

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 570 of 2009**

Hem Singh @ Hemchandra Thakur, S/o. Purushottam Thakur, aged about : 29 years, R/o. Village : Dudhli, Police Station : Balod, District Durg (C.G.)

---- **Petitioner**

Versus

State of Chhattisgarh, Through : Police Station – Daundilohara, District : Durg (C.G.)

----**Respondent**

For Petitioner	:	Ms. Nand Kumari Kashyap, Advocate on behalf of Mr. Pushpendra Kumar Patel, Advocate.
For Respondent	:	Mr. Vaibhav K. Agrawal, Panel Lawyer.

Hon'ble Shri Justice N.K. Chandravanshi

Order On Board

13.09.2021

(1) This Criminal Revision has been preferred against the impugned judgment dated 23.11.2009 passed by Additional Sessions Judge (FTC), Balod, District Durg (C.G.) in Criminal Appeal No. 111/2008 affirming the judgment of conviction and order of sentence dated 25.09.2008 passed by Judicial Magistrate, First Class, Balod, District Durg in Criminal Case No. 35/2005 convicting the petitioner/accused for the offence punishable under Section 324 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for six months with fine of Rs.500/-, with default stipulation.

(2) Case of the prosecution, in brief, is that on 25.10.2005 at about 7.30 PM when complainant Bhanuram, after taking meal, went outside the home for walking and on the way, he is talking with Laxmi Bai (PW-1), who is wife of Babulal, at that time petitioner came there from his back side and assaulted upon his head with axe, as a result thereof, he sustained grievous/multiple injuries on his head. After usual investigation, charge sheet under Section 324 of IPC was filed before Judicial Magistrate, First Class, Balod. Charge under Section 324 IPC was framed and the same was read and explained to the petitioner/accused, which he denied and his plea was recorded.

(3) In order to prove the guilt of petitioner/accused, the prosecution has examined as many as 9 witnesses. Statement of the petitioner/accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. Apart from this, the petitioner/accused has also examined one witness namely Devendra Kumar (DW-1) in his defence.

(4) Trial Magistrate, after hearing learned counsel appearing for the respective parties and considering the material available on record, has convicted and sentence the petitioner/accused as mentioned in opening paragraph of the judgment. In an appeal preferred by the petitioner/accused, judgment passed by the trial Magistrate has been affirmed by the appellate Court. Hence this Criminal Revision.

(5) Learned counsel appearing for the petitioner/accused submits that none of

the prosecution witnesses have supported the statement of complainant – Bhanuram (PW-1) that petitioner/accused assaulted on his head and injured him. He further submits that even Dr. Vinod Kumar Chorka (PW-7) has admitted in his cross-examination that the injuries sustained by the complainant could be caused on collusion with wooden door in an intoxicated condition. She also submits that there had been some previous enmity also between them, therefore, learned trial Magistrate ought not have convicted the petitioner/accused on the basis of statement of complainant Bhanuram (PW-10), despite that learned both the courts below have convicted and sentenced the petitioner/accused as aforementioned, which is erroneous, perverse and unsustainable in law. She next submit that if conviction of the petitioner/accused is maintained then since the petitioner has already remained in jail after passing of the appellate judgment i.e. 23.11.2009 till bail order granted by this Court on 30.11.2009 *whereas* sentence awarded to the petitioner is only of six months imprisonment and incident had taken place in the year 2005 and thereby more than 15 years have rolled by since then, therefore, ends of justice would be met if the petitioner/accused is sentenced to the period already undergone by him. He submits that fine has already been deposited by the petitioner/accused.

(6) On the other hand, learned counsel for the State while supporting the impugned judgment would submit that the impugned judgment is based on well founded evidence, which does not call for any interference by this Court.

(7) I have heard learned counsel for the parties and perused the material available on record of both the courts below including impugned judgment with

utmost circumspection.

(8) Complainant – Bhanuram (PW-1) has stated in his court statement that on 25.10.2005 at about 6 pm when he was going outside from his home for walking after taking meal, and on the way he is talking with Laxmi Bai (PW-2) [wife of Babulal], at that time petitioner/accused came there from his back side and assaulted upon his head with axe, thereafter, he (complainant) ran away by screaming towards square (चौक) of the village and narrated the entire incident to Babulal (PW-3) and Bisalu Ram. His statement is well supported by FIR (Ex.P-1), which was lodged by complainant himself after about 1 ½ hours of the incident.

(9) Laxmi Bai (PW-2), Babulal (PW-3), Bisalu (PW-4), Kaushal Kumar (PW-5) have not supported the statement of complainant that they had seen the incident but Laxmi Bai (PW-2) has deposed in her court statement that complainant was talking with her while going from home. Other aforesaid witnesses have also not supported the version of complainant regarding assault made by petitioner/accused but have stated that when they were standing near betel shop, at that time, complainant came towards them by screaming, at that time, the blood was oozing out from his head. Although aforesaid witnesses have not supported in their court statement that they had seen assaulting the petitioner by axe upon complainant but Babulal (PW-3) & Kaushal Kumar (PW-5) have stated that complainant has told them that petitioner/accused has assaulted him with the axe.

(10) From medical evidence of Dr. Vinod Kumar Chorka (PW-7) and M.L.C. report of complainant, which has been proved by Dr. Vinod Kumar Chorka (PW-7) also supported the statement of complainant, in which, it has been stated that two lacerated wounds was found on the head of complainant and the blood was oozing out from there. He has also opined that aforesaid injuries were caused by hard, blunt and sharp edged mixed object. Although, he has admitted in his cross examination that in an intoxicating condition, on being collided with wooden door, such injuries could be caused but there is nothing in cross-examination of any of the witnesses that complainant had collided with any wooden door in an intoxicating condition *whereas* from the evidence available on record it is apparent that the aforesaid injuries, sustained by the complainant, were caused to him by the petitioner/accused with the axe. The defence has cross-examined these witnesses in detail but has not been able to elicit anything in their cross-examination to discard their testimony. Statement of Devendra Kumar (DW-1) that complainant had fell on door in his house in an intoxicated condition is not inspire confidence of the Court because such fact has not been asked from the complainant in his cross-examination.

(11) Looking to the aforesaid evidence and material available on record, I find that the trial Magistrate as well as First Appellate Court have rightly held guilty under Section 324 of IPC to the petitioner, therefore, the conviction part of the judgment impugned deserves to be and is hereby maintained.

(12) So far as sentence part of the impugned judgment is concerned, suggestion taken in the cross-examination from complainant and other witnesses

shows that there had been some dispute between both the parties regarding writing of letters by complainant mentioning character of the wife of petitioner/accused. Moreover, the petitioner/accused has remained in jail after passing of the appellate judgment i.e. 23.11.2009 till bail order granted by this Court on 30.11.2009 *whereas* sentence awarded to the petitioner/accused is only of six months imprisonment and incident had taken place in the year 2005 and thereby more than 15 years have rolled by since then. Nothing has been mentioned in record of the courts below with regard to previous criminal antecedents of the petitioner. Thus, the petitioner is sentenced to the period already undergone by him. However, fine sentence, as imposed upon the petitioner, is hereby maintained.

(13) Accordingly, the criminal revision is partly allowed.

Sd/-
(N.K. Chandravanshi)
Judge

D/-

