

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 605 of 2009**

- Badu @ Anendra Singh S/o Ramchandra Singh Thakur, aged about 26 years, R/o Near Gayatri Mandir, Risaipara, Dhamtari, Tahsil & District Dhamtari (C.G.)

----Applicant**Versus**

- State of Chhattisgarh Through : Police Station City Kotwali Dhamtari, District Dhamtari (C.G.)

---- Respondent

For Applicant	:	Ms. Aditi Singhvi, Adv.
For Respondent/State	:	Ms. Akshara Amit, P.L.

Hon'ble Smt. Justice Rajani Dubey**Order on Board****18/09/2019**

01. Being aggrieved by the order dated 30.09.2009 passed by Additional Sessions Judge (FTC), Dhamtari, District Dhamtari, in Criminal Appeal No.32/2009 affirming the judgment and order dated 24.07.2009 passed by Judicial Magistrate First Class, Dhamtari, in Criminal Case No.265/2008 convicting the accused/applicant under Section 323 IPC and sentencing him to pay fine of Rs.1,000/-, plus default stipulation.

02. Brief facts of the case are that on 22.11.2006, complainant Lokesh Mishra along with one Ashish, Golu and

Chandrapratap was going to play volleyball at Mission Ground, Risaipara. At the relevant time, the applicant along with other co-accused persons namely Akash Mishra and Sonu who were sitting at Gayatri Temple, had abused the complainant saying that as to why he is staring at them and started assaulting the complainant. Thereafter, the complainant informed his father Vijay Mishra about the incident and when he reached the place of occurrence, he too was assaulted by the applicant and other co-accused persons, which resulted into filing of FIR against the applicant and other accused persons.

03. After completion of usual investigation, charge sheet was filed against the accused/applicant and other co-accused persons under Sections 147, 294, 506, 323 and 324 IPC, and charges under Sections 294, 147, 323/149, 324/149 and 506(B) IPC were framed by the trial Court against the accused/applicant.

04. So as to hold the accused/applicant guilty, the prosecution examined as many as 11 witnesses. Statement of the accused/applicant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication and examined three defence witnesses.

05. Vide judgment and order dated 24.07.2009 the trial Magistrate while acquitting the applicant and other accused persons of the offence under Sections 294, 147, 324/149, 506-B IPC, has convicted the applicant under Section 323 IPC

sentencing him to pay fine of Rs.1,000/-. The judgment of the trial Court has been confirmed by the appellate Court vide impugned judgment dated 30.09.2009, hence this revision.

06. Learned counsel for the applicant submits that the order passed by the both the Courts below is illegal and perverse in law as well as in facts. The learned Courts below did not consider the statements of defense witnesses, who have clearly negated the incident, whereas the law in this regard is that the defense witnesses are entitled to equal treatment with those of the prosecution and the Courts ought to overcome their traditional, instinctive disbelief in defense witnesses. She further submits that the lower Court as well as the appellate Court did not consider the contradiction and omission in the statements of the prosecution witnesses and the fact that the doctor has opined that the injuries could be self caused or could have been sustained by falling. Lastly, it has been submitted by learned counsel for the applicant that the learned Court below ought to have given benefit of Probation of Offenders Act to the applicant for the reason that the applicant has never been charge sheeted ever and is a practicing advocate at Dhamtari District Court. In support of her submission, she placed reliance on the decision of High Court of Madhya Pradesh in the matter of **Monu @ Kaushal Singh Bhadoriya Vs. State of M.P.**¹ and decision of this Court in the matter of **Jagdish Prasad & others Vs. State**

¹ 2016(2)M.P.L.J.

of C.G. (CRA No.611/2017, CRA No.597/2017 and CRMP No.1062/2017).

07. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the conviction of the applicant is in accordance with law and there is no infirmity in the same.

08. Heard learned counsel for the parties and perused the material available on record.

09. Having gone through the material on record and the evidence of witnesses Lokesh Mishra (PW/1), Vijay Mishra (PW/2), Akash Mishra (PW/3), Dr. A.R. Thakur (PW/4), Chandra Pratap (PW/5), N. Chandrakar (PW/6), Jai Prakash Tiwari (PW/8), Dr. R.S. Mishra (PW/9), S.P. Singh (PW/10) and Rishabh Mishra (PW/11), established the involvement of the accused/applicant in the crime in question. This Court does not find any illegality or infirmity in the findings recorded by both the Courts below as regards conviction and sentence.

10. As regards the submission of learned counsel for the applicant that the applicant ought to have given benefit of Probation of Offenders Act as the impugned judgment may be an impediment in the future of applicant. In the present case, the applicant is a practicing advocate. This Court is considering the sentence to be imposed upon the applicant and whether he can be given benefit of Probation of Offenders Act so that his conviction may not affect his profession of Advocate.

11. The High Court of Madhya Pradesh in the matter of **Monu (supra)**, in para 6 and 7, has held as under :-

“6. In a similar case Santosh Vs. State of M.P. reported in 2010 MPLJ Online (Cri.) 1, (2010) 3 MPHT 55, for offence under section 323/34, 324/34 of Indian Penal Code, this Court imposed fine of Rs.5,000/- and it was made clear that the conviction of the appellant will not affect his service career in any manner. In the case of Rajbir (supra), Hon'ble the Supreme Court has clearly and unambiguously allowed the benefit of probation under section 3 of Probation of Offenders Act, 1958, and subsequently ordered that the conviction was maintained and directed the appellant to be released on probation for good conduct under section 4 of the Act. At the same time, it was ordered that the conviction should not affect his service.

7. Besides when a juvenile in conflict with law has been convicted, is not liable to any disqualification. Section 19 of the Juvenile Justice (Care and Protection of Children) Act, 2000, provides that :-

“19. Removal of disqualification attaching to conviction. -

(1) Notwithstanding anything contained in any other law, a juvenile who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attaching to a conviction of an offence under such law.

(2) The Board shall make an order

directing that the relevant records of such conviction shall be removed after the expiry of the period of appeal or a reasonable period as prescribed under the rules, as the case may be.

12. Further, this High Court in the matter of **Jagdish Prasad (supra)**, in para 12, has held as under:-

“11. Section 4 of the Probation of Offenders Act, 1958 (in short “the Act, 1958) confers power on the Court to release certain offenders on probation of good conduct whereas Section 12 empowers the Court to direct removal of disqualification attaching the conviction. As has been stated by us infra about the genesis of offence and for the fact that judgment of conviction against the appellants, who are government servants, may disqualify them to hold government service in future, we hereby direct, in exercise of our power under Section 12 of Act, 1958, that such appellants in either of the appeals who are government servants shall not be affected by their conviction so as to suffer any disqualification in their employment. This power we have exercised keeping in view the fact that none of the offences alleged against the appellants attract punishment of death sentence or life imprisonment.

13. In view of the above, as the applicant is practicing advocate and was convicted by the trial Court on 24.07.2009 in Criminal Case NO.265/2008, which was affirmed by the appellate Court vide order dated 30.09.2009 in Criminal

Appeal No.32/2008, the disqualification attached to the conviction is removed and it is made clear that the conviction of the applicant in the above case will not affect his future career in any manner.

14. In the result, the criminal revision stands disposed of in the above terms.

Sd/-

(Rajani Dubey)
JUDGE