

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.740 of 2006

Bishambhar, S/o Laxman Sahu, aged about 40 years, R/o Village Bamni, P.S. Mahasamund, District Mahasamund, Chhattisgarh

---- Petitioner

versus

State of Chhattisgarh through Police Station Mahasamund, District Mahasamund, Chhattisgarh

--- Respondent

For Petitioner	:	Shri Vikram Dixit, Advocate
For State/Respondent	:	Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

1.8.2017

1. This revision has been preferred under Section 397 read with Section 401 of the Code of Criminal Procedure against the judgment dated 5.12.2006 passed in Criminal Appeal No.37 of 2006 by the 1st Additional Sessions Judge, Mahasamund by which the Learned Additional Sessions Judge has upheld the judgment dated 8.3.2006 passed in Criminal Case No.547 of 2005 by the Judicial Magistrate First Class, Mahasamund convicting the Petitioner under Sections 451 and 323 of the Indian Penal Code and sentencing with simple imprisonment for 2 months and to pay fine of Rs.100/- with default stipulation and with sentence till rising of the Court, respectively.
2. Case of the prosecution, in brief, is that on 10.2.2000 at about 5:00 p.m., the accused/Petitioner along with Tikam and Khemin assaulted Complainant Gita (PW-1) with Lathi, hand and fist due to which she sustained injury on her back. Umabai (PW-6) witnessed the incident. On 11.2.2000, Gita (PW-1) lodged First Information Report of the incident in Police Station Mahasamund. Crime No.41

of 2000 was registered. After investigation, a charge-sheet was filed under Sections 294, 448 and 323 of the Indian Penal Code against the Petitioner in the Court of Chief Judicial Magistrate, Mahasamund. Learned Judicial Magistrate First Class, Mahasamund, after receipt of the case on transfer, framed charges under Sections 451 and 323 of the Indian Penal Code against the Petitioner and after trial convicted and sentenced him as mentioned above. In appeal, the Learned Additional Sessions Judge upheld the judgment of conviction and sentence passed by the Trial Court. Hence, this revision.

3. Learned Counsel appearing for the Petitioner submits that he confines his argument to the conviction and sentence awarded for the offence under Section 451 of the Indian Penal Code and he does not press this revision against the conviction and sentence awarded for the offence under Section 323 of the Indian Penal Code. Therefore, he prays that the instant revision may be heard and decided against the conviction and sentence awarded for the offence under Section 451 of the Indian Penal Code only. Learned Counsel further submitted that the offence under Section 451 of the Indian Penal Code is, in view of the evidence available on record, not made out against the Petitioner/accused.
4. On the contrary, Learned State Counsel opposed the argument advance on behalf of the Petitioner and supported the impugned judgment.
5. I have heard Learned Counsel appearing for the parties and perused the evidence available on record.
6. Gita (PW-1) has deposed in paragraph 2 that when she was

entering her house, she was beat by the accused/Petitioner near the door of the courtyard of her house. She further deposed that Umabai (PW-6) witnessed the occurrence. Umabai (PW-6) deposed that the incident took place near the door of the house of Gita (PW-1). Dinbandhu (PW-3) also deposed that the incident took place near the house of Gita (PW-1). As per the statement of Rupeshwar (PW-2), the incident took place in front of the house of Gita (PW-1). Therefore, it is clear that the incident took place near the courtyard (verandah) of the house of Gita (PW-1). There is no evidence on record to show that the courtyard was a covered courtyard. There is also no evidence on record to show that the said courtyard was situated inside the house of Gita (PW-1).

7. House trespass is defined under Section 442 of the Indian Penal Code and criminal trespass is defined under Section 441 of the Indian Penal Code as under:

“442. House trespass.—Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit “house-trespass”.

Explanation.—The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.”

“441. Criminal trespass.—Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit “criminal trespass”.”

8. In view of the evidence available on record, it is apparent that the place of occurrence was the courtyard or near the courtyard of the house of Complainant Gita (PW-1) not inside her house. There is

no evidence on record to show that the said courtyard was a covered courtyard. Therefore, house trespass as defined under Section 442 of the Indian Penal Code is not applicable in this case. But, it is clear that the Petitioner/accused had entered the courtyard of the house which was in possession of Complainant Gita (PW-1) and assaulted her there. Therefore, as defined under Section 441 of the Indian Penal Code, criminal trespass is made out. Therefore, the Petitioner is guilty of the offence of criminal trespass punishable under Section 447 of the Indian Penal Code.

9. Therefore, the conviction imposed upon the Petitioner under Section 451 of the Indian Penal Code is altered to Section 447 of the Indian Penal Code.
10. As regards sentence against the conviction under Section 447 of the Indian Penal Code, looking to the fact that the Petitioner is facing the *lis* since 2000, i.e., for about 17 years, he is aged about more than 50 years, he has no criminal antecedent and he has already undergone the period of about 15 days, therefore, I am not inclined to impose any further jail sentence upon the Petitioner/accused. Therefore, for the conviction under Section 447 of the Indian Penal Code, the Petitioner is sentenced with the period already undergone by him and with fine of Rs.100/-, which he has already paid. The conviction and sentence imposed upon the Petitioner under Section 323 of the Indian Penal Code by the impugned judgment is upheld.
11. Consequently, the criminal revision is allowed in part in the aforesaid terms.
12. It is reported that the Petitioner is on bail. His bail bonds are not

discharged at this stage and the same shall remain operative for a further period of six months from today in view of the provisions contained in Section 437A of the Cr.P.C.

- 13.** Records of the Courts below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge