

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 773 of 2008

Chandrashekhar S/o Premji Rao, aged about 52 years, R/o Railway Colony Bload, Police Station Balod, District Durg (CG)

---- Applicant

Versus

1. Ganesh Prasad S/o Late Khamhan Prasad Sharma, aged about 47 years, R/o Village Marapara Balod, Police Station Balod, District Durg (CG)
2. Chova Prasad Sharma, S/o Late Khamhan Prasad Sharma, aged about 49 years, R/o Village Shikaripara Balod, Police Station Balod, District Durg (CG)
3. Pradeep Kumar Nag, S/o Sadaram Nag, aged about 35 years, Village Marapara Balod, Police Station Balod, District Durg (CG).
4. Dileep Kumar, S/o Late Satau Ram Dewangan, Village Kohangatola Police Station Balod, District Durg (CG).
(Non-applicant No.1 to 4 were appellant/accused)
5. State of CG, through the Police Station Balod, District Durg (CG)

--- Respondent/s

For Applicant	:	Mr. Rakesh Pandey, Mr. Abhishek Pandey, Advocates.
For Non-applicants	:	Mr. Raj Kumar Pali, Advocate.
For State	:	Mr. Sameer Sharma, Dy. GA.

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

27.11.2020

First of all as per FIR (Ex.P-3) on 22.08.2005 at about 12 noon the accused persons forced themselves into the bedroom without knocking at the door where complainant Chandrashekhar (PW-5) was sleeping, and his wife Manorama (PW-6) was also present there. When the complainant objected to their unwanted entry in his house, some hot words were exchanged between them and thereafter the accused persons got back with a threat to deal with them later. On the same day at about 1:30 PM the accused persons are again said to have come to his house and abused the complainant (PW-5) apart from beating him with hands and fists. At about 8:45 PM on the same day they again came there and

indulged in the same act of beating and abuses. Subsequently, FIR (Ex. P-3) was lodged by the complainant (PW-5) on the same day at about 9:30 PM on the basis of which offences under Sections 452, 323 & 34 IPC were registered against them. After completion of investigation charge-sheet was filed against them under the same sections followed by framing of charge accordingly.

2. Learned Magistrate vide judgment impugned dated 30.03.2007 passed in Criminal Case No.123/2006 convicted the accused persons under Sections 452 and 323 IPC and imposed the sentence of RI for 6 months with fine of Rs.200/- under Section 452 and RI for one month with fine of Rs.100/- under Section 323 IPC, plus default stipulations. Learned first appellate Court vide judgment impugned dated 04.09.2008 passed in Criminal Appeal No.23/2007 however set aside the findings recorded by learned Magistrate and acquitted all the accused persons of the charges levelled against them. Hence this revision by the complainant.

3. Counsel for the complainant submits that though there is ample material on record showing the act of the accused persons where they forcibly entered in his house and subjected him and his wife to abuses and beating with hands and fists but yet the lower appellate Court has recorded an erroneous finding of acquittal of the accused persons of the charges levelled against them. He submits that the evidence of the eye witnesses namely Chandrashekhar (PW-5) and his wife Manorama (PW-6) has been given a complete go bye while acquitting the accused persons of the charges levelled against them and therefore, the judgment impugned is liable to be set aside.

4. Counsel for the accused/non-applicants however supports the judgment impugned and submits that as the findings of acquittal by the lower appellate Court are based on proper appreciation of the evidence of

the witnesses, no interference is called for. State counsel also assisted this Court.

5. If the evidence of complainant (PW-5) is taken into consideration, it appears that as he was apprehensive of a report being lodged by the accused persons regarding the incident which took place on the same day first at 12 noon and then at 1:30 PM, as a safety measure he went to the police station in the night and lodged the report against the accused persons so as to protect his job. Hemkanta (PW-1) is the witness in whose house the complainant was residing as a tenant, has not supported the case of the prosecution. She has categorically stated that she was not aware of any incident of abuses and quarrel between complainant and the accused persons. The apprehension of beforehand lodgment of the report at the hands of the accused persons is further apparent from the evidence of Ashivni Goutam (PW-3). Another important witness is Aslam Tigala (PW-2) whom the complainant had informed about the incident has also not stated anything in support of the case of the prosecution. He has also expressed his ignorance regarding the incident of beating and abuses as alleged by the complainant. PW-6 is the wife of the complainant but she too has categorically stated that no such incident of beating and abuses etc. took place with her nor did she disclose anything like this to anyone. From the record it also appears that the first incident of 12 noon and 1:30 PM to the effect that the accused persons had entered the house of the complainant (PW-5) without knocking at the door was not informed to anyone. Of course, doctor (PW-4) has noticed certain injuries though simple in nature on the body of PW-5 and PW-6 yet she has also expressed possibility of self infliction of the same. The possibility of complainant being apprehensive of losing the job in case of first lodgment of the report at the hands of the accused persons cannot be ruled out as the same finds place in the testimony of some of the witnesses examined by him. Had the complainant really been a sufferer to the incident of

abuses and beating coupled with threat at the hands of accused persons, he would not have waited for the incident of 8:30 PM and would have lodged the report about the same at the beginning itself when the accused persons had entered his house without knocking the door and indulged in hurling abuses and inflicting injuries, if any. The act of keeping mum up to the third episode of incident which took place in the night creates a doubt in the mind of this Court. The view taken by the learned lower appellate Court acquitting the accused persons of the charges levelled against them appears to be based on the proper appreciation of the testimony of the witnesses and therefore, cannot be faulted with.

6. The revision thus being without any substance is liable to be dismissed and is hereby dismissed affirming the judgment passed by the learned lower appellate Court.

Sd/-
(Vimla Singh Kapoor)
Judge

Jyotishi/Ajay