

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No. 1289 of 2007

An application under Section 401 of the Code of Criminal Procedure, 1973.

AFR **Uttam @ Kali Charan Diggar** **Petitioner**

-Versus-

State of Odisha & another **Opp. Parties**

Advocate(s) appeared in this case:-

For Petitioner : M/s. D.P. Dhal, Sr. Advocate
along with M/s. B.S. Dasparida
A.K. Mishra & S.Mohapatra,
Advocates

For Opp. Parties : Mr. Priyabrata Tripathy,
Addl. Standing Counsel

M/s. A.K. Biswal, S.S. Ray,
& A.P. Rath, Advocates
[O.P. No.2]

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT
5th July, 2022

SASHIKANTA MISHRA, J.

By judgment of conviction and sentence passed
by the C.J.M.-cum-Asst. Sessions Judge, Baripada in S.T.

case No.11/144 of 2005, the petitioner was convicted for the offence under Sections 324/307 of IPC and sentenced to undergo R.I. for one year for the offence under section 324 of IPC and for 5 years for the offence under section 307 of IPC and to pay a fine of Rs.5000/-, in default, to undergo R.I for one year more for the offence under section 307 of IPC with all the sentences directed to run concurrently. The said judgement was confirmed in appeal by the Additional District and Sessions Judge, Baripada in Crl. Appeal No.45/24 of 2007. The petitioner has therefore approached this Court in the present revision challenging the aforementioned judgements.

2. The facts of the case, briefly stated as that the petitioner married one Gita Diggar according to their caste and customs and at the time of marriage cash of Rs.10,000/- was given besides gold ornaments, utensils and other household articles towards dowry. After the birth of a girl child, the petitioner and his family members started treating the victim with cruelty demanding Rs.25,000/- as further dowry. The victim informed her mother of the same who attempted to resolve the matter

amicably but without success. Since the victim was still treated with cruelty, her mother took her to her house apprehending danger to her life. On 09.10.2003 at about 11 AM when the victim had gone to the market to purchase clothes along with her grandmother-Fulamani Barik, the accused suddenly came there being armed with a knife and stabbed the victim with it 3 to 4 times after chasing her. As a result, she sustained injuries on her belly and left-hand. The matter was thereafter reported by the the informant at the police station leading to registration of Baripada Town P.S. Case No. 237/2003. Upon completion of investigation charge sheet was submitted against the petitioner and his mother under sections 498-A/324/325/307/34 IPC read with section 4 of D.P. Act.

During trial, prosecution examined 26 witnesses out of whom, P.W.-7 is the injured victim-Gita Diggar, P.W.-1, P.W.-2 and P.W.-19 are the eyewitnesses and P.Ws.-14 and 18 are the doctors who examined the injured victim. The trial court found the victim's version clear and consistent and fully corroborated by the

evidence of the eyewitnesses P.Ws.-1 and 2 as also by the medical evidence. The trial court however did not find adequate evidence regarding the allegations of cruelty relating to demand for dowry. As such, the trial court held the accused not guilty of the offence under section 498-A of IPC but found him guilty of the offence under section 324/307 IPC and sentenced him as aforesaid. The petitioner carried the matter in appeal to the Court of Session. The lower appellate court also scanned the evidence on record in detail but found no reason to interfere with the order of conviction and sentence. As such, the lower appellate court confirmed the order of conviction and sentence passed by the trial court.

Feeling further aggrieved, the petitioner has approached this Court in the present revision.

3. Heard Sri B.S. Dasparida, learned counsel for the petitioner and Sri P. Tripathy, learned Addl. Standing Counsel for the state.

4. Sri B.S. Dasparida has assailed the impugned judgments by contending that material witnesses were not examined. Other material witnesses, such as, the

shopkeepers of the market did not support the prosecution. It is also contended that the evidence of P.W.-2 should not have been relied upon by the trial court as she is admittedly related to the injured victim. It is further contended that there is evidence of a scuffle between the accused and the injured victim in course of which the accused had also sustained some injury and therefore the possibility of the victim being the aggressor cannot be ruled out. Alternatively, it is contended that the petitioner is now aged about 50 years and the differences between him and his wife have since been resolved and both are now residing peacefully with each other and their children. Therefore, the petitioner should be released as per the provisions of P.O. Act or must be sentenced to the period already undergone by him.

5. Sri Tripathy has supported the impugned judgments by contending that the same is based on clear and unimpeachable evidence of the injured victim as fully corroborated by eyewitnesses and medical evidence. There is therefore no reason for this Court to interfere.

