

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 374 of 2007**

Laxminarayan S/o Budhram Anuragi, Cast Survanshi, aged about 32 years, R/o Semari, P.S. Ratanpur, District Bilaspur at present Utai, District Durg, Chhattisgarh.

---- **Applicant** (in jail)

Versus

State of Chhattisgarh through P.S. Ratanpur, District Bilaspur, Chhattisgarh.

---- **Respondent**

For the Applicant	:	Smt. Kiran Jain, Advocate.
For the Respondent/ State	:	Shri R.K. Jaiswal, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Order on Board****23.01.2017**

1. This revision petition has been preferred against the judgment of conviction and order of sentence, dated 20.04.2007, passed by the Learned First Additional Sessions Judge, Bilaspur, District Bilaspur, Chhattisgarh in Criminal Appeal No. 167 of 2006, whereby and whereunder the learned appellate Court while maintaining conviction of the applicant under Sections 498-A and 323 of the Indian Penal Code (for short 'IPC'), modified the sentence awarded by the trial Court to the period of custody already undergone and enhancing the fine amount from Rs.500/- on each count to Rs.10,000/- and Rs.1,000/- respectively.

2. The case of the prosecution, in brief, is that the marriage of complainant – Harvati Bai was solemnized with applicant – Laxminarayan about 12 to 14 years before the date of lodging First Information Report i.e.

17.4.2002 and out of their wedlock three children were born. The applicant is employed as Peon in the Government College, Utai. About one year before lodging of the FIR, the applicant constructed a house. At that time, the applicant tortured complainant – Harvati Bai to bring money for construction of the said house. As the demand of the applicant could not be fulfilled, he has beaten the complainant on several occasions. On 14.4.2002, the applicant leveled false allegations on the character of the complainant and assaulted her with clubs, fists and threatened to kill her. He gave burn injuries on her thighs and on other places. The applicant continued to assault the complainant on the next day i.e. 15.4.2002, thereupon the father-in-law and mother-in-law intervened and send the complainant to her paternal home in village Madanpur. The First Information Report was lodged on 17.4.2002 vide Ex. P/1. Some letters were seized in the investigation vide Exs. P/2 and P/3. The complainant was medically examined by Dr. Staila Tudu (PW-9) and she has given her report Ex. P/4 about the injuries found on the body of the complainant. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code').

3. After completion of the investigation, charge-sheet was filed against the applicant under Sections 498-A and 323 of the IPC. The applicant denied the charges, pleaded innocence and demanded for trial. After hearing the arguments of both the sides, on 8.9.2006, the trial court convicted the applicant under Section 498-A and 323 of the IPC and sentenced him with RI for one year and RI for three months alongwith fine of Rs.5,000/- and Rs.500/- respectively. This judgment was challenged in appeal before the Sessions Judge, Bilaspur, which was heard and decided

by the impugned judgment maintaining the conviction of the applicant, however, modifying the sentence part, as detailed above.

4. The grounds in this revision are that the courts below have erred in recording the finding of conviction against the applicant. There had been no evidence to convict the applicant under Section 498-A of the IPC. Statements of the prosecution witnesses were full of contradictions and omissions hence unreliable. For these reasons, it is prayed that the judgments of the courts below be set aside and the applicant be acquitted of the charges framed against him.

5. Learned counsel for the applicant submits that the applicant has been falsely implicated. The fact that the marriage of the applicant and the complainant was subsisting since 13-14 years, has been overlooked by the trial court because of which the story put-forth by the complainant was highly improbable and the statements of the witnesses cannot be regarded as trustworthy. Learned counsel submits that for the aforesaid reasons, the applicant is entitled for benefit of doubt.

6. Learned State counsel has opposed the arguments advanced on behalf of the applicant and the grounds raised in this revision. It is submitted that the impugned judgment and the finding of the conviction by the courts below do not suffer from any infirmity. The applicant has already been benefited by the judgment of the lower appellate court whereby the sentence was modified to the period already undergone by him and as such, there is no reason to interfere with the impugned judgment.

7. Considering the material on record and the arguments submitted by both the sides, the question which arises for consideration in this revision is, whether the conviction against the applicant is supported by evidence of the prosecution beyond all reasonable doubt?

