

Jharkhand High Court

Rita Devi Wife Of Triloki Das vs The State Of Jharkhand on 21 June, 2021

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Rev. No. 949 of 2013

Rita Devi wife of Triloki Das, resident of Village- Bara Sanghra,
P.O. and P.S. - Madhupur, District- Deoghar

... .. Petitioner

Versus

1. The State of Jharkhand
2. Suresh Das son of Jaleswar Das resident of Village- Bara Sanghra, P.O. and P.S.- Madhupur, District- Deoghar

... .. Opposite Parties

Cr. Rev. No. 913 of 2013

Suresh Das s/o Sri Jaleswar Das, r/o Village Bara Sanghra, P.O.
Pathrol, P.S. Madhupur, Dist. Deoghar

... .. Petitioner

Versus

1. State of Jharkhand
2. Rita Devi w/o Triloki Das, r/o Mauza Bara Sanghara, P.S. - Madhupur, Dist.- Deoghar

... .. Opposite Parties

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

In Cr. Rev. No. 949 of 2013 For the Petitioner : Mr. Sudhanshu Kumar Deo, Advocate For Opp. Party No. 2 : Mr. Prakash Chandra, Advocate For the State : Mr. Ravi Prakash, A.P.P.

In Cr. Rev. No. 913 of 2013 For the Petitioner : Mr. Prakash Chandra, Advocate For Opp. Party No. 2 : Mr. Sudhanshu Kumar Deo, Advocate For the State : Mr. Ravi Prakash, A.P.P.

Through Video Conferencing

10/21.06.2021 Heard Mr. Sudhanshu Kumar Deo, learned counsel appearing on behalf of the petitioner in Cr. Rev. No. 949 of 2013. He is appearing on behalf of the opposite party no. 2 in Cr. Rev. No. 913 of 2013.

2. Heard Mr. Prakash Chandra, learned counsel appearing on behalf of the petitioner in Cr. Rev. No. 913 of 2013. He is appearing on behalf of the opposite party no. 2 in Cr. Rev. No. 949 of 2013.

3. Cr. Rev. No. 913 of 2013 has been filed by the convict and Cr. Rev. No. 949 of 2013 has been filed by the informant of the case. These two criminal revision petitions arise out of judgement dated 10.07.2013 passed in Criminal Appeal No. 74 of 2009 by 1st Additional Sessions Judge, Deoghar whereby the learned appellate court has dismissed the appeal filed by the accused and has additionally convicted and sentenced the petitioner-accused under Section 323 of Indian Penal Code. The petitioner has been additionally sentenced to undergo Rigorous Imprisonment for six months and fine of Rs. 5,000/- and in default, to undergo Simple Imprisonment for one month under Section 323 of Indian Penal Code. The appellate court confirmed the conviction and sentence of the petitioner for Rigorous Imprisonment for a period of one year under Section 354 of Indian Penal Code.

4. The petitioner in Cr. Rev. No. 913 of 2013 (convict) has also challenged the judgement and order of conviction and sentence dated 14.07.2009 passed by learned Judicial Magistrate, Ist Class, Madhupur at Deoghar in P.C.R. Case No. 96 of 2007 and T.R. Case No. 598 of 2009 whereby the petitioner was convicted under Section 354 of Indian Penal Code and sentenced to undergo Rigorous Imprisonment for a period of one year.

5. Upon perusal of the judgements passed by the learned trial court and learned appellate court, it appears that the accused was tried for offence punishable under Sections 323 and 354 of Indian Penal Code.

Cr. Rev. No. 949 of 2013

6. At this stage, the learned counsel appearing on behalf of the petitioner in Cr. Rev. No. 949 of 2013, who was the informant of the case, seeks permission to withdraw the criminal revision and does not want to press the same.

7. The learned counsel appearing on behalf of the State as well as the opposite party No. 2 in Cr. Rev. No. 949 of 2013 have no objection to the prayer made.

8. Accordingly, Cr. Rev. No. 949 of 2013 is dismissed as not pressed.

Cr. Rev. No. 913 of 2013 Arguments of the petitioner

9. Learned counsel appearing on behalf of the petitioner submits that the petitioner was convicted under Section 354 of Indian Penal Code by the learned trial court, but was acquitted for offence under Section 323 of Indian Penal Code. He further submits that there was no cross-appeal or acquittal appeal filed by the State or the informant against the acquittal of the petitioner under Section 323 of Indian Penal Code. He submits that in absence of any cross appeal or acquittal appeal filed by the State or the informant, the learned appellate court could not have convicted the petitioner under Section 323 of Indian Penal Code. The learned counsel submits that the appellate

court has convicted the petitioner under Section 323 as well as upheld the conviction and sentence of the petitioner under Section 354 of I.P.C. passed by the learned trial court.

