

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 274 of 2014**

Hitesh Kumar Sonwani, S/o Shri Premlal Sonwani, aged about 18 years,
Resident of Kushalpur, Police Station Purani Basti, Raipur, Civil & Revenue
District Raipur (C.G.)

---- Applicant

Versus

State of Chhattisgarh, Through District Magistrate, Raipur, District Raipur (C.G.)

----Respondent

For Applicant	:	Mr. Pushkar Sinha, Advocate.
For Respondent	:	Mr. Wasim Miyan, Panel Lawyer.

Hon'ble Shri Justice N.K. Chandravanshi

Order On Board

27.08.2021

- (1) Proceedings of the matter have been taken-up through Video Conferencing.
- (2) Present applicant - Hitesh Kumar Sonwani & two other accused persons namely Rakesh Kumar Sonwani & Premlal Sonwani have been convicted for commission of offence punishable under Sections 323/34 of the IPC by Judicial Magistrate, First Class, Raipur (C.G.) in Criminal Case No. 383/2011 vide judgment of conviction & order of sentence dated 30.11.2013 and sentenced to undergo simple imprisonment for three months with fine of Rs.500/-, each with default stipulation. In appeal being Criminal Appeal No. 277/2013 preferred by the applicants, Sessions Judge, Raipur vide its impugned judgment dated 31.03.2014, acquitted the two other accused persons of the aforesaid offence whereas maintained the conviction and sentence of the accused/applicant under Section 323 of the IPC. The applicant has

challenged the same in the instant revision petition.

(3) Case of the prosecution, in brief, is that on 30.05.2011 at about 6.45 PM, quarrel took place at Sheetla Bazar Thana, Purani Basti, Raipur when complainant – Ramankant Soni asked the applicants/accused to return his Rs. 5/-, which the applicants borrowed from him, then present applicant & other accused persons abused the complainant and inflicted injuries by knife, pelting piece of bricks, as a result of which complainant sustained grievous/multiple injuries. On being report lodged by him at Police Station, Purani Basti, FIR (Ex.P-1) was registered against the present applicant & other two accused persons under Sections 294, 506, 323 & 336 read with Section 34 of the IPC. After usual investigation, charge sheet under Sections 294, 506, 323, 336 read with Section 34 of IPC was filed against the present applicant and two other accused persons. Charges were framed and the same are read and explained to the applicants/accused, which they denied and their plea were recorded.

(4) In order to prove the guilt of the applicant/accused, 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 30.11.2013, learned trial Magistrate has convicted the accused persons including present applicant under Section 323/34 of the IPC and sentenced as aforementioned. In appeal preferred by them, learned Sessions Judge, Raipur acquitted the other two accused persons but upheld the judgment of conviction and order of sentence against the present applicant/accused under Section 323 of IPC. Hence, this revision.

(6) Counsel for the applicant/accused submits that he is not pressing this appeal as regards conviction part of the impugned judgment and would confine his arguments to the sentence part thereof only. He further submits that scuffle took place only for trivial issue of asking to return the amount of Rs. 5/-, which was borrowed by applicant from the complainant. According to him, the applicant has already remained in jail after passing of the appellate judgment i.e. 31.3.2014 till bail order granted by this Court on 15.04.2014 *whereas* sentence awarded to the applicant is only of three months imprisonment and incident had taken place in the year 2011 and thereby more than 10 years have rolled by since then, therefore, he prayed that looking to the nature of offence and the fact that there is no previous criminal antecedents against present applicant/accused, he may be sentenced to the period already undergone by him.

(7) On the other hand, counsel for the State while opposing the submissions made by counsel for the applicant submits that conviction & sentence imposed by the learned Sessions Judge, Raipur is just & proper, which does not call for any interference.

(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 – Ramakant Soni (PW-1) has deposed in his court statement that when he asked the applicants/accused to return Rs.5/-, which was borrowed by

him from the complainant, then applicant attacked upon his head by knife, which is used for cutting the mangoes and also caused him injuries on his mouth by Weight (बॉट), as a result of which, his one tooth was broken and another tooth got cracked. His statement regarding injuries caused by applicant/accused is well supported by Ratnakar (PW-2) but it is not proved from his statement that injuries sustained by complainant on mouth and his teeth were broken on account of assault made by applicant/accused.

(10) Dr. Padmini Singh (PW-5) has deposed in her court statement that on 30.5.2011, she examined complainant Ramakant Soni and has found three lacerated wound on his forehead, one lacerated wound on his left eyebrow and one lacerated wound on middle finger of right hand. She has opined that nature of injuries suffered by complainant are simple in nature, which were caused by hard & blunt object; and the aforesaid injuries sustained by complainant were within a duration of six hours of his medical examination, which was done at about 12.50 pm. She has further opined that complainant's tooth of upper jaw was also half broken. Her statement is well supported by medical report (Ex.P-9) prepared by her, which she has proved also.

(11) Dr. Mridula Sharma (PW-10), Dentist, has deposed in her court statement that on 6.6.2011, she medically examined complainant Ramakant Soni, in which, she found that complainant's one tooth of front upper jaw was broken.

(12) Both the learned Courts below have not found proved from the evidence that any tooth of the complainant has been broken due to assault / *marpeet* made by the applicant/accused. So far as injuries sustained by

complainant/victim under Section 323 of IPC is concerned, deposition of complainant Ramkant Soni (PW-1) has well supported by witness of spot namely Ratnaker (PW-2) and also medical evidence of Dr. Padmini Singh (PW-5). 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.

(13) 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 323 of IPC to the applicant, therefore, the conviction part of the judgment impugned deserves to be and is hereby maintained.

(14) So far as sentence part of the impugned judgment is concerned, as per records of the Courts below; the applicant has remained in jail after passing of the appellate judgment i.e. 31.3.2014 till bail order granted by this Court on 15.04.2014 *whereas* sentence awarded to the applicant is only of three months imprisonment and incident had taken place in the year 2011 and thereby more than 10 years have rolled by since then. 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.

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

Sd/-
(N.K.Chandravanshi)
Judge

