

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 294 of 2014****Order reserved on 19.08.2021****Order delivered on 31.08.2021**

Ku.Pushpa Tirki, D/o Late Sunder Lal Tirki, Aged about 27 years, Occupation : Student, R/o Mission Hospital Road, Near Degree College, Chakradhar Nagar, Raigarh, Distt. Raigarh (C.G.) Presently residing at Chandmari, Turipara (at present Changed), Civil & Revenue Distt. Raigarh (C.G.)

---- Applicant**Versus**

State of Chhattisgarh, Through – District Magistrate, District Raigarh (C.G.)

----Respondent

For Applicant	: Mr. Rishi Rahul Soni, Advocate.
For Respondent	: Mr. Devesh Chand Verma, Govt. Advocate.

Hon'ble Shri Justice N.K. Chandravanshi**ORDER [C.A.V.]**

- (1) Proceedings of the matter have been taken-up through Video Conferencing.
- (2) Applicant has been convicted for commission of offence punishable under Sections 294, 353 & 332 of the IPC by the Chief Judicial Magistrate Raigarh in Criminal Case No. 495/2012 vide judgment of conviction & order of sentence dated 29.10.2013 and sentenced to undergo simple imprisonment for three months u/S 294 IPC, and to undergo simple imprisonment of one year & pay fine of Rs.500/- , in default additional simple imprisonment for one month u/S 332 IPC, in view of provisions contained in Section 71 IPC, applicant/accused has not been punished

separately for offence under Section 353 IPC. In appeal being Criminal Appeal No. 76/2013 preferred by applicant/accused, the Additional Sessions Judge (Fast Track Court), Raigarh vide judgment dated 14.04.2014, upheld the conviction under Sections 294 & 332 of the IPC. However, modified the sentence and in place of simple imprisonment for three months, to pay fine of Rs.500/- u/S 294 IPC, and for offence u/S 332 IPC, while maintaining fine sentence of Rs.500/-, reduced simple imprisonment for one year to simple imprisonment for one month, in default of payment of fine, further simple imprisonment of one month is reduced to simple imprisonment for seven days on each count.

(3) Case of the prosecution, in brief, is that complainant Vaijynati Sahu, who was working as Head Constable at City Kotwali, Raigarh made a written complaint (Ex.P-4) at Police Station Kotwali, Raigarh alleging therein that on 15.5.2010 when she was discharging her duties as public servant in the said Police Station, at that time Sub-Inspector – Uma Gupta (PW-3) came there with the applicant/accused. On seeing the complainant, applicant/accused stated that one Tarun Patel, who is residing at village of complainant, has ruined her life by entangling her in love affair and abused the complainant in filthy language and scuffled with the complainant, as a result of which, complainant sustained multiple/grievous injuries on her face. Based on this, FIR (Ex.P-2) was registered at Police Station Kotwali, District Raigarh under Sections 186, 353, 323 & 294 of IPC. After filing of charge sheet under Sections 186, 353, 323, 324 & 294 of IPC, the trial Court stated the substance of accusation under Sections 353, 294 & 332 of IPC to the applicant/accused.

(4) In order to prove the guilt of the applicant/accused, the prosecution has examined as many as 11 witnesses. Statement of the applicant/accused was also

recorded under Section 313 of Cr.P.C. in which she denied the circumstances appearing against her in the prosecution case, pleaded innocence and false implication.

(5) Vide judgment dated 29.10.2013, learned trial Magistrate has convicted the accused/applicant under Sections 294, 353 & 332 of the IPC and sentenced her as aforementioned. In appeal, conviction was upheld and sentence was modified by Additional Sessions Judge (FTC), Raigarh as mentioned in opening paragraph of the order. Hence, this revision petition.

(6) Counsel for the applicant/accused submits that there is contradictory evidence of prosecution witnesses as well as evidence of Dr. (Smt.) J.K. Choudhary (PW-11) regarding time of incident because complainant - Vijayanti Sahu (PW-6) stated that time of incident is about 10-11 AM whereas witnesses namely Devratan Singh Rathia (PW-1), Suresh Minj (PW-2) & Kusum Kaiwartya (PW-4) have stated that time of incident is about 3 to 4 PM. According to opinion of Dr. (Smt.) J.K. Choudhary (PW-11) the time of incident is at about 4 O'clock as she opined that the injuries sustained by complainant were within a duration of four hours from her medical examination, which was done at 8.05 PM. There is overwriting in FIR (Ex.P-2) also in this regard. He further submits that prosecution has not led any evidence, which proves that complainant Vijayanti Sahu (PW-6) was discharging her duties as a public servant at the time of incident. According to the statement of Sub-Inspector - Uma Gupta (PW-9), she had brought the applicant/accused at police Station but neither she or any other prosecution witnesses has stated that, in which case, she had been brought or whether she had been arrested or not, nor such documents have been proved by the prosecution by adducing evidence to this effect. Even the applicant/accused had