10. The learned counsel, while referring to the operative portion of the appellate court's judgement submits that while upholding the judgement of conviction of the petitioner by the learned trial court (conviction under Section 354 of Indian Penal Code), the learned appellate court has referred to Sections 323 and 454 of Indian Penal Code and also held that the petitioner has committed offence under Sections 323, 345 and 454 of Indian Penal Code, but no charge was framed under Section 454 of IPC. As section 354 of IPC has not been mentioned in para 9, the operative portion of the impugned judgement, it cannot be said that the conviction of the petitioner under section 354 has been upheld by the learned appellate court. It is submitted that in view of the aforesaid facts and circumstances, the impugned judgement is not sustainable in the eyes of law and is fit to be set-aside.

Arguments of the State.

11. At this stage, learned counsel appearing on behalf of the opposite party- State submits that upon complete reading of para 9 of the appellate court's judgement, it is apparent that the learned appellate court has upheld the conviction of the petitioner passed by the learned trial court and admittedly the petitioner was convicted by the learned trial court for offence under Section 354 of Indian Penal Code for which the petitioner was sentenced for one year. He submits that additionally, the appellate court has convicted the petitioner under Section 323 of Indian Penal Code. The learned counsel for the State submits that mentioning of Section 345 instead of 354 in para 9 of the appellate court's judgement is apparently a typographical error as the appellate court clearly records upholding of the conviction of the petitioner by the trial court.

12. The learned counsel further submits that so far as the conviction under Section 323 of Indian Penal Code by the learned appellate court is concerned, it is not in dispute that no cross-appeal or acquittal appeal was filed against acquittal of the petitioner by the learned trial court under Section 323 IPC either by the state or by the informant. He does not dispute the fact that in absence of any acquittal appeal or cross-appeal, the appellate court could not have convicted the petitioner under Section 323 IPC as that would amount to reversal of the acquittal of the petitioner under Section 323 of Indian Penal Code.

Findings of this Court

13. Upon perusal of the case record, it appears that the complainant and the petitioner are co-villagers and the petitioner is the neighbour of the complainant. It is alleged that in the night of 22.03.2007 at about 11 p.m., the complainant came out along with her dewar from her house to attend to her natural call. In the meantime, petitioner armed with pistol, trespassed into the courtyard of the complainant having made preparation for causing hurt and pointed the pistol on the head of the complainant by using criminal force and the accused caught hand of the complainant and began to drag her with intention to outrage her modesty. The complainant raised alarm and she along with her dewar, protested the illegal act of the petitioner and then, the complainant and her

dewar were assaulted by the petitioner with fists and slaps which caused injury. It is further alleged that another witness i.e. the husband of the complainant also came on the spot upon raising alarm by the complainant and thereafter, the petitioner fled away leaving behind his slipper. It has also been stated that at the time of occurrence, C.W. 3 and 4, who are the father-in-law and mother-in-law of the complainant, were in Bengal. Upon information they came and thereafter, they went to Madhupur police station, but the police did not register a case and ultimately, the complaint was filed. The complaint was instituted on 26.03.2007 before the court of learned S.D.J.M., Madhupur at Deoghar and was registered as P.C.R. Case No. 96 of 2007 for offence under Sections 323, 354 and 452 of Indian Penal Code against the petitioner.

14. After recording the statement of the complainant, on solemn affirmation the case was sent for further enquiry to another court who found a prima facie case for offence under Sections 323 and 354 of Indian Penal Code against the present petitioner. The petitioner appeared before the court and the substance of accusation was explained to the petitioner in Hindi on 06.07.2007, to which he pleaded not guilty and claimed to be tried.

15. During the trial, altogether five witnesses were examined on behalf of the complainant. C.W. 1 is the husband of the complainant, C.W. 2 is the brother -in-law of the complainant, C.W. 3 is the father-in-law of the complainant, C.W. 4 is the mother-in-law of the complainant and C.W. 5 is the complainant herself.

16. The complainant who was examined as C.W. 5 stated in her examination-in-chief that the incident had taken place on the fateful day at 11 p.m. and C.W. 2 had taken her for urinal and she went along with him. At that point of time, the petitioner crossed the boundary and came in the courtyard and caught her and told her to go outside with him. On her protest, the petitioner began abusing and pointed the pistol over her cheek, upon which C.W. 2 made noise and accused began to run away after leaving his slipper. Upon hearing the noise, the other person also came and her in-laws were informed who came later and went to concerned police station along with her. She claimed to identify the petitioner. During her cross- examination, she admitted that there was no enmity with the family of the accused and she denied the suggestion that the petitioner had not caught her hand with ill intention.

