

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 217 of 2008

- Kamrunnisha, aged about 45 years, W/o. Shri Sarvar Alam, R/o. Rajendra Prasad Chowk, Supela, Bhilai, District Durg (CG)

---- Applicant

Versus

1. Mohd. Ahmad, S/o. Ahmad Ali, Aged about 49 years, R/o. Nijami Chowk, Faridnagar, P.S. Supela, District Durg (CG)
2. State Of C.G. Through: Distt. Magistrate Durg, Distt.-Durg, C.G.

---- Respondent

For Applicant	: Shri Tarun Dansena, Advocate
For Respondent/State	: Shri Rahul Tamaskar, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

01/08/2017

The applicant in this revision is assailing the legality, validity and propriety of the impugned judgment and order dated 25.08.2007 passed by Second Additional Sessions Judge, Durg in S.T. No. 120/2004 whereby the court below while acquitting the respondent No.1/accused of the charges under Sections 341, 294, 506 (B) and 307/34 IPC, convicted him under Section 325 IPC and sentenced to undergo SI for 11 months with fine of Rs. 15,000/- plus default stipulation.

2. As per prosecution case, respondent No.1/accused was the tenant of complainant's husband namely Sarvar Alam. On 20.01.04, at

about 8.00 a.m., when the complainant Kamrunnisha was going to attend the nature's call towards the common toilet, accused/appellant reached there carrying iron rod and after abusing her, caused several injuries in particular, on her shoulder and left hand. FIR Ex.P-1 was immediately lodged against four persons by the complainant under Sections 294, 506 (B), 341, 323, 324 and 34 IPC. Complainant was medically examined vide Ex.P-7 by Dr.Kavita (PW-12) and she opined that the victim had suffered lacerated wound on the tip of left little finger, abrasion on palmar aspect of right mid forearm, swelling with abrasion on left parietal region of scalp and further was referred to DHD for X-ray, orthopaedician and to surgical specialist for head injury. After investigation charge sheet was filed against four accused persons showing two of them to be absconding and one dead. While framing the charge trial Judge has framed charge against the respondent No.1/accused and accused Mohd. Israel under Sections 341, 294, 506 (B), 307/34 IPC.

3. Prosecution has examined 13 witnesses in support of its case. Statement of the respondent No.1/accused was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the charges levelled against him and pleaded false implication in the case.

4. After hearing the parties, the trial Court, vide its judgment dated 25.08.2007 while acquitting the accused/respondent No. 1 of all the charges levelled against him, has convicted and sentenced him as mentioned in paragraph No.1 of the judgment above. Hence the present revision on behalf of the applicant/complainant assailing the acquittal of respondent No.1/accused as well as enhancement of the sentence as awarded by the trial court.

5. Counsel for the applicant submits that the Court below has erred in law in acquitting the respondent No.1/accused of the offence under Section 307 IPC. He submits that the manner in which the complainant was assaulted by the respondent No.1/accused clearly spells out the case under Section 307/34 IPC.

6. On the other hand, supporting the impugned judgment it has been argued on behalf of the respondent No.1/accused that the impugned judgment is in accordance with law.

7. State counsel has duly assisted this Court.

8. From the statement of the doctor (PW-12) it is apparent that the complainant suffered injuries mainly on her left mid forearm and shoulder and there was fracture of radius and ulna in both forearms. No injury was found on the vital part of the complainant likewise it has not been stated by the doctor that the injuries sustained by the complainant were grievous or sufficient to cause death in the ordinary course of nature.

9. Considering the nature and quality of the evidence adduced by the prosecution, the trial court came to the conclusion that the prosecution has failed to prove the offence under Sections 341, 294, 506(B) as well as 307/34 IPC against the respondent No.1/accused beyond all reasonable doubt and resultantly acquitted him of these charges. However, considering the statements of the witnesses and that of the doctor, the trial court having found the respondent No.1/accused guilty of voluntarily causing grievous hurt to the victim, convicted him under Section 325 IPC and sentenced to undergo SI for

11 months with fine of Rs. 15,000/-.

10. Having gone through the judgment under assail and the overall evidence, oral and medical available on record, we are of the opinion that the findings recorded by the trial court holding the respondent No.1/accused guilty of the offence under Section 325 IPC only are based on just and proper appreciation of the material collected by the prosecution.

11. Moreover, the present is a case against acquittal where law is well settled in relation to cases against acquittal. In a revision against acquittal if two views are possible on the basis of the evidence led by the prosecution and the trial Court has taken the one favouring the accused, reversion of the findings of acquittal by the revisional Court taking the other possible view into consideration, is not permissible in law and further considering the scope of revision against acquittal, we are of the considered opinion that the judgment impugned acquitting the respondent/accused of the offence under Sections 341,294, 506(B) as well as 307/34 IPC does not call for any interference.

12. As regards the sentence, the trial court considering the fact that the offence proved against the respondent/accused is not grievous in nature, he has already remained in jail for about one year and has also faced the trial thereafter for about 2 1/2 years, sentenced him for imprisonment of 11 months with fine of Rs. 15,000/-. In the facts and circumstances of the case, the sentence awarded by the trial court appears to be commensurate with the gravity of the offence and as such needs no interference by this Court.

13. In the result, the revision being devoid of substance fails and is accordingly dismissed.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Ram Prasanna Sharma)
Judge