

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1233 of 2019

Ashwan Kumar Sahu S/o Achhelal Sahu Aged About 31 Years R/o Om Printers Urga Op Urga Thana Kotwali District Korba Chhattisgarh.

---- Applicant

Versus

The State Of Chhattisgarh Through Out Post Urga P. S. Kotwali Korba, District Korba Chhattisgarh.

---- Respondent

For Applicant	: Shri A.K. Prasad, Advocate
For Respondent/State	: Shri Sanjay Pathak, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

11-02-2020

1. This revision petition has been brought challenging the correctness, propriety and legality of the judgment dated 9.9.2019 passed by the Court of Learned First Additional Sessions Judge, Korba in Criminal Appeal No. 28 of 2019.
2. The case against the applicant is that on the basis of the FIR lodged by Smt. Savita Sahu (PW-1), wife of the applicant, a charge-sheet was filed against him for the prosecution of the offences under Sections 498A and 323 read with Section 34 of the Indian Penal Code. Learned Judicial Magistrate First Class, Korba framed charges against the applicant for the commission of offences under Sections 498A and 324 of the IPC. After completion of trial, vide judgment dated 11.4.2019 passed by the trial Court, the applicant was convicted for both the offences and he was sentenced with imprisonment of 9 days which was already undergone by him in jail and fine of Rs.5,000/- for the offences under Section 498A of the IPC. Same sentence was imposed upon him for the commission of offence under Section 324 of the IPC. The judgment of conviction

and sentence was challenged in this appeal. The appellate Court upheld the conviction under Section 324 of the IPC, however, the conviction under Section 498A of the IPC was set aside.

3. It is submitted by counsel for the applicant that framing of charge against the applicant under Section 324 of the IPC was not well founded, as there was no evidence present in the charge-sheet and subsequent to that, conviction against him under Section 324 of the IPC again is without any substance. The complainant in the case, Smt. Savita Sahu (PW-1) herself has stated that she was thrashed by the applicant and others and as such she suffered injury because she had a collision with the door in the house. There is no mention in her evidence regarding assault by any sharp-edged weapon or any dangerous weapon. According to the evidence of Dr. Sujata Shrivastav (PW-9), only one scratch wound was found on her forearm regarding which, it may have been caused by some pointed object and the victim herself has not mentioned regarding this injury. It is also submitted that no seizure of any article was made from the possession of the applicant which may have been considered as an object used in causing injury to the victim, therefore, there is total lack of evidence. Hence, the conviction under Section 324 of the IPC against the applicant is bad in law, which is liable to be set aside.
4. In the alternative, it is submitted by counsel for the applicant that the applicant is an employee in SECL and if this Court is not inclined to give a clean acquittal to the applicant, then the conviction may come against his prospects in the career. It is a simple case of matrimonial dispute because of which, the applicant should not be made to suffer to that extent, therefore, this Court may be pleased to make any observation in this respect.

5. Learned State counsel opposes the submissions made and the grounds raised in the revision petition. It is submitted that there is clear evidence present in the record of the trial Court on the basis of which, the conviction has been recorded by the trial Court and upheld by the Appellate Court, therefore, no case is made out to hold that the applicant has not committed the offence under Section 324 of the IPC and also the applicant is not entitled for any other relief in any other form. Hence, the revision petition may be dismissed.
6. The only question for determination before this Court is whether the conviction under Section 324 of the IPC is well founded and supported with evidence of the prosecution beyond reasonable doubt. To examine this, all the evidence present in the record of the trial Court is perused.
7. The only direct witness on this point of assault and beating is Smt. Savita Sahu (PW-1), who is the complainant herself. She has stated in her examination-in-chief that on 9.6.2012, the applicant and other in-laws assaulted her with hands, fists and kicks and because of the force used she collided with an iron door and suffered one injury on her head. She has not mentioned about use of any sharp-edged or point of any article by the persons who had assaulted her.
8. Dr. Sujata Shrivastav (PW-9) has examined the victim on 10.6.2012 and reported that the victim suffered injuries of one contusion on her right cheek, one bruise on her left forearm, one scratch injury on her left wrist, swelling on the thumb of her left hand and one hematoma on the occipital region of her head and also one bruise on her right leg. She has opined that all the injuries were of simple in nature. Regarding one injury of scratch on her left forearm, she has opined that it may have been caused by some pointed object.

9. There is no other eyewitness to the incident. The other witnesses who have stated about the injury of the victim are hearsay witness.
10. On perusing and appreciating the evidence present in the record of the trial Court, it is found that there is no statement or allegation of the complainant herself that she was assaulted with any sharp weapon or by any pointed weapon. Her statement is only to this extent that she was assaulted by use of hands, fists and kicks. The opinion of the examining doctor that one of the injury may have been caused by a pointed object, has to be corroborated with the other evidence brought on the facts of the case and that part is missing. Therefore, there is no evidence that this injury was caused by the applicant to the victim.
11. The scratch injury may be caused by various other objects in various other manners, therefore, I am of this view that this kind of evidence was not sufficient against the applicant under Section 324 of the IPC, however, it is enough under Section 323 of the IPC. Hence, on the basis of these observations and the discussions made herein-above, it is held that the conviction against the applicant under Section 324 of the IPC is not well founded, therefore, it needs to be interfered with.
12. Accordingly, the petition is allowed at the motion stage and the conviction of the applicant under Section 324 of the IPC is set aside, instead thereof now he stands convicted for the offence under Section 323 of the IPC. However, the sentence imposed by the trial Court and upheld by the Appellate Court is now made as the sentence for which he is now convicted.
13. Considering the alternative prayer made by counsel for the applicant, reliance has been placed on the judgments of the Co-ordinate Bench of this Court in the case of **Naresh Markam and Ors. vs. State of Chhattisgarh** in **Criminal Revision No. 8 of 2018** decided on

16.5.2018 and also in the case of **Jugal Kishore and Ors. vs. State of Chhattisgarh** in **Criminal Revision No. 254 of 2011** decided on 5.12.2018 in which the Co-ordinate Bench of this Court has observed likewise that the conviction against the applicant shall not affect his service career. There is a clear policy of the State Government in this respect as to what kind of offences shall be regarded as the offences against moral turpitude and it is only in case of conviction in offences against moral turpitude, the service career of any person gets affected.

14.A memo has been issued by the State of Chhattisgarh which is numbered as F 4-271/Home-C/ 2007 dated 20.12.2007 in which the schedule is attached mentioning which of the offences under IPC shall be considered as offence under moral turpitude. The offence under Section 323 of the IPC is not shown as such an offence to be regarded as against the moral turpitude. According to the State policy, the conviction for the offence under Section 323 of the IPC is not considered as an offence of moral turpitude therefore not considered to affect the career of a person who is convicted for such offence. Therefore, this Court observes that the conviction that has been held against the applicant in this case by this order shall not have any adverse effect in the prospects of the career which is presumed as yet.

Sd/-

(Rajendra Chandra Singh Samant)
Judge