

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on 26.03.2021

Order pronounced on 09.07.2021

CRR No. 428 of 2010

- Jaini @ Dilip Kumar, S/o Bharat Ghasiya, aged about 19 years, R/o Cooperative Line Charcha, PS Charcha Colliery, Korea (CG)

---- Applicant.

Versus

- State Of Chhattisgarh, through District Magistrate, District Korea (CG)

---Respondent.

With

CRR No. 429 of 2010

1. Raju @ Rajesh Kumar, S/o Jamuna Prasad Sarthi, aged about 22 years, R/o Village Nagpur, PS Charcha, Tehsil Baikunthpur, District Korea (CG)
2. Pintu @ Jaikumar, S/o Baldev Sarthi, R/o Village Nagar, PS Charcha, District Korea

--- Applicants.

Versus

- State Of Chhattisgarh, through District Magistrate, District Korea (CG)

--Respondent.

For Applicants : Mr. D.N. Shukla, Senior Adv. with Mr. Arijit Tiwari & Mr. Syed Ishhadil Ali, Advocates.

For respondent/State : Mr. Ishwar Jaiswal, PL.

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

Since both these revisions arise out of the same judgment dated 10.08.2010 passed by the lower appellate Court, they are being disposed of by this common order.

2. From the FIR (Ex.P-1), the statements of the witnesses recorded under Section 161 Cr.P.C. as also the charge-sheet, it is manifest that on 16.09.2007 at about 12 midnight when the prosecutrix was sleeping, the accused/applicants along with one Santosh (already acquitted by learned trial Court) had entered in the house of the prosecutrix (PW-1) and asked her as to whom had she given shelter in her house. They also subjected her to beating and while leaving the house they bolted the door from

outside. Subsequently, the Panch of the ward along with his brother Ramkrishna came there and unlocked her house. This led to the registration of offence under Sections 452, 342, 323 & 506/34 IPC followed by filing of charge under the same sections.

3. Learned Magistrate vide judgment dated 31.12.2008 acquitted accused Santosh of all the charges levelled against him but convicted the accused/applicants herein under Sections 452 and 342 IPC and sentenced each of them to undergo RI for 2 years with fine of Rs.1000/- under Section 452 IPC and RI for 6 years under Section 342 IPC, plus default stipulation. Learned lower appellate Court also approved the judgment of learned Magistrate in its entirety. Hence these revisions.

4. Heard counsel for the parties and perused the material on record.

5. The evidence of the prosecutrix (PW-1) goes to show that on the date of incident at about 12 midnight when she was sleeping alone in her house, the accused/applicants along with one Santosh (acquitted by the learned Magistrate) had entered in her house and subjected her to beating. Not only this, while leaving the house the accused/applicants had also put lock on the exit door from outside, which was opened after the arrival of Ward Panch accompanied by one Ramkrishna, as is clear from the evidence of Bhaiyalal (PW-2). Evidence of PW-2 also goes to show that on the same night the accused/applicants had gone to his house also and complained about his sister (the prosecutrix) that she was not giving liquor to them. On this, PW-2 however, did not pay any heed on all that and left the same to be a matter between them and the prosecutrix. Though the other witnesses have been declared hostile and there are minor contradictions and omissions in the evidence of PW-1 and PW-2 yet on material particulars that the accused/applicants had gone to the house of the prosecutrix in the midnight and had wrongfully confined her in her own house by bolting the door from outside, is not in dispute. The overall

evidence speaks volumes about the act of the accused/applicants in barging into the house of prosecutrix in the midnight after preparing to cause hurt, the offence under Section 452 i.e. for committing the house trespass and under Section 342 for wrongfully confining her are clearly made out. There is no reason for the prosecutrix to portray a false story against accused/applicants so as to be falsely implicated by prosecution witnesses.

6. The conviction of the accused/applicants under Sections 452 and 342 IPC is thus fully based on the material collected by the prosecution and therefore, this Court does not find any error to interfere with the same. Their conviction is accordingly maintained.

7. As regards sentence, keeping in mind the fact that the incident had taken place about 14 years back and that the accused/applicants have already suffered a lot by facing a long drawn prosecution and also by remaining inside for a fortnight, in the considered opinion of this Court the interest of justice would be served if the sentence imposed on them is reduced to the period already undergone. Order accordingly.

8. Revisions are thus allowed in part.

**Sd/-
(Vimla Singh Kapoor)**

Judge