committed '*marpeet*' with complainant or not, has been contradicted by Head Constable - Devratan Singh Rathia (PW-1). Despite that, both the courts below overlooking all these infirmities available in the evidence of prosecution witnesses, convicted & sentenced the applicant/accused as aforementioned, which is liable to be set aside.

(7) On the other hand, counsel for the State supports the impugned judgment and submits that the same is in accordance with law and there is no infirmity in the same.

(8) I have heard learned counsel appearing for the parties and perused the material available on record with utmost circumspection.

(9) Head Constable - Complainant Vaijyanti Sahu (PW-6) has stated in her evidence that on the date of incident, Sub-Inspector - Uma Gupta (PW-3) had brought the applicant/accused, at that time, she was sitting in the police station and discharging her duties, when she asked the applicant/accused that "your womb is empty but you were saying that you were pregnant", on this, applicant/accused abused her with filthy language and also inflicted injuries on her face with her nails. Her statement has been corroborated by Head Constable – Suresh Minj (PW-2), Sub-Inspector- Uma Gupta (PW-3), Kusum Kaiwartya (PW-4) & Constable – Manju Mishra (PW-5) and somehow by independent witnesses namely Shankar Yadav (PW-9) & Sandeep Yadav (PW-10). Dr. (Smt.) J.K. Choudhary (PW-11) has stated in her evidence that during the course of examination on 15.1.2010, she found three abrasions on the face of complainant – Vaijyanti Sahu (PW-6), which was caused by sharp edged object. Her statement has been fully supported by medical report (Ex.P-8) prepared by her. The defence has cross-examined these witnesses in detail but has not been able to elicit anything in

their cross-examination to discard their testimony. Even independent witnesses namely Shankar Yadav (PW-9) and Sandeep Yadav (PW-10) have also supported the case of the prosecution by stating that some quarrel took place at police Station – Kotwali, Raigarh. Injuries sustained by complainant Vaijyanti Sahu (PW-6) have been well supported by medical evidence of Dr. (Smt.) J.K. Choudhary (PW-11) also. Thus, from the evidence adduced by the prosecution, it is proved that applicant/accused had abused complainant Vaijyanti Sahu (PW-6) with filthy language and also inflicted injuries on her face by nails, as a result thereof, she sustained injuries on her face, which are simple in nature.

(10) Although, there seems some difference with regard to time of incident from the evidence of prosecution witnesses and it has also not been proved by the prosecution that, in which case, the applicant/accused was brought at the police Station, but merely on the basis of these facts, proven facts could not be disbelieved because from the positive suggestion given by the defence counsel in the cross-examination of prosecution witnesses, it is clear that applicant/accused was in the police station at the time of incident, therefore, aforesaid contradictions do not have any force to disbelieve the statements of prosecution witnesses.

(11) So far as discharging of public duty of complainant Vaijyanti Sahu (PW-6) at the time of incident is concerned, no document has been proved by the prosecution, which could show as to what duty she was discharging as public servant which was interrupted from the act of applicant/accused or she has inflicted injuries to the complainant to deter or prevent her from discharging her duties, therefore, the act of the applicant/accused does not travel beyond the scope of Section 323 of the IPC instead of offence under Section 332 of the IPC . Since the applicant/accused has also

abused with filthy language to complainant - Vaijyanti Sahu (PW-6) , therefore, offence under Section 294 of the IPC has also been proved against her.

(12) In view of above, criminal revision is partly allowed. Conviction & sentence imposed upon the applicant/accused under Section 294 of IPC is hereby maintained. However, Conviction of the applicant under Section 332 of the IPC is altered to Section 323 of the Indian Penal Code. Appellant is reported to have remained in jail from 14.04.2014 to 22.04.2014 [The date, on which, the bail was granted to the applicant by this Court] and therefore she is sentenced to the period already undergone by her. However, fine sentence, as imposed upon the applicant, is hereby maintained.

Sd/-
(N.K. Chandravanshi)
Judge

D/-

