

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 770 of 2012

Mahettar Gond, S/o- Sidar Gond, Aged about- 50 years, R/o-
Hathitikra, Outpost- Naila, Police Station- Janjgir, District- Janjgir-
Champa (C.G.). **---- Applicant**

Versus

State of Chhattisgarh, Through- Police Station- Janjgir-Champa,
District- Janjgir-Champa (C.G.). **---- Non-Applicant**

For Applicant : Mr. Vaibhav A. Goverdhan, Advocate.
For Non-Applicant/State : Mr. C.B. Kesharwani, Panel Lawyer.

Hon'ble Shri Justice Gautam Chourdiya

Order On Board

20/10/2021

- 1) Challenge in this Revision filed under Section 397 r/w 401 of Cr.P.C. is to the judgment dated 31.10.2012 passed by Additional Sessions Judge, Janjgir-Champa in Criminal Appeal No. 141/2012 confirming the judgment dated 06.09.2012 passed by Chief Judicial Magistrate, Janjgir-Champa in Criminal Case No. 753/2012 convicting and sentencing the applicant as under-

Conviction	Sentence
U/s. 323 of Indian Penal Code (in short "IPC")	R.I. for 3 months and fine of Rs. 500/-, in default of fine additional R.I. for 15 days.
U/s. 326 of IPC	R.I. for 3 years and fine of Rs. 500/- in default of fine additional R.I. for 15 days.

- 2) As per the prosecution case, on 24.07.2010 at around 6 pm there was some dispute between the accused persons (Mahettar Gond and Love Kumar) and the complainant/victim Brijmohan as the complainant party erected fencing on the *badi* of the accused

persons and also damaged their *badi*. Accused Love Kumar assaulted the victim Santosh with club whereas accused Mahettar Gond assaulted him with Axe. When victim Santosh Kumar intervened, he too was assaulted by the accused Mahettar with axe on his left cheek, on the back of the knee whereas accused Love Kumar assaulted him with club. The incident was witnessed by Brihaspati, Sati, Bahoran etc. On report being lodged by complainant Brijmohan offence under Section 294, 506 B, 223 of IPC was registered against the accused persons.

- 3) During investigation site plan Ex.P/2 was prepared, clubs were seized from the accused persons vide Ex.P/3 & P/4. As per medical examination of complainant Brijmohan vide Ex.P/3 he suffered abrasion over left area lateral side which was simple in nature, whereas victim Santosh Kumar sustained incised wound over left side middle of jaw of size 7cm x 1 cm and incised wound over left leg just below knee joint of size 6cm x 2cm x 1 cm. As per Ex.P/5 victim Santosh suffered fracture of mandible of jaw. After recording statements of witnesses and completing formalities of the investigation, charge-sheet was filed under Section 294, 506 (B), 323, 325, 34 of IPC against the accused persons. Trial Court charged the accused persons under Section 294, 506 B, 326, 324 of IPC which were abjured by them and they prayed for trial. The trial Court after considering material available on record convicted and sentenced the accused persons as mentioned in paragraph 1 of this order and on appeal being made by the applicant, the appellate Court dismissed the same upholding the order of trial Court.
- 4) Learned counsel for the applicant submits that the impugned judgment is passed without appreciating the material available on record. There are material contradiction and omission in the statement of the witnesses which have not been considered by the Courts below in accordance with law.

Alternatively it is submitted that if this Court maintains the

applicant's conviction u/s 323 & 326 of IPC, then considering the fact the incident took place way back in the year 2010, at that time the applicant was 50 years old, he has remained in jail from 26.08.2010 to 31.08.2010 and after passing of judgment 06.09.2012 to 07.12.2012 he has remained in jail about more than 97 Days and has already paid fine amount and presently on bail, the jail sentence of the applicant may be reduced to the period already undergone by him.

