

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 142 of 2012****Order reserved on 22.07.2021****Order delivered on 30.07.2021**

1. Mohammed Kasim, S/o Abdul Karim, aged about 23 years, Occupation-Press Reporter, R/o Village – Luthra, P.S.- Seepat, District – Bilaspur (C.G.)
2. Mohammed Ijrail, S/o Sheikh Sattar, aged about 24 years, Occupation – Shopkeeper, R/o Village- Luthra, P.S.- Seepat, District – Bilaspur (C.G.)
3. Sheikh Majeed, S/o Sheikh Rahim, aged about 40 years, R/o Occupation – Agriculturist, R/o Village – Luthra, P.S. - Seepat, District – Bilaspur (C.G.) **(In jail)**

---- Applicants**Versus**

State of Chhattisgarh, through the Thana Incharge, Arakshi Kendra, Seepat, District Bilaspur (C.G.)

----Non-applicant

For Applicants	: Mr. Ratnesh Kumar Agrawal, Advocate.
For Non-applicant	: Mr. Raghvendra Verma, Govt. Advocate

Hon'ble Shri Justice N.K. Chandravanshi**ORDER [C.A.V.]**

(1) The proceedings of the matter have been taken-up through video conferencing.

(2) Present revision is directed against the impugned judgment dated 13.02.2012 passed by Third Upper Sessions Judge, Bilaspur (C.G.) in Criminal Appeal Nos. 340/11 & 349/11, respectively partly affirming the order dated 24.11.2011 passed by Judicial Magistrate, First Class, Bilaspur in Criminal Case No. 504/2010 convicting

the applicants/accused for the offence punishable under Sections 323/34 & 325/34 of the Indian Penal Code and sentencing each of them to undergo rigorous imprisonment for three months with fine of Rs.500/- and to undergo rigorous imprisonment for six months with fine of Rs.500/-, respectively for each offence, with default stipulation. Both the sentences were ordered to run concurrently.

(3) Brief facts of the case are that on 03.10.2007 at 7 O'clock evening, the applicant/accused entered into the shop of complainant unauthorizedly and committed *marpeet* with the complainant namely Nand Kumar Tiwari and his son namely Mukesh Tiwari by means of rod and sticks, as a result of which, they sustained grievous / multiple injuries on their legs, hands, back-side and several parts of their body. Based on this, FIR (Ex.P-1) was registered at Police Station, Seepat under Sections 452, 294, 506, 323 read with Section 34 of the Indian Penal Code, 1860 (henceforth "IPC"). After filing of charge sheet, the trial Magistrate framed the charges under Sections 294, 452/34, 323/34, 325/34 & 506-B of the IPC against the applicants/accused.

(4) So as to hold the applicants/accused guilty, the prosecution has examined as many as 10 witnesses. Statements of the applicants/accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

(5) Vide judgment dated 24.11.2011, learned trial Magistrate has acquitted the applicants/accused of the offence under Sections 294 & 506-B of the IPC *whereas* convicted & sentenced each of them under Sections 323/34, 325/34 & 452 of the Indian Penal Code.

(6) Applicants/accused preferred appeal there-against before the appellate Court. The appellate Court vide its impugned judgment dated 13.02.2012, judgment of conviction and order of sentence passed by the trial Magistrate has been partly affirmed by the appellate Court, acquitting each of the applicants/accused under Section 452 of the IPC *whereas* convicting and sentencing each of them as mentioned in paragraph two of this order. Hence, this criminal revision.

(7) Learned counsel appearing for the applicants/accused would submit that independent witnesses have not supported the case of the prosecution; seizure witnesses have also not supported the seizure memos (Exs. P-3 & P-4). He would further submit that medical witness Dr. Rajesh Kumar (PW-10) & Dr. George M. Khakha (PW-4) have clearly stated in their cross-examination that injuries sustained by the complainant and his son can be caused on being fell upon the articles, which were being used by them in their shop. He would also submit that since police officer, who has registered the FIR (Ex.P-1), has not been examined by the prosecution, therefore, the first information report has not been proved in accordance with law; and there was also previous enmity between them, despite that, overlooking all the aforesaid facts, both the courts below have convicted and sentenced the applicants/accused as aforementioned, which is unsustainable in law. He would also submit that even if it is found that applicants/accused have committed the said crime, then he prayed that liberal view may be taken in respect of the sentence imposed upon the applicants/accused because there are no past criminal history of the applicants and the incident took place due to *marpeet* which was taken place in the morning between the children.

(8) On the other hand, supporting the impugned judgment, it has been argued by counsel for the respondent/State that both the courts below were fully justified in convicting and sentencing the accused/applicants as aforementioned, which does not call for any interference in the instant revision.

(9) I have heard learned counsel appearing for the parties and perused the material available on records of both the courts below including impugned judgment with utmost circumspection.

(10) Nand Kumar Tiwari (PW-2), who is complainant of this case, has stated in his court statement that on 3.10.2007 when he along with his son was sitting in his shop and maintaining the accounts of his shop, at that time, applicants/accused came there and started assaulting them by means of stick, rod and hand & fist, as a result of which, he [complainant himself] sustained multiple injuries on his hand, backside and several other places of his body *whereas* his son [Mukesh Tiwari (PW-3)] sustained multiple injuries on his head, leg and immediately after the incident, he went to police station and lodged FIR (Ex.P-1), which he has proved in his statement.

