

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal (M) No. 142 of 2019

- Smt. Madhavi Yadu W/o Shri Sunil Chandra Yadu Aged About 27 Years D/o Shri Kirtanlal Yadu, R/o Through Nandu General Stores, Gol Bazar, Rajnandgaon, District : Rajnandgaon, Chhattisgarh

--- Appellant

Versus

- Sunil Chandra Yadu S/o Shri R.S. Yadu Aged About 37 Years R/o A - 16, Centuri Cement Colony, Deendayal Upadhaya Nagar, Dangania, Raipur, Tahsil And District Raipur Chhattisgarh

--- Respondent

For Appellant :- Mr. Yogesh Pandey, Advocate.

For Respondent :- Mr. Gourav Singhal, Advocate.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board by Justice Manindra Mohan Shrivastava J.

29.09.2021

1. With the consent of both the parties matter is heard finally.
2. This appeal is directed against the judgment and decree dated 05.01.2019 passed by the Family Court, by which, respondents' application for restitution of conjugal rights has been allowed.
3. Briefly stated, the case of the applicant is that the wife i.e. Smt. Madhavi Yadu had left the matrimonial house without any reasonable cause. It was pleaded, inter alia, in the application that on 13.06.2012 marriage between the parties was solemnized and they were also blessed with a

daughter on 02.06.2013. According to the pleadings made in the application, the appellant/wife was aggressive by nature and was not properly discharging household obligations. She did not properly look after the husband when he suffered an accident. False cases were registered against the husband in the police station alleging cruelty in connection with demand of dowry and finally the appellant/wife left the matrimonial house without any reasonable cause by making false allegation in various fora. The appellant is willing to reside with his wife and despite repeated attempts made, as the wife has not come back, the decree of restitution of conjugal rights was sought.

4. The appellant wife in her reply stated that she was subjected to cruelty since long stating that she had not brought sufficient dowry from her parents. Time and again, she was subjected to physical assault. She used to be tied with rope and burnt with cigarettes. She was also harassed stating that she was playing witchcraft and time and again assault was opened on her. It was pleaded that in this manner, the harassment, cruelty and physical assault continued and on 26 June, 2015, she was again scolded and subjected to physical violence by assault on various parts of the body and finally in order to save her, matter was reported to the parents and with the help of the police she was rescued and removed from the matrimonial house on 02.07.2015. The appellant/wife, opposing the application

for restitution of conjugal rights claimed to have reasonable excuse stating that she was been subjected to physical violence and cruelty, therefore, no decree could be granted in favour of the husband.

5. By impugned judgment and decree, the trial Court, disbelieving oral and documentary evidence with regard to physical violence and cruelty upon the wife held that wife had no reasonable excuse against discharge of marital obligation and a decree of restitution of conjugal rights has been passed.
6. Learned counsel for the appellant would argue that the appellant/wife has not only pleaded but has led a specific and clear oral as well as documentary evidence to prove that since long she was being subjected to assault, cruelty in many ways by the husband and his family members and apart from various incidents which had happened in the past, she clearly stated regarding assault given to her on 28.06.2015, and thereafter, attempts made by her to rescue herself the help of police and removed from matrimonial house on 02.07.2015. Counsel for the appellant would further argue that in order to prove the specific incident of assault and cruelty soon before the wife was rescued from the matrimonial house, apart from the oral evidence, report in the police station as also medical examination report has been led in evidence but this specific evidence has been disbelieved by the learned trial Court on assumptions drawn by appreciating the evidence as if the Court was

scrutinizing the evidence in a criminal case applying the degree of proof beyond reasonable doubt, whereas in the present proceedings, the principles of preponderance of probability would apply.

7. On the other hand, learned counsel for the respondent/husband has stated that the learned trial Court has not committed any illegality or perversity in arriving at conclusion that all the allegations of cruelty and harassment were improbable, contradictory and otherwise not made out. He would submit that all the incident prior to 28.06.2015, as pleaded in the application and as also in the evidence has been minutely scrutinized by the Family Court and disbelieved. He would submit that as far as incident of assault on 28.06.2015 is concerned, the trial Court has recorded cogent reasons. He would further argue that the learned trial Court has clearly recorded a finding that in the medical examination of the wife, conducted on 04.07.2015, though the doctor found various injuries on her body, the injuries were stated to have been caused within 72 hours meaning thereby that the incident may have happened around first of July,2015, whereas according to wife, the incident of assault had happened on 28.06.2015. Thus, pleading and evidence were found at variance and for that reasons the learned trial Court rightly disbelieved the allegation of assault and physical violence.