- 5) On the other hand, learned State counsel supports the impugned judgment and submits that Courts below after due appreciation of evidence available on record has rightly convicted the applicant which needs no interference by this Court.
- 6) Heard learned counsel for the parties and perused material available on record.
- 7) Present case is based on direct evidence. Injured witnesses Brijmohan PW/2 and Santosh Kumar PW/3 have categorically stated in their depositions as to the manner in which they were assaulted by the applicant Mahettar Gond with axe and absconded accused Love Kumar with club. In their cross-examination the defence could not elicit anything which could render their evidence doubtful or untrustworthy. The evidence of these witnesses further, finds corroboration from the promptly lodged FIR vide Ex.P/1, their medical reports Ex.P/3, P/4 & P/5 as well as the evidence of PW/1 Urmila Bai, PW/4 Brihaspati, PW/5 Kumari Sati, PW/6 Ramayan Das, PW/8 Dr. B Markam. Thus, in view of the ocular, medical and documentary evidence, conviction of the applicant under Section 326, 323 of IPC awarded by the trial Court and subsequently affirmed by the appellate Court cannot be faulted with. This Court finds no illegality or perversity in the judgments of the Courts below and as such the conviction of the applicant is hereby affirmed.
- 8) Now this Court proceeds to consider the quantum of sentence. In the matter of **George Pon Paul Vs. Kanagalet and Others, (2009) 13 SCC 478** the Hon'ble Supreme Court considering the

fact that fine amount has been deposited and paid to the victim as also the long passage of time, sentenced the accused to the period already undergone by him. In the matter of ***Nasir Vs. State of Uttar Pradesh reported in 2010 (13), SCC 251*** the Hon'ble Supreme Court considering the fact that the appellant was sentenced to 5 years imprisonment under Sections 399 and 402 of IPC, occurrence took place 29 years ago, the appellant remained in custody for period of 6 months, allowed the appeal in part and reduced the sentence to the period already undergone by the appellant.

- 9) Co-ordinate Bench of this Court in the matter of ***Panchram Vs. State of Chhattisgarh*** vide order dated 22.07.2016 passed in Criminal Revision No. 620 of 2003 while maintaining conviction of the petitioner under Section 326 of IPC, considering the fact that the incident took place around 16 years ago, the petitioner was on bail, reduced the sentence from 6 months R.I. to the period already undergone by him i.e. 16 days by enhancing the fine amount from Rs. 3,000/- to Rs. 8,000/- with a further direction to pay a sum of Rs. 5,000/- of the said amount to the victim/complainant as compensation.
- 10) In the present case, considering the facts and circumstances of the case, the fact that the incident took place around 11 years back, the applicant is facing the trial since 2010 and contesting the litigation since long, at the time of incident he was around 50 years old, he has remained in jail for a period of more than 97 days and presently on bail, there was counter FIR by the accused persons against the victim/complainant the fact that the fine amount has already been deposited by the applicant, keeping in view the judgments of Hon'ble Supreme Court in the matter of ***George Pon Paul (supra) & Nasir (supra)*** and the order passed by the Co-ordinate Bench of this Court in the matter of ***Panchram (supra)*** this Court is of the opinion that no fruitful purpose would served in sending the applicant back to jail at this stage and the end of justice would served if he is sentenced to period already undergone by him for the offence

under Section 326 of IPC by enhancing fine amount imposed thereunder from Rs. 500 to 5,000/-, which shall be available to the victim Santosh as compensation u/s 357 of CrPC.

- 11) In the result, the revision petition is allowed in part. Conviction of the applicant under Sections 326, 323 of IPC is hereby affirmed. While maintaining sentence u/s 323 of IPC awarded by the trial Court, sentence imposed under Section 326 of IPC is reduced to the period already undergone by the applicant by enhancing the fine imposed thereunder of Rs. 500 to 5,000/-. If the applicant fails to pay the fine amount he shall have to suffer additional RI for 3 months. The fine amount already deposited by the accused shall be adjusted accordingly.
- 12) On fine of Rs. 5,000/- being deposited by the applicant the same shall be payable to the victim Santosh as compensation under Section 357 (3) of CrPC by the trial Court after due verification.

Nadim

Sd/-
(Gautam Chourdiya)
Judge