17. So far as C.W. 1 is concerned, he has supported the prosecution case so far as the time and place of incident is concerned. However, this witness has stated that his wife told him for urinal and he had taken his wife and then accused had entered the campus and began to pull his wife by catching her hand. He further deposed that the accused pointed out a revolver and assaulted his wife and then, fled away leaving his Slipper. He has also deposed that on alarm the villagers assembled, but they would not depose because the accused may beat them. In his cross-examination, he further admitted that his wife went for urinal alongwith his brother. He has also stated in his cross-examination that he went on alarm being raised and saw the accused in his campus and then, the accused fled away.

18. C.W. 2, the brother-in-law of the complainant, has also supported the prosecution case so far as time, manner and place of occurrence is concerned, but he deposed that at the relevant time he

wanted to go for urinal and for that, he told his brother, who told him to go with the complainant and he went to the courtyard with the complainant. At that time, the petitioner crossed the boundary and entered in his campus and began to pull the complainant towards outside and when he made noise, the accused slapped him and pointed his pistol. At that time, his brother i.e. husband of the complainant also came there and the petitioner fled away leaving his slipper. This witness has also been thoroughly cross-examined by the defence.

19. The learned trial court discussed the evidences on record and also considered the inconsistencies or contradictions in the evidences and held that all the witnesses have supported the occurrence that the petitioner entered into the courtyard of the complainant at 11 p.m. in the night and caught her hand and pulled her towards outside. The learned trial court also recorded that the victim has fully supported the allegation against the petitioner and her testimony is consistent and does not suffer from any serious contradictions. The learned trial court also recorded that the complainant has clearly stated that the petitioner caught her hand and pulled her towards outside and on her protest, he pointed out pistol and as such, the learned trial court did not find any reason to disbelieve the testimony of the complainant/victim. The learned trial court also recorded that the defence was given opportunity to produce its defence evidence and the defence had not led any evidence. It further recorded that the defence had not whispered anywhere about previous enmity with the petitioner and rather, the complainant had clearly deposed that there was no previous enmity with the petitioner and accordingly, rejected the plea of false implication also. However, the learned trial court, in para 19 of its judgement, recorded that from the perusal of the deposition of the complainant, it transpired that she had not stated that the petitioner had beaten her by fists and slaps and even she had not stated that her brother-in-law was assaulted by the petitioner. Under such circumstances, the trial court was of the view that the allegation under Section 323 of Indian Penal Code was not proved against the petitioner beyond all reasonable doubt. The learned trial court recorded its specific finding in the concluding paragraph 20 of the trial court judgement which reads as under:

"20. So far the allegation under Section 354 of the I.P.C. is concerned, it clearly transpires, from perusal of all the witnesses that they have consistently supported that accused Suresh Das had caught the hand of the complainant in the night at 11:00 p.m. and pulled her towards outside but on hulla he fled away. The offence under Section 354 of the I.P.C. is complete when the accused uses criminal force to any woman intending to outrage or knowing it to be likely that he will thereby outrage her modesty. In this case the complainant has fully supported the allegation against the accused for the offence under Section 354 of the I.P.C. which has been fully supported and corroborated by the other witness of occurrence also. Therefore, on the basis of aforesaid discussions and evidences as well as, considering submissions of both the parties, it can be clearly said that the complainant has been able to prove the allegation for the offence under Section 354 of the I.P.C. against accused beyond all reasonable doubts hence."

20. Thus, the trial court convicted the petitioner only under Section 354 of Indian Penal Code and found that the prosecution has not been able to prove the offence under Section 323 of Indian Penal

Code beyond all reasonable doubt.

21. The appellate court also considered the evidences on record including the contradictions in the evidences of the witnesses and rejected the arguments advanced on behalf of the appellant. The learned appellate court also recorded that the learned trial court committed error in finding that the offence under Section 323 of Indian Penal Code was not made out. The learned appellate court recorded its findings and also further convicted the petitioner under Section 323 IPC and upheld the conviction and sentence passed by the learned trial court. The learned appellate court also recorded that no charge was framed under Section 454 of Indian Penal Code although the ingredients of the offence under section 454 IPC were present and accordingly did not proceed to record order of conviction/sentence under section 454 IPC. Paragraph 9 of the appellate court judgement, reads as under:

"9. The findings of learned trial court on the point of conviction only u/s 354 I.P.C. is correct but the learned trial court has committed error in their finding after leaving sentence u/s 323 I.P.C. because both the victim deposed in one tone that the accused assaulted them by fists and there is no possibilities of independent witness. Therefore, the ingredients of section 323 I.P.C. is on the record. For the application of section 323 I.P.C. only ingredient is voluntarily caused bodily pain to the victim and accused is so with intention to causing hurt or with the knowledge that he would hereby caused hurt to the victim. Therefore, if the ingredients available on the record but not appreciated by the learned Magistrate then it is an error in the eye of law. Here is also no any fact and circumstances that why she made any false allegation while there is no previous enmity with the accused. And he is her neighbour. The allegation of out rage her modesty in Indian society is destroyed her whole peace of her life and the accused entered in to her boundary with an intention to made outrage her modesty and on her protest, he assaulted and taken on point of pistol. The act of the accused fulfill all ingredients of Sec. 323 & 454 I.P.C. Lurking house trespass. It is a grievous offence and ingredient is 1. lurking house trespass, 2. and commit an offence punishable with imprisonment. In this case the accused entered in the boundary in the night and caught hold her arms and force to take her out. The two facts fulfilled the requirement which is graver then sec. 345 I.P.C. hence, in this stage it is not possible to take in to consideration. The accused committed offence u/s 323, 345 and 454 IPC. But no charge was framed u/s 454 IPC. And I would not like to remand back the record for fresh trail but he sentence of go R.I. For six month and fine of 500/- and in dealt he will further go simple imprisonment for S.I of one month u/s 323 I.P.C. and also sentence awarded by the trial court such as undergo R.I. for a period of one year. The period already undergone by the convict during the proceeding of this case shall be set off. The appeal is dismissed sentence is modified and confirmed all sentences run concurrently."

22. This Court finds that the learned appellate court in its opening sentence in para 9 has clearly recorded that the findings of learned trial court on the point of conviction only u/s 354 I.P.C. is correct and also proceeded to hold that the learned trial court has committed error in their finding after leaving sentence u/s 323 I.P.C. because both the victim deposed in one tone that the accused assaulted them by fists and there is no possibilities of independent witness. This Court finds that in the later part of para 9, the appellate court has mentioned Section 345 IPC which is apparently a typographical error. The present case is not even remotely related to any offence under Section 345

IPC. This Court is of the considered view that upon reading para 9 of the impugned judgement as a whole, it appears that the appellate court has upheld the conviction of the petitioner under Section 354 IPC and additionally convicted the petitioner under Section 323 IPC. This Court is of the considered view that the said typographical error in para 9 of the appellate court judgement in mentioning Section 345 IPC instead of Section 354 IPC at certain places, does not cut any ice in favour of the petitioner as upon complete reading of para 9, the appellate court has clearly upheld the conviction and sentence of the petitioner under Section 354 IPC passed by the learned trial court.

23. This Court finds that the judgements passed by the learned courts below have considered all the arguments advanced on behalf of the petitioner including the contradictions pointed out by the petitioner and have dealt with the arguments and rejected the argument of the petitioner so far as the contradictions in the evidence are concerned and found that the materials for convicting and sentencing the petitioner for offence under Section 354 of Indian Penal Code were available. There are concurrent findings recorded by the learned courts below on the point of conviction and sentence of the petitioner under Section 354 IPC. There being no illegality or perversity in the findings of conviction and sentence of the petitioner under Section 354 IPC, no interference is called for under revisional jurisdiction by this Court.

24. So far as the conviction and sentence of the petitioner under Section 323 IPC by the learned appellate court is concerned, this Court finds that admittedly, the learned trial court did not convict the petitioner under Section 323 of IPC, but the appellate court found that the basic ingredients of offence under Section 323 of Indian Penal Code were present and the trial court had committed error. Admittedly, no cross- appeal was filed by the state or the informant against the order of acquittal of the petitioner under Section 323 IPC and the impugned appellate court judgement does not reflect grant of any opportunity of hearing to the petitioner at the appellate stage. This Court is of the considered view that in the aforesaid circumstances, the appellate court could not have convicted the petitioner under Section 323 IPC and reversed the order of acquittal of the petitioner under the said section. Thus, the appellate court judgement calls for interference in revisional jurisdiction so far as it relates to conviction and sentence of the petitioner under Section 323 IPC. In view of the aforesaid, the conviction and sentence of the petitioner by the appellate court under Section 323 IPC is hereby set-aside.

25. Thus, the sentence and conviction of the petitioner under Section 354 of Indian Penal Code is upheld and sentence and conviction of the petitioner under Section 323 of Indian Penal Code by the appellate court is set-aside. Accordingly, this criminal revision petition is partly allowed.

26. Pending interlocutory application, if any, stands closed.

27. The bail bond furnished by the petitioner is cancelled.

28. Let the Lower Court Records be immediately sent back to the court concerned.

29. Let a copy of this order be communicated to the learned court below through 'FAX/Email'.

(Anubha Rawat Choudhary, J.) Pankaj