

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 706 of 2016**

Lakhan Lal Yadav S/o Late Bodhi Ram Yadav, aged about 44 years, R/o Gokulganj Sitamani Korba, Police Station Kotwali Korba, Civil & Revenue District Korba, Chhattisgarh.

---- Applicant

Versus

State of Chhattisgarh acting through Officer-in-Charge, Police Station Kotwali Korba, Civil & Revenue District Korba, Chhattisgarh.

---- Respondent

For Applicant	:	Shri Devesh G. Kela, Advocate.
For Respondent/State	:	Shri Bhaskar Payashi, P.L.

Hon'ble Shri Justice P.Sam Koshy

Order On Board

02/11/2016

With the consent of the counsel appearing for the State the present revision petition has been finally decided.

2. The present Revision was admitted for hearing on 29.07.2016 and this Court after admitting the same had suspended the sentence and ordered for releasing the applicant on bail. However, it is submitted that the applicant was not in a position to furnish the bail bond and therefore he is still languishing in jail.

3. The applicant has been convicted for the offence under Sections 324 and 326 of IPC and sentenced to undergo RI for six months with fine of Rs.500/- u/s 324 IPC and RI for three years with fine of Rs.500/- u/s 326 of IPC with default stipulations by the JMFC, Korba vide its judgment dated 05.01.2016 which has

been affirmed by the Sessions Judge, Korba vide its order dated 13.07.2016 passed in Criminal Appeal No. 51 of 2016.

4. Counsel for the applicant submits that the applicant in the instant case was arrested on 25.07.2014 and since then he is in jail and as such he has already undergone for a period of 2 years 3 months 7 days out of the total jail sentence of 3 years imposed upon him for the offence under Section 326 of IPC. He submits that the medical evidence of the two doctors examined by the prosecution does not reflect any grievous injury sustained by the injured PW-1 except for the fracture of 6th rib of the left side. In addition, the Court may also take into consideration the fact that admittedly the applicant was under the influence of alcohol at the relevant point of time and he was not in a proper mental state of affair while attacking his wife. Further, the applicant and the injured were husband and wife and they were having strained relationship for a couple of years. Counsel for the applicant further submits that in the given peculiar facts and circumstances of the case he does not intend to argue the case on merit seeking for acquittal of the applicant and this Court may sympathetically consider the case of the applicant and modify the sentence part to the period already undergone.

5. State counsel opposing the prayer made by the counsel for the applicant submits that it is a case where the applicant who is husband of the injured PW-1 had attacked his wife without any provocation made on the part of the wife. He submits that the attack was made with a deadly weapon i.e. knife and the injury caused was on the abdomen region as a result the 6th rib of the left side of the injured got fractured. In addition, two other injuries were also sustained by the injured. Therefore, the applicant does not deserve any sympathy and the

revision petition deserves to be rejected in toto.

6. Having considered the rival contention put forth on behalf of the counsel appearing on either side and on perusal of the record what clearly reflects is that admittedly the applicant is the husband of injured PW-1. The marriage between the two took place about two years back from the date of incident i.e. 24.07.2014. Further admitted fact is that there was a strained relationship between the applicant and his wife for the last more than a couple of years. Though they were residing in the same house, they were not in talking terms for about last two years as is established from the evidence of the two children i.e. PW-2 & PW-3. It is also reflected from the deposition of the injured that on the date of incident the applicant under the influence of alcohol started abusing and assaulted her. As a result of the assault, the injured sustained minor bruises on her forehead and also on the right hand. The injury on the rib has led to the fracture of 6th rib of left side. PW-7 and PW-9 are the two doctors who have been examined by the prosecution. On perusal of the medical evidence also it reflects that neither of the two doctors have stated that the injury sustained by PW-1 was grievous in nature and that the injury could have resulted in the death of the injured person. The only reason for convicting the applicant for the offence under Section 326 IPC by the Court below is perhaps the fracture of 6th rib which too is not an area which can be said to be an injury which could have proved fatal.

7. Considering the total facts and circumstances of the case particularly the facts narrated in the preceding paragraph this Court is of the opinion that no strong case is made out for interfering with the conviction of the applicant under Sections 324 and 326 of IPC. However, taking note of the fact that the applicant has already remained in custody for a period of 2 years 3 months 7 days out of

the total jail sentence of 3 years which has been imposed by the Court below, the sentence imposed upon the applicant for the offence under Section 326 of IPC is reduced to the period already undergone by him. However, the fine imposed upon the applicant shall remain intact.

8. Accordingly the Criminal Revision allowed in part.

Sd/-
(P.Sam Koshy)
JUDGE