

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 266 of 2007**

Smt. Chandrika Bai alias Munni, aged 33 years, wife of Shri Ashwani Kaushik, resident of village Podi (Khurd), police station Chakarbhata, district Bilaspur, Chhattisgarh.

---- Revisionist

Versus

State of Chhattisgarh through police station Chakarbhata, District Bilaspur, Chhattisgarh.

---- Respondent

For the Applicant	:	Shri Somnath Verma, Advocate.
For the Respondent/ State	:	Shri Sameer Behar, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

ORDER

08.12.2016

1. The applicant has brought this revision against the judgment dated 13.6.2007 passed in Criminal Appeal No. 21 of 2007, by the Learned Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the SC-ST Act of 1989'), Bilaspur, Chhattisgarh, whereby the Learned Special Judge has affirmed the judgment of conviction and order of sentence dated 27.1.2007 passed by the Judicial Magistrate, First Class, Bilaspur in Criminal Case No.377 of 2005 by which the Learned Judicial Magistrate has convicted the applicant under Sections 452 and 326 of the Indian Penal Code (for short 'the IPC') and sentenced to undergo RI for one year and RI for two years and to pay fine of Rs.1,000/- and Rs.2,000/-, in default of payment of fine, to further undergo RI for one month and RI for two months, respectively.

2. The facts of the case are, that on the date of incident, i.e., 2.11.2002 at about 9:00 am, victim – Sukrita Bai (PW-1) was alone at her house and preparing food. At that time, the applicant entered the house of the victim by climbing over the wall and bolted the door from inside. Thereafter, the applicant caught hold the victim's hair and forcibly pushed her down on the ground and beaten her by using fists. Thereafter, the applicant took out a burning wood from the stove and burnt the face and hand of the victim. On raising alarm, Saroj Bai (PW-3) and Meena Bai (PW-4) arrived at the spot. The applicant after threatening the victim left the spot. Sukriti Bai (PW-1) was taken to the hospital at Chakarbhata for treatment. On arrival of police officer in the hospital, unnumbered First Information Report, i.e., Dehati Nalishi (Ex. P/1) was lodged by Sukriti Bai (PW-1) and she was medically examined vide Ex. P/5. A case was registered under Sections 452, 326 and 506 of the IPC in Police Station Chakarbhata. On completion of the investigation, charge-sheet was filed against the applicant. The applicant was charged under Sections 452 and 326 of the IPC. She denied the charges. Learned trial Court vide judgment dated 27.1.2007 convicted the applicant under Sections 452 and 326 of the IPC and sentenced her as aforesaid. This judgment was challenged before the court of Special Judge under the SC-ST Act of 1989, which was decided on 13.6.2007, whereby the judgment passed by the trial Court was upheld.

3. The grounds of challenge in this revision are that there is no evidence on record to make out a case under Section 326 of the IPC against the applicant. For this reason, the conviction against the applicant is bad in law and contrary to the facts and circumstances of the case. The evidence of the victim does not inspire confidence. There is no observation by the court

that victim Sukriti Bai (PW-1) had any permanent dis-figuration on her face. Apart from that, the medical evidence also does not disclose any permanent dis-figuration on the face of victim. Under these circumstances, the only offence which is made out against the applicant is under Section 323 of the IPC for which the period of custody already undergone by the applicant is sufficient punishment. For this reason, the sentence of imprisonment may be modified and confined to the period of custody already undergone by the applicant.

4. Learned counsel for the applicant submits that the prosecution has not brought any evidence, that the face of the victim Sukriti Bai (PW-1) was permanently disfigured due to the burn injuries. The applicant and the victim are closely related. The incident was a simply household quarrel which usually happens in every house. After passing of the judgment by the lower appellate court, the applicant was taken into custody on 13.6.2007. She was enlarged on bail by order dated 10.7.2007 passed by this Court. There are no papers on record to ascertain the date of her release, even then the period of her custody comes to be 28 days. Hence, it is prayed that the sentence part of the applicant may be modified.

5. Learned counsel appearing on behalf of the State opposed the argument and grounds raised on behalf of the applicant. It is submitted that on the basis of evidence brought by the prosecution before the trial court, it is very clear that an offence under Section 326 of the IPC is made out against the applicant. Hence, there is no scope for interference with the impugned judgment and the revision may be dismissed.

6. I have heard learned counsel appearing for the parties at length and also perused the evidence available on record of the trial court. This court while exercising the revisional jurisdiction has limited scope to examine the legality, propriety and correctness of the impugned judgment passed by the lower appellate court.

