the applicant under Section 327/149 of the IPC, but in the paragraphs 16 and 19 of the judgment learned appellate Court has confirmed the conviction and sentence against the applicant under Section 327/149 of the IPC, which appears to be in juxtaposition of the conclusion drawn in paragraph 12 of the judgment.

9. The trial Court has held conviction under Section 148 of the IPC on the basis of one seizure of a knife made from co-accused Govind Singh. Further, the learned appellate Court has concluded in the impugned judgment that the applicant is not guilty for commission of offence under Section 148, 458, 506 Part-I of the IPC and the conviction was set aside. His conviction under Section 147, 452, 327/149 was ordered. But, there is no order regarding maintaining or modifying the sentence for commission of offence under Section 147 of the IPC. Therefore, for this reason, it is found that the impugned judgment has ambiguity, which needs to be clarified. Proper reason needs to be assigned for upholding the conviction making reference to the statements of the witnesses so that it will enable the revisional Court to draw a conclusion, look for the legality, propriety and correctness of the order passed. Hence, only for this sake this revision petition is allowed. The impugned judgment of the appellate Court is set aside. The appeal is

remanded back to the appellate Court with a direction to re-hear the matter and pass a fresh judgment in appeal in accordance with law.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Balram/Aadil