

HIGH COURT OF MADHYA PRADESH JABALPUR

Criminal Revision No.399/2011

Indraj Singh Kurmi

Vs.

State of Madhya Pradesh

Present : Hon'ble Shri Justice N.K. Gupta.

Shri Aseem Dixit, counsel for the applicant.

Shri R.N. Yadav, Panel Lawyer for the respondent/State.

O R D E R

(Passed on 30th day of November, 2013)

The applicant has preferred the present revision petition against the judgment dated 28.2.2011 passed by the learned 1st Additional Sessions Judge, Sagar in Criminal Appeal No.36/2011, whereby the judgment dated 7.2.2011 passed by the J.M.F.C. Sagar in Criminal Case No.272/09 was modified and the applicant was convicted for the offences punishable under Sections 452 & 323 of IPC and sentenced for six months R.I. with fine of ₹1,000/- and fine of ₹500/- respectively.

2. The prosecution's case, in short is that, on 15.11.1999 at about 9:00 p.m. in the night, the applicant entered in the house of the victim Laxmi Devi (PW-2) situated at village Johariya Police Station Rahatgarh District Sagar and assaulted her by stick.

3. The learned J.M.F.C. after considering the evidence

adduced before him, convicted and sentenced the applicant for the offences punishable under Sections 452 & 323 of IPC and sentenced for one year R.I. with fine of ₹500/- and two months R.I. with fine of ₹300/-, whereas the judgment passed by the trial Court was modified by the appellate Court.

4. I have heard the learned counsel for the parties.

5. After considering the evidence adduced by Narayan (PW-1), Laxmi Devi (PW-2) and other eyewitnesses, timely lodged FIR and the medical report proved by Dr. N.K. Saini (PW-3), it would be apparent that the applicant had done a house trespass with the preparation of assault and voluntarily caused hurt to the victim Laxmi Devi and therefore, both the Courts below have rightly convicted the applicant for the offences punishable under Sections 452 & 323 of IPC. There is no reason by which any interference can be done in the concurrent findings given by both the Courts below relating to the conviction and therefore, the present revision filed by the applicant relating to the conviction cannot be accepted.

6. So far as the sentence is concerned, it would be apparent that the applicant was the first offender and the main crime was of 323 of IPC for which only fine was imposed and therefore there is no necessity to impose the jail sentence for the offence punishable under Section 452 of IPC. However, the applicant remained in the custody for 15 days during the trial, appeal and the revision therefore, it would be proper that his jail sentence may be reduced to the period for which he remained in the custody, without enhancing the fine.

7. On the basis of the aforesaid discussion, the revision filed by the applicant is hereby partly allowed. The conviction for the offences punishable under Sections 452 & 323 of the IPC is hereby maintained, but the sentence for the offence punishable under Section 452 of IPC is reduced to the period for which he remained in the custody during the trial, appeal and the present revision. There is no change in the fine amount.

8. Copy of the order be sent to both the Courts below alongwith their records for information and compliance.

(N.K. GUPTA)
JUDGE
30.11.2013