7. Sukriti Bai (PW-1) stated that the applicant entered her house by climbing over the wall and bolted the door from inside. She pinned her down on the ground and started beating her with fists and picked up one burning wood from the stove and caused injuries with it on her face and right hand. On raising alarm, Saroj Bai (PW-3) and Meena Bai (PW-4) arrived at the spot. She was taken to the hospital where she lodged a report (Ex. P/4) which was registered as an unnumbered report by the police officer. This statement remains unrebutted in her cross-examination. Saroj Bai (PW-3) stated that when the alarm was raised by Sukriti Bai (PW-1), she arrived at the spot and saw that the applicant was beating Sukriti Bai (PW-1). Meena Bai (PW-4) stated that she arrived at the spot after the incident and saw the applicant fleeing away from the spot by climbing the wall of the residence of Sukriti Bai (PW-1). She also saw that the face and hand of Sukriti Bai (PW-1) were in burnt condition.

8. Uttara Kumar Kaushik (PW-2) is husband of the victim. He was informed about the incident by one Paras Kaushik on which he came to his home where his wife Sukriti Bai (PW-1) narrated him about the incident.

9. Head Constable Maniraj Prasad Tiwari (PW-9) recorded the unnumbered FIR (Ex. P/1) and on his request the victim was examined by

Dr. C.N. Tiwari (PW-8). Dr. C.N. Tiwari (PW-8) stated that the victim was admitted in the District Hospital, Bilaspur. On examination, he found that there were patchy burn injuries on face and left hand of the victim and the total burnt area was 9%. His report is Ex. P/5 in which he has stated that the burn injuries were caused by dry flame within four hours from the time of examination. This report has remained unchallenged. Dr. Pradeep Soni (PW-7) treated the victim and reported vide Ex. P/4 that the victim had burn injuries on her face and left hand, i.e., about 9% of the body area. No opinion has been given by any of the doctors that the burn injuries caused to the victim Sukriti Bai resulted in permanent dis-figuration on her face. Head-Constable Maniraj Prasad Tiwari (PW-9) stated about the investigation and seizure of articles made from the spot.

10. On scrutinizing the evidence of the prosecution led before the trial court, it is apparent that the applicant took entry into the house of victim Sukriti Bai (PW-1) by climbing the wall of her house and thereafter she assaulted first by her hands and later assaulted with burning firewood. This statement of the victim is totally un rebutted, reliable and trustworthy. The injuries that were caused to the victim in this incident have been examined and reported by Dr. Pradeep Soni (PW-7). The trial court vide its judgment dated 27.1.2007 has given a finding that the victim suffered permanent dis-figuration. Similarly, this finding has been approved by the lower appellate court in its judgment dated 13.6.2007.

11. The findings given by the trial court and lower appellate court clearly seem to be not based on any evidence led by the prosecution. Sukriti Bai (PW-1) has simply stated that she suffered burn injuries on her body. No

statement has been made that her face got dis-figured due to burn injuries. As discussed above, Dr. C.N. Tiwari (PW-8) and Dr. Pradeep Soni (PW-7) have not stated that the face of the victim Sukriti Bai (PW-1) was permanently disfigured due to burn injuries caused to her. The opinion regarding dis-figuration can be made out only after the injuries are healed. Victim Sukriti Bai (PW-1) was never examined by any doctor after her injuries cured neither any observation has been made by the court in this respect when she presented herself for her deposition before the trial court. Hence, for this reason, without any evidence, simply because victim Sukriti Bai (PW-1) suffered burn injuries on her face, it cannot be held that the injuries caused to her resulted in permanent dis-figuration of head or face as described under Section 320 (*Sixthly*) of the IPC. Not being such case, the finding by the trial court and the lower appellate court that the offence committed by the applicant under Section 326 of the IPC is bad in law which needs interference in this revision.

11. Considering all the above aspects, it appears that the prayer made on behalf of the applicant deserves to be allowed. Hence, this revision is allowed in part. The offence committed by the applicant is within the definition of Section 324 of the IPC. Hence, the conviction and sentence passed by the trial court under Section 326 of the IPC is set aside. The conviction under Section 452 of the IPC is upheld and the applicant is also convicted under Section 324 of the IPC. The applicant and the victim are closely related to each other. As on today, almost 14 years have passed since the incident took place. Therefore, for the conviction under Sections 452 and 324 of the IPC, the sentence part is interfered with and for both the offences the applicant is sentenced with imprisonment for the period already

undergone by her. However, the sentence of fine is enhanced to Rs.2,000/- for the offence under Section 452 IPC and she is sentenced with fine of Rs.4,000/- for the offence under Section 324 IPC in default of payment of fine as ordered, the applicant shall have to undergo further RI for two months and four months respectively.

Sd/-

(Rajendra Chandra Singh Samant)
Judge