HIGH COURT OF MADHYA PRADESH, JABALPUR

SINGLE BENCH : HON'BLE SHRI JUSTICE VISHNU PRATAP SINGH CHAUHAN

Criminal Revision No.480/2020

Chirai Raikwar & others

Vs.

State of Madhya Pradesh

Shri Arvind Kumar Soni, learned counsel for the applicants.

Shri Vishal Yadav, learned Deputy Government Advocate for the respondent/State

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Whether approved for reporting : Yes / No

O R D E R

(Passed on the 12th day of March, 2020)

The applicant No.1 has been convicted for offence punishable under Section 323 of IPC and the applicants No.2 and 3 have been convicted for offence punishable under Section 323 read with Section 34 of IPC and each sentenced to 3 months rigrous imprisonment with fine of Rs.500/- vide judgment dated 2.8.2019 passed by the learned Judicial Magistrate First Class, Rajnagar, District-Chhatarpur in criminal case No.394/2017. In criminal appeal No.141/2019 vide judgment dated 8.1.2019, the learned Second Additional Sessions Judge, Chhatarpur, dismissed the appeal by affirming the conviction and sentence passed against the applicants. Being aggrieved by the aforesaid

judgments, the applicants have preferred the present criminal revision under Section 397/401 of the Cr.P.C.

2. The case of the prosecution, in short, is that, the complainant Nanhelal Raikwar lodged a report at Police station-Khajuraho that on 25.8.2017, at about 1.30 a.m., when he was standing in front of his house, the applicants Anari Raikwar, Chirai Raikwar and Mihilal Raikwar came there and started abusing him by filthy words on the basis of previous animosity. When the complainant tried to stop them from abusing him, the applicants Anari and Mihilal caught hold him and the applicant Chirai assaulted him on his head by a stick. On shouting of the complianant, Beti Bai (PW-1),wife of the complainant, his daughter and Katuwa Raikwar (PW-4) intervened and rescued the complainant. On a report lodged by the complainant Nanhelal Raikwar, crime no.142/2017 was registered at Police station-Khajuraho against the applicants for offence punishable under Sections 294, 323/34, 506 of IPC. After completing the investigation, charge-sheet came to be filed before the Court of JMFC, Rajnagar, District-Chhatarpur.

3. Learned trial Court after completing the trial, delivered a judgment dated 2.8.2019 convicting the applicants for offence punishable under Section 323 and Section 323 read with Section 34 of IPC and sentenced each of them to undergo 3 months rigorous imprisonment and fine of Rs.500/-. In default of payment of fine, additional 5 days simple imprisonment was directed. The applicants being aggrieved by that conviction and sentence

preferred an appeal which was registered as Criminal Appeal No.141/2019. Learned appellate Court after hearing both the parties, vide judgment dated 8.1.2019 dismissed the appeal by affirming the conviction and sentence of the applicants under Section 323 and Section 323 read with Section 34 of IPC.

4. Learned counsel for the applicants submits that both the Courts below have not appreciated the evidence in proper perspective. There are so many contradictions and omissions in the statements of the witnesses. The applicants were the first offenders. In such circumstances, it is prayed that this revision be allowed by setting aside the conviction and sentence passed by both the Courts below and the applicant be acquitted.

5. In alternate, it is submitted by the learned counsel for the applicants that the applicants does not wish to press this revision on merits and appreciation of evidence done by both the Courts below. The incident occurred in a spur of moment amongst the victim and the applicants. The victim received only one injury in the incident, which was simple in nature. The applicants have already deposited the fine amount and undergone one and a half month of their custodial awarded sentence. Looking to the nature of offence, it is prayed that jail sentence of the applicants may be reduced to the period which they have already undergone in custody.

6. On the other hand, learned Deputy Government Advocate for the State submits that looking to the injury received by the victim, both the Courts below have not committed any

error in convicting and sentencing the applicants. There is no illegality or perversity visible in the judgments passed by both the Courts warranting interference by this Court. Thus, the revision filed by the applicant deserves to be dismissed.

7. Heard the learned counsel for the parties at length and perused the record of both the Courts below.

8. This Court cannot re-appreciate the evidence minutely in exercising the powers under the revisional jurisdiction. Hon'ble Apex Court in the case of **Sanjay Singh Ramarao Chavan Vs. Dattatray Gulabrao Phalke and others,** AIR 2015 (Suppl) 127, in para-14 has held as under :

> "14. .....The revisional Court is not meant to act as an appellate Court. The whole purpose of the revisional jurisdiction is to preserve the power in the Court to do justice in accordance with the principles of criminal jurisdiction. Revisional power of the Court under Section 397 and 401 of the Cr.P.C. is not to be equated with that of an appeal. Unless the finding of the Court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the Courts may not interfere with decisions in exercise of their revisional jurisdiction."

9. In the light of the aforesaid proposition laid down by the Supreme Court in the case of **Sanjay Singh Ramarao Chavan** (supra), it is evident that injured Nanhelal Raikwar (PW-2) has stated that applicants Anari and Mihilal caught hold him and applicant Chirai inflicted a blow of stick on his head. His testimony is duly corroborated by Beti Bai (PW-1), wife of the victim, who has also clearly stated that the applicants Anari and

Mihilal caught hold her husband and the applicant Chirai inflicted a blow of stick on his head. Dr. Satendra Kumar Gupta (PW-3) who examined the victim, found a cut wound on the left parietal region of head of the victim and mentioned its size as 1 X ½ cms. MLC report of the victim is exhibited as *Ex.P/3*.

10. In view of the aforesaid, it is clear that the applicant Chirai voluntarily caused injury to the victim on the left parietal region with help of other applicants. Looking to the size and measurement of the injury caused to the victim, this Court is of the view that both the Courts below have not committed any error in convicting the applicants for offence punishable under Section 323 and 323 read with Section 34 of IPC.

11. So far as the sentence of the applicants is concerned, looking to the fact that the applicants have already undergone one and a half month of their custodial awarded sentence, which is sufficient sentence considering the nature of offence committed by the applicants, their jail sentence may be reduced to the period which they have already undergone in the custody.

12. On the basis of the aforesaid discussion, the revision filed by the applicants is hereby partly allowed. Conviction of the applicant Chirai for offence punishable under Sections 323 of IPC and conviction of applicants Anari and Mihilal for offence punishable under Section 323 read with Section 34 of IPC is hereby maintained but, jail sentence of the applicants is reduced to the period which they have already undergone in custody.

13. At present, the applicants are in jail, therefore, it is directed that they be released forthwith, if not required in any other case.

14. Copy of the order be sent to both the Courts below along with their records for information and necessary compliance.

(Vishnu Pratap Singh Chauhan)
JUDGE

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