

IN THE COURT OF THE ADDL. SESSIONS JUDGE  
AIZAWL JUDICIAL DISTRICT : MIZORAM

Present : Vanlalenmawia,  
Addl. Sessions Judge

Criminal Revision No. 55 of 2015

Sri Simon Lalruatfela  
S/o Pradip Biswas  
R/o Khumtung, Serchhip District,  
Mizoram .....Petitioner

-Versus-

State of Mizoram .....Respondent

**APPEARANCE**

1. For the petitioner : Shri Lalrinchhunga, Advocate  
2. For the respondent : Shri Joseph Lalfakawma, Addl. P.P.

**Hearing : 13.10.2015**  
**Order delivered on : 27.10.2015**

**ORDER**

The revision petition has been filed under Section 397 of Cr PC for setting aside the Judgment & Order passed by the learned Chief Judicial Magistrate, Serchhip in Crl. Tr. No. 22 of 2015 arising out of Serchhip Police Station Case No. 68 of 2015 under Sections 323/354 of IPC. In the Order, the petitioner was convicted under Section 355 of IPC and sentenced to suffer S.I. for a period of three months.

2. The prosecution case in a nut shell is that one Lalthangpuii of Khumtung lodged a written First Information Report (hereinafter as 'FIR') to the effect that at around 11:30 AM on 16.11.2014, the accused who is her ex-husband, pulled her hair and assaulted her causing injury. Thereafter, the victim fought back and released herself. But, the accused kicked on her left temple and the latter fell unconscious. Hence, SRCP PS Case No. 68 of 2014 dated 19.11.2014 was registered against the accused under Section 323/354 of IPC.

In the course of investigation, the Case I.O. examined all the witnesses and also sent the victim to the Medical Officer for medical examination. After observing the materials on records, the case I.O. found a prima facie case against the petitioner under Section 323/354 of IPC, and he submitted charge sheet to the learned Chief Judicial Magistrate, Serchhip on 5.12.2014.

3. The petitioner was released on bail on 20.11.2014 without remanding him into judicial custody. The order dated 20.11.2014 appears to be passed by the learned Chief Judicial Magistrate due to non availability of jail in the district and remanding the petitioner into Central Jail would require heavy expenditure to the State.

4. Shri C. Lalrinchhunga, the learned Counsel appearing for the petitioner submitted before me that the alteration of charge framed against the accused from Section 354 of IPC to Section 355 of the Code is inconsistent with the law in force and the learned Trial ought not to convict him under Section 355 of the Code. It was contended by the learned Counsel that the learned Counsel should not record conviction by solely basing the explanation questioned under Section 313 of Cr PC. The learned Counsel also placed reliance of the decision of the Gauhati High Court (in Bishnu Prasad Sinha & others vrs. State of Assam, 2007 (1) SBR 544). It was next contended by the learned Counsel that sentence hearing is always mandatory before pronouncement of judgment. The learned Counsel also challenged the sentence. According to him, the petitioner should be released in probation of good conduct as provided by Section 360 of Cr PC inasmuch as there is no proof of previous conviction against him. Last, but not the least, the learned Counsel pointed out non availability of lawyer in the district.

5. But, the learned Addl. PP prayed to uphold the conviction and sentence passed by the learned Trial Court inasmuch as there is no irregularity in the trial which had caused prejudice to the petitioner, According to him, the learned Trial Court rightly decided the case in consonance of the principles of natural justice and the applied law in force.

6. I have duly considered the submission made by the rival parties. I have also perused the records made available before me.

7. In connection with the present case, the learned Counsel Shri C. Lalrinchhunga did not challenge how the irregularity of the investigation performed by the Case I.O. It appears to me that the FIR was filed by the victim on 16.11.2014 and the information was entered in the General Diary Entry on the same day. The medical examination was conducted by the Medical Officer of J.N. Hospital, Serchhip on the requisition of the police on that evening at 5 PM. Summons u/s 160 of Cr PC was issued calling the accused for his appearance on 17.11.2014 at 11:00 AM and it was conveyed to him through the victim. On 17.11.2014, the accused appeared at the Police Station and he was interrogated, whereat he admitted his guilt before the police. It is also reflected from the Case Diary that the accused was put in police custody. However, it is shown from the Police Report that the information was received at the Police Station on 19.11.2014 vide the FIR and the Arrest Memo. But, the accused was brought before the Court on 20.11.2014. Hence, there was a delay in filing the FIR.

8. As the learned Counsel Shri C. Lalrinchhunga did not bring notice to this Court, I need not to discuss further.

9. In the case at hand, the offence punishable u/s 354 of IPC is altered to Section 355 of the Code.

10. I have perused the evidence adduced by the prosecution which clearly shows that she was assaulted by the petitioner inasmuch as the deposition of the victim was corroborated by the deposition of the Case I.O. I find no regularity in the procedure adapted by the learned Trial Court in view of the provision under Section 222 of Cr PC since the evidence convinced the Id. Trial Judge that the petitioner had assaulted the victim with intent to dishonor her. There is also in the evidence that the accused wanted the victim to join him as husband and wife, but the victim refused. I believe that this is the reason why the accused wanted to assault his ex-wife with the intent of dishonoring her.

11. It is true that the reply made in examination u/s 313 of Cr PC should not be based for recording conviction of the petitioner. However, if the evidence of either party is supported by the reply of the accused, the law has permitted the party to be advantageous to the reply.

12. Under Section 248 of Cr PC, it is provided that if the learned Trial Court finds the accused guilty, but does not proceed in accordance with the provisions of Section 325 or 360 of Cr PC, he shall, after hearing the accused on the quantum of sentence, such sentence upon him according to law. In connection with the sentence passed by the learned Trial Court, the Chief Judicial Magistrate recorded the reason why Section 360 of Cr PC or the Probation of Offenders Act was not invoked. Hence, the petitioner was not heard on sentence.

13. It is pertinent to mention here that the learned Trial Court exercise discretion to release accused person either on probation of good conduct or on admonition provided that, if in his opinion, accused can reform himself and he has no previous conviction.

14. Summons Case is a case relating to an offence which is not a warrant case. The maximum punishment provided for the offence under Section 355 of IPC, being 2 years, even summons or summary trial can be adopted as found in the present case.

15. The petitioner was given sufficient time to engage lawyer of his choice while he was on bail. But, he did not engage lawyer and also did not demand Legal Aid Counsel. As no prejudice was caused to the petitioner, the point raised by the learned Counsel has no force of law. There is no law which acquits a person due to the default of the petitioner.

16. However, I am of the considered view that the Judgment & Order is to upheld, but leniency has to be shown to the petitioner in sentence since he has repented for his commission of the offence against his wife. Accordingly, the sentence portion is modified. In my opinion, justice will be met if he is sentenced to the period undergone by him.

17. Send back the LCR.

18. Hence, the case is disposed off.

**Sd/- (VANLALENMAWIA)**  
Addl. Sessions Judge,  
Aizawl Judicial District,  
Aizawl, Mizoram

**Memo No.\_\_\_\_/AD&SJ(A)/2015 : Dated Aizawl, the 27<sup>th</sup> October, 2015**  
**Copy to: -**

1. Simon Lalruatfela through Counsel Sh. C. Lalrinchhunga, Advocate.
2. District & Sessions Judge, Aizawl Judicial District, Aizawl.
3. Chief Judicial Magistrate, Serchhip District, Serchhip.
4. Addl. PP/APP, Aizawl.
5. Special Superintendent, Central Jail, Aizawl.
6. DSP (Prosecution), District Court, Aizawl.
7. Officer-in-Charge, Serchhip Police Station.
8. i/c G.R. Branch.
9. Registration Section.
10. Guard File.
11. Case Record.
12. Calendar Judgment.

**P E S H K A R**