(11) Mukesh Tiwari (PW-3), who is son of complainant and another injured person, has fully supported the statement of his father (complainant) and clearly stated that applicants brutally assaulted him and his father by means of stick and rod and also with hand and fist, as a result of which, they sustained grievous / multiple injuries on head, backside and several other parts of the body.

(12) Mohd. Idrish (PW-1) & Sitaram (PW-7), who are said to be the eye witnesses to the incident, have not supported the case of the prosecution *but* Dr. Rajesh

Kumar (PW-10), who medically examined Nand Kumar Tiwari (PW-2) and his son Mukesh Tiwari (PW-3) on 3.10.2007 has stated in his evidence that he found injuries on both the legs, forehead, face, backside & shoulder of Mukesh Tiwari (PW-3); and also found injuries on left Thai, hip, left ear, left temporal region, chest, head, face, left arm and many bruise on backside of injured/complainant Nand Kumar Tiwari (PW-2). As per his statement , he referred both the injured persons to the District Hospital for further investigation and opinion. Ex.P-11 is the medical report of Mukesh Tiwari (PW-3) whereas Ex.P-12 is the medical report of Nand Kumar Tiwari (PW-2). Statement of Dr. Rajesh Kumar is supported with medical report (Exs.P-11 & P-12), which were prepared by him in respect of Mukesh Tiwari (PW-3) and Nand Kumar Tiwari (PW-2), respectively.

(13) Dr. J.M. Khakha (PW-4), who is Radiologist, has stated in his court statement that Mukesh Tiwari (PW-3) was admitted in CIMS Hospital, Bilaspur, whose X-ray of left leg was being taken as per his direction and on being examination of his X-ray of left leg, he found fracture on his *tibia* bone of left leg. His statement is corroborated by X-ray report (Ex.P-2), which was prepared by him.

(14) Although independent witnesses have not supported the statements of complainant Nand Kumar Tiwari (PW-2) and his son Mukesh Tiwari (PW-3) but medical evidence available on record would support their statements regarding injuries sustained by them in the said incident. Both the doctors i.e. Dr. Rajesh Kumar (PW-10) & Dr. J.M. Khakha (PW-4) have stated in their cross-examination that injuries sustained by both the injured persons can be caused on being fell upon the hard and rough object and also on the articles, which were used by them in their bicycle shop but only on their such admission, it cannot be said that they were

sustained such injuries upon being fell on hard and rough or other objects especially when they have clearly stated in their evidence that they were sustained aforesaid injuries on being assaulted by applicants/accused. Police Officer, who was registered FIR (Ex.P-1), has not been examined but complainant Nand Kumar Tiwari (PW-2) has clearly stated that he lodged FIR (Ex.P-1) and he has also proved his signature on FIR (Ex.P-1), therefore, only on non-examination of Police Officer, who had registered the FIR, it cannot be held that FIR has not been proved in accordance with law.

(15) Furthermore, sticks and roads are commonly available articles in the villages, therefore, non-proving of seizure memo (Exs. P-3 & P-4) will not adversely affect to the case of the prosecution. Complainant (PW-2) and Mukesh Tiwari (PW-3) have been cross-examined in detail by the defence but has not been able to elicit anything in their cross-examination to discard their testimony against the applicants.

(16) In view of the foregoing discussion and perusing the evidence and material available on record, I do not find any adverse material to hold that both the courts below have committed any error in convicting the applicants/accused under Sections 323/34 & 325/34 of the Indian Penal Code, therefore, I upheld the conviction part of the impugned judgment. Thus, it is held that conviction part of the impugned judgment is hereby maintained.

(17) So far as sentence part of the impugned judgment is concerned, evidence of the witnesses shows that before the incident, some quarrel took place between the children, which gave rise to this incident. Both the parties are resident of same village and as per record there is no previous criminal antecedents has been shown

against the applicants, further except injury of left leg of Mukesh Tiwari (PW-3), other injuries have not been proved as grievous in nature. Applicants are reported to have remained in jail from 13.2.2012 till 16.02.2012 and the fact that the incident had taken place in the year 2007 and thereby more than 14 years have rolled by since then. Therefore, looking to the facts and circumstances of the case, their sentence is reduced to the period already undergone by them. However, in lieu thereof, fine of Rs. 500/- each u/S 323/34 IPC; and fine Rs.500/- each u/S 325/34 IPC imposed by the trial Court is enhanced to Rs.1,000/- & Rs. 2,000/- to each of the accused persons, respectively, which shall be payable before the concerned trial Court within a period of 90 days from today before the concerned trial Court. Failure, if any, in depositing the amount before the trial Court within the period stipulated, would make each of the applicants liable to be inside the jail for a period of one month u/S 323/34 IPC & three months u/S 325/34 IPC, respectively. Fine amount deposited, if any, shall be adjusted by the fine amount as imposed by this Court.

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

Sd/-
(N.K. Chandravanshi)
Judge

D/-