8. We have heard learned counsel for the parties and perused the material available on record as also impugned judgment and decree.
9. We find that as against the application for restitution of conjugal rights, the appellant/wife has come out with detailed pleadings which she has also stated in her evidence that since long she was being subjected to various form of violence, cruelty, assault, physical violence in the hands of her husband and members of his family.
10. Keeping aside various details of what happened in the past, we find that the appellant wife had very specifically pleaded in her written statement before the Court below that she was brutally assaulted by the husband and his family members on 28.06.2015. She specifically pleaded in this regard in para 8 of her written statement, wherein she has stated that she was tied up with a nylon rope, she was dragged by pulling her hair and was assaulted by hands and fists due to which she also started bleeding and sustained injuries. She further pleaded that on 02.07.2015, her father, brother approached police authorities as also Chhattisgarh State Rajya Mahila Aayog and finally, with the help of police she was rescued from her matrimonial house and went to her parental house. She had lodged complaint on 03.07.2015 before Mahila Prakoshth Rajnandgaon. She also lodged FIR in the police station, Rajnandgaon.
11. In her affidavit under order 18 Rule 4 C.P.C. also, the details of the incident have been given and particularly the

incident of assault on 28.06.2015 and she having sustained multiple injuries on her body. In support of this, the appellant led in evidence reliable documentary evidence in the form of Doctor Mulhaija (medical examination) Ex-D/4, FIR, various complaints etc. The medical examination report clearly spelt out multiple injuries on various parts of the body of the appellant. Though these injuries are not grievous but there were multiple injuries found on her body upon her medical examination on 04.07.2015.

12. We find that the learned trial Court disbelieved the aforesaid oral and documentary evidence by holding that as per the case of the appellant she was assaulted on 28.06.2015 whereas the medical examination report dated 04.07.2015 shows that the injuries could be caused within 72 hours, that means, on or after 01.07.2015. Only on this discrepancy, the learned Court has completely disbelieved and set at naught specific pleadings and evidence with regard to cruelty committed on the appellant.

13. In our considered opinion, the finding of the learned trial Court cannot be sustained in law. While appreciating the evidence, oral and documentary in nature, the learned trial Court has applied principle of proof beyond reasonable doubt ignoring that it is not a case where the husband was being tried for commission of offence punishable under the Indian Penal Code or any other penal law.

In civil proceedings, the standard of proof applied is preponderance of probability and not proof beyond

reasonable doubt. The learned Court below had committed serious illegality in appreciating and scrutinizing the evidence led by the wife in support of her cause that she was subjected to physical violence and cruelty. The medical evidence clearly shows that the wife was subjected to assault and which has been reflected from multiple injuries. Slight variation with regard to the exact period within which such injuries could be caused, would not render her entire statement liable to be disbelieved. It is a clear and admitted position on record and also reflected from the evidence that the appellant/wife was rescued from the matrimonial house with the help of police only on 02.07.2015 and medical report Ex-D/4 clearly depicts that the injuries was caused on her prior to 02.07.2015. The margin of 2-3 days is always possible because the duration of injury could not be stated with exactitude and precision. It is not a case that injuries were found to be caused after she was rescued from matrimonial house i.e. after 02.07.2015.

14. One single incident of physical violence on the wife caused by the husband is sufficient to constitute reasonable excuse. At this stage, we are not going into other allegation of cruelty but of assault on the wife soon before she was rescued from the matrimonial house which clearly proves that she was subjected to cruelty.

15. In order to constitute reasonable cause, the wife is not required to prove that she was subjected to repeated assault of physical violence or that degree of such violence was very

high. A minimal assault of physical nature may, in a given case, constitute a reasonable excuse for the wife to refuse to cohabit with the husband. No wife can be expected to discharge her marital obligation and cohabit her husband who has been subjected to physical violence irrespective of the nature and degree thereof.

16. A husband who treats his wife as chattel/property and subjects her to physical violence is not entitled to indulgence of the Court by granting him decree of restitution.

17. In the result, we are unable to uphold the impugned judgment of decree of restitution of conjugal rights granted in favour of respondent/husband. In the result, the appeal is **allowed**.

18. The impugned judgment of decree is set aside and the respondent application for restitution of conjugal rights is dismissed.

19. Let appellate decree be accordingly drawn.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge