

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 599 of 2003

1. Geeta Soni W/o Jaweri Lal alias Pappu, aged about 22 years, resident of Bijapur, PS Bijapur, District Dantewada, CG

---- Applicant

Versus

1. Smt. Reshami Devi W/o Ranulal Soni, aged about 40 years (Accused)
2. Ranulal W/o Narayan Soni, aged about 44 years (Accused)
3. Jaweri Lal alias pappu S/o Ranulal, aged about 22 years (Accused)
All residents of Kamasipara, Raipur, CG
4. State of Chhattisgarh through : City Kotwali, Raipur, C G

---- Respondents

For Applicant	:	Shri Subhash Yadav, Advocate
For Respondents/Accused:		Shri J.K. Gupta, Advocate
For Respondent/State	:	Shri Avinash Mishra, PL

Order on Board by Pritinker Diwaker, J

12/04/2017

This revision petition has been filed by the applicant/wife against the judgment and order dated 24.9.2003 passed by Additional Sessions Judge (FTC) Raipur, in Criminal Appeal No. 74/2003 reversing the judgment and order dated 21.3.2003 passed by Judicial Magistrate First Class, Raipur in Criminal Case No. 888/2001 convicting the respondents/accused for the offences punishable under Sections 498-A and 323/34 IPC and sentencing each of them to undergo RI for six months with fine of Rs. 500/- under Section 498-A and RI for three months with fine of Rs. 200/- under Section 323/34 IPC. Appellate Court however acquitted the accused persons of the all the charges levelled against them.

2. Marriage of the applicant herein namely Geeta Soni was solemnized with accused Jaweri Lal alias Pappu on 7.12.1996 but as the

couple could not adjust, dispute arose between them as also the other two accused. On 1.5.1998 written complaint Ex. P-1 was lodged by the applicant against the accused persons at Police Station Bijapur which was registered without number. Later on, it was transferred to Raipur where FIR was registered against them under Sections 498-A, 323, 324 and 506-B IPC. After filing of charge-sheet, the trial Court framed the charges against them under Sections 498-A, 324/506-B read with Section 34 IPC.

3. In order to hold the accused persons guilty, the prosecution examined as many as nine witnesses. Statements of the accused persons were also recorded under Section 313 of the Code of Criminal Procedure where they denied their guilt and pleaded innocence and false implication in the case. One Sharad Agrawal (DW-1) has also been examined by the defence in support of its case.

4. The trial Court, after considering the material available before it, convicted the accused persons under Sections 498-A and 323/34 IPC and sentenced each of them to undergo RI for six months with fine of Rs. 500/- under Section 498-A and RI for three months with fine of Rs. 200/- under Section 323/34 IPC. However, in appeal the lower Appellate Court has acquitted them all of the charges levelled against them and thus set aside the order of the trial Court. Hence this revision by the applicant/complainant.

5. Counsel for the applicant submits as under:

(i) that the lower appellate Court has committed an error of law in disbelieving the statements of the witnesses;

(ii) that mere non examination of the neighbour of Raipur town, does not demolish the case of the complainant and in the cases like the present one where the incident took place inside the house and therefore in most probability even the neighbours may not be aware of the same;

(iii) that minor contradictions in the statements of the prosecution witnesses are required to be ignored;

(iv) that once the trial Court convicted the accused persons, no interference should have been made therewith by the lower appellate Court; and

(v) that non examination of the doctor was not fatal to the case of the prosecution for convicting the accused under Section 323 IPC.

6. Counsel for the respondents/accused however supports the judgment of the lower appellate Court and submits that the complainant has falsely implicated them in the case in hand. He submits that as per the complainant, she wrote as many as three letters to her father but none of these letters was posted by her and in fact subsequent to filing of FIR they were created to falsely implicate the accused persons. He submits that had there been any cruelty to the complainant, in natural course she would have informed the incident to her relatives at Raipur and also to neighbours. He submits that though maternal uncle of the applicant has made an attempt to support the case of the prosecution but if his entire evidence is seen it appears that he has favoured the accused persons.

7. State counsel has duly assisted the Court.

8. Heard counsel for the parties and perused the documents on record.

9. Gita Bai (PW-2) has stated that she married accused Jaweri Lal four year prior to the incident and since beginning she was subjected to cruelty by him in spite of the fact that her father had given number of items in her marriage. Her husband is once stated to have bitten her also. According to her, the accused persons went on making the demand even thereafter and ultimately she lodged the report and informed the incident to number of persons. In cross-examination she has stated that the incident occurred on

various dates and as those dates were not in her memory, she did not state the same in the examination-in-chief. She has stated that three letters were written by her to her parents, though not on the same date. She has denied that those letters were written at Bijapur and therefore should not produce the same. She has admitted that she did not inform any of her relatives at Raipur about the act of the accused persons though they used to visit her house on various occasions. Even her father had come to meet her at Raipur but no report was lodged at Raipur. She has admitted that along with her husband she had gone to see a house at Raipur so that she could live with her husband separately. Mohanlal (PW-8) – the father of the applicant/complainant has stated that immediately after marriage her daughter started living at Raipur, and about 20-25 days thereafter when his brother-in-law in relation returned from Raipur, he handed over the letters written by her in which it was written that the accused persons were subjecting her to cruelty. Gumanmal Soni (PW-7) – the maternal uncle of the applicant/complainant has stated that he came to know that Gitabai was not conscious and was suffering from some ailment and when on hearing the said news, he went to Raipur, Gita was taken to hospital where the doctor informed that she was all right and was acting unnecessarily. Harkunwar Bai (PW-3) – the mother of the applicant has also made similar allegation about cruelty meted out to her daughter at the hands of the accused persons.

10. This Court has heard counsel for the parties and perused the material on record including the judgments passed by the two courts below. The allegations made by the applicant/complainant regarding her subjection to cruelty by the accused persons and having been bitten by her husband do not appear to be trustworthy because though according to her all that happened at Raipur but none of the witnesses of that town much less the neighbours has been examined by the prosecution to prove this fact. True it is that examination of such witnesses is not mandatory to arrive at any

conclusion regarding the guilt or innocence of the accused but even otherwise no conclusive material has been collected by the prosecution in the case in hand on the basis of which the allegation made against them can be affirmatively proved. Even in regard to her being bitten by her husband, there is no medical evidence to corroborate the said version nor the doctor medically examining her has been examined by the prosecution. Further, though certain letters are said to have been written by her and sent to her father yet in view of the varying statement of the applicant/complainant as to the person through whom she sent those letters, the authenticity of said letters becomes doubtful. Somewhere she has stated that those letters were carried by her maternal uncle but somewhere she stated that all three letters were sent by her through three different persons. Thus the view taken by the lower appellate Court acquitting the accused persons of the charges levelled against them by setting aside the judgment of the trial Court is based on proper appreciation of the evidence on record. Even otherwise, it is a settled legal position that if the material available on record gives rise to two views, the one favouring the accused persons has to be drawn.

11. Being so, the revision being without merit is liable to be dismissed and it is hereby dismissed. Judgment of the lower appellate Court is hereby maintained whereas that of the trial Court is set aside.

Sd/-
(Pritinker Diwaker)
Judge