

(2025) 04 OHC CK 1334
In the Orissa High Court
Case No : Criminal Revision No.288 of 2024

Manguli Majhi

APPELLANT

Vs

State Of Odisha Vs

RESPONDENT

Date of Decision : 29-04-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 401
Indian Penal Code, 1860 — Section 34, 323, 341, 427

Citation : (2025) 04 OHC CK 1334

Hon'ble Judges : G. Satapathy, J

Bench : Single Bench

Advocate : S.K. Nayak, R.B. Mishra

Final Decision : Dismissed

Judgement

G. Satapathy, J.

1. This criminal revision is directed against the impugned judgment dated 22.04.2024 passed by learned Sessions Judge, Kendrapara in criminal appeal no. 10 of 2022 confirming the judgment of conviction of the appellant (revision Petitioner) for commission of offences punishable U/S. 323 of IPC, but modifying his sentence to undergo Simple Imprisonment for three months and to pay a fine of Rs. 5,000/- in default whereof, to undergo SI for further period of seven days.

1.1. On conclusion of the trial, the learned Nyaya Adhikari Grama Nyalaya-cum-Judicial Magistrate First Class, Rajnagar by the impugned judgment dated 29.07.2022 passed in GR Case No. 152 of 2017 (TR No. 436 of 2017) convicted the revision-petitioner and five other convicts for commission of offence U/Ss. 323/34 of IPC and sentenced each of them to undergo SI for one year and to pay a fine of Rs. 1,000/- in default whereof, to undergo SI for one month.

2. The short facts involved in this case are that due to some dissension and land dispute regarding construction of house by the present revision-Petitioner, on 05.07.2017 at about 10:30 AM, the revision-Petitioner and five others assaulted

PW4-Sasmita Majhi. Accordingly, PW4 lodged an FIR before the IIC, Rajnagar, who registered Rajnagar PS case No. 118 of 2017 paving the way for investigation in this case and accordingly, the revision-Petitioner and five others have been charge sheeted in the aforesaid case for commission offences punishable U/Ss. 341/323/427/34 of IPC resulting in trial in the present case, when the revision-Petitioner and other accused persons denied to plead guilty to the charge. Accordingly, the learned trial Court examined seven witnesses and exhibited three documents under Exts. 1 to 3 and after hearing the the parties upon analysis of evidence, the learned trial Court returned with a finding that the revision-Petitioner and five others are guilty of the offences U/Ss. 323/34 of IPC. Accordingly, the learned trial Court had sentenced the revision-Petitioner and other convicts to undergo Simple Imprisonment for one year and to pay a fine of Rs. 1,000/- in default whereof, to undergo Simple Imprisonment for one month.

2.1. Being aggrieved, the convict carried an appeal to the Sessions Court, Kendrapara who after hearing the convicts and the State has passed the impugned judgment in the appeal confirming the conviction of the revision-Petitioner for offence U/S. 323 of IPC by modifying his sentence to the punishment indicated supra, while acquitting the other convicts of the charges. Hence, this revision by the present Petitioner.

3. In the course of hearing, Mr.Sukanta Kumar Nayak, learned counsel for the revision-petitioner while pressing the revision not on merit, but on the question of sentence, submits that the revision-Petitioner is in custody since 25.02.2025 and in the meanwhile, more than two months has been elapsed and thereby, the revision-Petitioner has already undergone substantial period of his substantive sentence and the Petitioner being an innocent Scheduled Caste Person, he may kindly be released from the custody by reducing his sentence to the period already undergone. Accordingly, Mr. Nayak has made a limited prayer to reduce the sentence of the revision-Petitioner to the period already undergone.

3.1. On the other hand, Mr. R.B. Mishra, learned Additional Public Prosecutor, however, does not dispute with regard to conviction and sentence of the Petitioner, but he, however, prays to dismiss the revision by contending inter-alia that the revision-Petitioner does not deserve any leniency.

4. After having considered the rival submissions upon perusal of record, since the revision-Petitioner does not challenge his conviction for offence U/S. 323 of IPC, this Court only confines the adjudication to the limited extent of quantum of sentence of the revision-Petitioner. It is not disputed that the revision-Petitioner has been taken into custody on 25.02.2025 which is forthcoming from the copy of the order dated 25.02.2025 passed by the learned Nyaya Adhikari Grama Nyalaya-cum-Judicial Magistrate First Class (I/C) as attached to IA No. 207 of 2025 and, therefore, the revision-Petitioner has already undergone more than two months of the sentence. The theory of punishment as prevailed in India is deterrent in nature, but not retributive and the philosophy of the punishment is to finish the crime, but not the criminals and in this case, the Petitioner has been

convicted for offence U/S. 323 of IPC, but no previous conviction of the Petitioner has been proved. Further, there is no adverse report against the Petitioner with regard to his conduct during the post conviction period. It is also not in dispute that the Petitioner is a Scheduled Caste person and temper runs high in their community and people of such community never hesitate to assault for petty matters. In this case, there is only allegation of causing simple hurt to the injured and that too, the occurrence had taken place in the year 2017 and in the meanwhile, around 8 years has elapsed.

5. In view of the aforesaid facts and after taking into consideration the period undergone by the revision-Petitioner vis-à-vis his conduct being not adverse in the period after the occurrence, this Court considers that the revision-Petitioner deserves some leniency in sentence. This Court, accordingly, is of the considered opinion that interest of justice would be best served, if the sentence of the revision-Petitioner is reduced to the period already undergone by him.

6. In the result, the criminal revision stands dismissed on contest, but in the circumstance, there is no order as to costs. Consequently, the sentence of the revision-Petitioner is modified to the extent indicate above.

Since the Petitioner is in jail custody, modified warrant of sentence along with copy of this judgment be immediately sent to the Officer-in-Charge of the concerned jail through e-mail or any other faster mode of communication for release of the petitioner from custody.

.....