6. In order to appreciate the contentions putforth by the petitioner, this Court has gone through the evidence on record independently. It is seen that the victim has clearly and consistently testified about the occurrence vividly. According to her, the occurrence took place in front of a cloth store of the market at about 11:30 AM. The accused suddenly came being armed with a knife and stabbed her in her belly as a result of which she bent down whereupon the accused dealt 2 to 3 blows with the knife on her arm. Her version has been corroborated by P.W.-1 in material particulars. P.W.-3 who was also present at the spot fully corroborates the version of the injured victim. The doctors who examined the victim after the incident have described the injuries in detail as follows:

- I. Stab wound covered with fresh blood of size 3 cm x 2cm x 2 cm over the lateral side of left forearm 3 cm below the left elbow joint.*
- II. Stab wound covered with fresh blood size 3 cm x 2 cm x 2 cm over the lateral side of left arm 5 cm above the left elbow joint.
The above injuries are simple and caused by sharp pointed cutting weapon.*
- III. Stab wound covered with fresh blood of size 3 cm x 2 cm x 2 cm over lateral side of*

left arm 1 cm below and parallel to injury No. II.

- IV. Stab wound covered with fresh blood of size 2.5 cm x 2.5 cm x muscle deep over the left chest. Opinion to be obtained from the surgery specialist. The injury is caused by sharp pointed cutting weapon.*
- V. Stab wound covered with fresh blood of size 5 cm x 2.5 cm x deep into the abdomen over the lumbar region of left abdomen. Opinion to be obtained from the surgery specialist. The injury is caused by sharp cutting pointed weapon;
and*
- I. Incision wound 3 cm x ½ cm x skin deep at the base of the index finger.*
- II. Incision wound 4 cm x ½ cm skin deep it is just below the I injury.*

Thus, the version of the injured is fully supported by the eyewitness account as also by the opinion of the doctors. Nothing substantial has been elicited from either the injured or the eyewitnesses to even remotely disbelieve their testimony. Under such circumstances, this Court finds that the trial court committed no error in convicting the accused for the aforementioned offences.

7. As regards the contentions raised by the petitioner that some material witnesses were not examined by the prosecution, it is to be noted that law of evidence places importance more on the quality rather

than quantity of evidence. As has already been noted hereinbefore, the version of the injured victim has been corroborated by two eyewitnesses and there is nothing on record to even remotely suggest that they had any justified reason to depose falsely against the accused. As to the contention that the shopkeepers of the market had not supported the prosecution, the same pales into insignificance in view of the clear and consistent as well as credible evidence of the injured as corroborated by the eyewitnesses' account. That apart the medical evidence is fully consistent with the version of the victim. Therefore even if the shopkeepers did not come forward to support the prosecution, the same does not mean that the prosecution case must of necessity be thrown to the winds. The contention that P.W.-2 being related to the injured had a reason to falsely depose against the accused also cannot be accepted because in view of the clear evidence of the injured having sustained multiple stab wounds on her person, it is highly irreparable that a close relation of the injured would falsely implicate another person and allow the actual offender to go scot-free. It has

been argued that the accused also sustained some injuries which suggest that the injured was the aggressor. This is a fallacious argument in view of the very nature of injuries sustained by the accused and the injured. It is seen that none of the contentions raised are strong enough to persuade this Court to take a different view than what was taken by the trial court and concurred by the lower appellate court.

8. On the question of sentence, it is contended that the petitioner and the injured being husband and wife are now residing peacefully and happily and that the occurrence in question had taken place nearly 20 years ago. It is further contended that the children of the couple are now grown up. Whatever the petitioner had done at the relevant time was in a fit of anger and not out of a definite intention to kill his wife. After considering the submissions as above, this Court finds some force in it. The petitioner is aged about 50 years presently. No criminal antecedents are reported against him. As has been submitted, the petitioner and his wife are presently residing peacefully and happily. It appears from the case

record that the petitioner had spent nearly one and half years in prison during trial and appeal. Therefore taking all the above facts into consideration, this Court is of the considered view that ends of justice would be best served if instead of sending the petitioner to serve the remaining part of the sentence in prison, the sentence is modified to the period already undergone by him.

9. In the result, while confirming the order of conviction passed by the trial Court and confirmed by the lower appellate Court, the sentence imposed is modified to the period already undergone by the petitioner.

10. The CRLREV is disposed of accordingly.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 5th July, 2022/ A.K. Rana