8. Harvati Bai (PW-1) stated that she married the applicant 13-14 years back and since then, the applicant had been habitual to drink and give beatings to her. After 10 years of her marriage, the applicant constructed a house and thereafter he started torturing her to bring money from her paternal home. The applicant also alleged that she was having illicit relationship with his father, thereby he tortured her and physically assaulted her time and again. Before lodging of the First Information Report, the applicant gave her burn injuries on her thighs with matchstick, thereupon the father-in-law and mother-in-law intervened. The First Information Report was lodged vide Ex. P/1. In cross-examination, she stated that she and the applicant used to quarrel all the times since 14 years. Further, she stated that one year prior to lodging of the FIR, the applicant constructed a house and thereafter started demanding money. There is some important discrepancy in her statement compared to the First Information Report Ex. P/1 lodged on her previous statement, however it is insignificant. Some extra details have been brought in the cross-examination by the questions put-forth by the defence which cannot be termed as improvement because this answer was given at the instance of the defence counsel. She left the house of the applicant and was living separately. She denied the suggestion that the new house was not in her name, due to which she lodged a report to harass the applicant. There is no other statement in her cross-examination

to contradict her statement in examination-in-chief about the cruel treatment given by the applicant.

9. Binda Bai (PW-2), mother of the complainant, stated about the cruel behaviour of the applicant and on one occasion she saw the applicant beating her daughter. Her Statement has remained unrebutted in her cross-examination. Mayaram (PW-3), father of the complainant, stated that he received one letter from the complainant, whereby he learnt about the torture and cruel behaviour of the applicant towards the complainant. After receiving the letter, he met the applicant and tried to pacify him. On one occasion, he was informed that his daughter was sick and at the time when he visited his daughter's house, the applicant assaulted him with a slap. After this incident, his daughter came to his house because of the torture given by the applicant. She told him that the applicant has severely beaten her and he also gave burn injuries on her body by matchstick. His daughter was staying with him since 24.2.2002. In cross-examination, he admitted that this was the only report lodged against the applicant in 13-14 years of marriage with the complainant. He admitted that the applicant was constructing a house in village Utai, but he denied the suggestion that he wanted that the house should be in the name of his daughter.

10. Krishna Kumar (PW-4), brother of the complainant, supported the complainant's version. Savitri Bai (PW-5) stated that she saw the applicant beating his wife Harvati Bai in her presence and then she was informed that the applicant was demanding Rs.15,000/- to Rs.16,000/- from her paternal home. Suresh Kumar (PW-7) also supported the prosecution version that he came to know that the complainant was being tortured by the applicant.

Head-Constable Srinivas Pandey (PW-8) recorded the First Information Report Ex. P/1 lodged by Harvati Bai (PW-1). Dr. Staila Tudu (PW-9), on 17.4.2002, found grievous injuries including burn injuries on the body of the complainant vide report Ex. P/4. Head-Constable, L.D. Patley (PW-10) conducted the investigation.

11. After scrutinizing the evidence of the prosecution before the trial court, it is apparent that there had been evidence of the prosecution on record to sustain the finding of conviction against the applicant under Sections 498-A and 323 of the IPC. There had been no reason to disbelieve the statements of the prosecution witnesses. It is true that the marriage between the applicant and the complainant had been 13-14 years old even then the story of the prosecution cannot be said to be improbable, because on medical examination of the complainant after the lodging of the FIR, various injuries including burn injuries were found on her body and no explanation has been given by the applicant in this respect. Hence, the finding of conviction against the applicant by both the courts below do not suffer from any infirmity, which cannot be interfered with.

12. At this stage, learned counsel for the applicant submits that the applicant is a government servant and conviction and sentence standing against him shall affect his career. Attention has been drawn to a judgment of this court in **Criminal Revision No. 346 of 2001** passed on 31.8.2012 (**Inder Sai and Anr. vs. State of Chhattisgarh**). In that case, while deciding the revision petition, this court observed that the applicants are public servants and hence, the conviction against them would not affect their services. Learned counsel submits that in this case also a similar direction

may be given because the lower appellate court has already modified the sentence of imprisonment to the period of custody already undergone by the applicant by enhancing the fine amount for the respective offences. Since the sentence of imprisonment imposed upon the applicant has already been modified to the period already undergone, there would be no use in setting aside the same. Hence, it is found that there is no ground to interfere with the judgment of the lower appellate court. This revision petition is dismissed accordingly with a direction that the judgment of conviction and order of sentence against the applicant shall not affect the prospects of his service.

Sd/-

(Rajendra Chandra Singh Samant)
Judge