

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 414 of 2010**

Shiv Bagas, S/o Bhuneshwar Dangchagha, aged about 40 years, R/o Goverdhan Nagar, Ward No. 13, Police Station Nevra, District Raipur (C.G.)

---- Applicant

Versus

State of Chhattisgarh, Through : the Police Station Nevra, District Raipur (C.G.)

----Non-applicant

For Applicant	:	Mr. Basant Dewangan, Advocate
For Non-applicant	:	Mr. Praveen Shrivastava, P.L.

Hon'ble Shri Justice N.K. Chandravanshi**Order On Board****13.07.2021**

(1) Proceedings of the matter have been taken-up through Video Conferencing.

(2) Present revision is directed against the impugned judgment dated 6.8.2010 passed by the Additional Sessions Judge, Bhatapara, District Raipur in Criminal Appeal No. 6/2010 affirming the order dated 3.2.2010 passed by Judicial Magistrate, First Class, Tilda in Criminal Case No. 43/2009 convicting the applicant/accused for the offence punishable under Section 324 of the Indian Penal Code and sentencing him to undergo simple imprisonment for six months with fine of Rs. 500/-, in default of payment of fine, to further undergo simple

imprisonment of one month.

(3) Brief facts of the case are that on 18.02.2009 at about 1.45 P.M. complainant Raju Ahuja had gone to Budhwari Bazar, Nevra for selling of dressed pour meat, at that time, applicant also came there for selling of dressed pour meat. They were having the shop / place in the same market and they were involved in the same business. It is alleged that applicant started abusing the complainant by filthy language as soon as he reached there because according to him, the place on which the complaint was holding his business belonged to the applicant and in furtherance of that the applicant assaulted the complainant by means of *Kattal* [Article used for dressing of pour meat], as a result of which complainant sustained multiple injuries in his head, wrist and severe bleeding. Based on which, complainant lodge FIR (Ex.P-1) against the applicant/accused for commission of offence under Sections 294, 323 & 506-B of the Indian Penal Code. After filing of charge sheet, the trial Magistrate framed the charge under Section 324, 294, 506 (part-II) of the IPC and Sections 25 & 27 of the Arms Act.

(4) So as to hold the applicant/accused guilty, the prosecution has examined 6 witnesses. Statement of the applicant/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.

(5) Vide judgment dated 3.2.2010, learned Magistrate has acquitted the applicant/accused of the offence under Section 294 & 506(B) of the IPC and Section 25 & 27 of the Arms Act *whereas* convicted the applicant for the offence

punishable under Section 324 of the Indian Penal Code and sentencing him to undergo simple imprisonment for six months with fine of Rs. 500/-, in default of payment of fine, to further undergo simple imprisonment of one month.

(6) In an appeal preferred by the applicant/accused, order of the Magistrate has been affirmed by the appellate Court. Hence this Criminal Revision.

(7) Counsel for the applicant/accused submits that he is not pressing this appeal as regards conviction part of the judgment impugned and would confine his argument to the sentence part of the same only. According to him, the applicant has already remained in jail for about 1 month and looking to the first offence which has been committed by him, he may be sentenced to the period already undergone by him. To this submission of the counsel for the appellant, state counsel has no objection.

(8) I have heard learned counsel appearing for the parties and perused the material available on record including judgment impugned with utmost circumspection.

(9) Although learned counsel for the applicant is pressing only the conviction part of the impugned judgment despite that if merits of the judgment is seen, then Complainant – Raju (PW-1) has clearly stated in his evidence that on the date of incident, at Budhwari Bazar, Nevra applicant assaulted the complainant by means of *Kattal*, as a result of which he sustained cut injuries on his head and blood was oozing out from there.

(10) Lata (PW-2),- wife of complainant – Raju, who was also present at the time of incident, has fully supported the evidence of complainant.

(11) Sajesh (PW-5), who is said to be the eye witness to the incident, has also supported the evidence of complainant. The defence has cross-examined this witness in detail but has not been able to elicit anything in his cross-examination to discard his testimony.

(12) Dr. G.R. Agrawal (PW-3), who was medically examined complainant – Raju on 18.2.2009 also stated that on being medical examination, he found one incised wound over scalp in the size of 15 c.m.; one abrasion on his left wrist and also one abrasion on his nose. He has also opined that afore-states injuries were caused by hard and sharp object. His statement is supported by medical report (Ex.P-3) prepared by him. There is nothing in his cross-examination, on the basis of which his above evidence may be disbelieved.

(13) Perusal of afore-stated evidence, it is proved that on the date of incident, applicant assaulted the complainant by means of sharp edged object and caused multiple injuries to the complainant. According to the Dr. G.R. Agrawal (PW-3), the injuries sustained by the complainant are simple in nature.

(14) 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 IPC to the appellant and keeping in view of the fact that the incident had taken place in the year 2009 and thereby more than 12 years have

rolled by since then, the conviction part of the judgment impugned is hereby maintained.

(15) So far as sentence part of the impugned judgment is concerned, as per record of the court below, the applicant has remained in judicial custody from 19.02.2009 to 3.2.009 and after dismissal of appeal i.e. from 6.8.2010 to 19.8.2010 [Bail was granted to the applicant by this Court on 19.8.2010] i.e. the appellant has remained in jail about one month. Furthermore, nothing has been mentioned in record of the courts below with regard to previous criminal antecedents of the applicant. Thus, the applicant is sentenced to the period already undergone by him. However, fine sentence, as imposed upon the applicant, is maintained. Appellant is stated to have deposited the fine of Rs.500/- imposed by the court below. Thus, sentence imposed upon the applicant is modified to the extent indicated hereinabove.

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

Sd/-
(N.K. Chandravanshi)
Judge

D/-

