

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR
Criminal Appeal No. 2448 of 1998

- Raj Kumar Alias Bhakoli, S/o Govind Singh Thakur, aged about 23 years, R/o Village Kharkhundi-Ratanpur, District – Bilaspur (M.P) (Now C.G.)

---- Appellant

Versus

- The State of Madhya Pradesh, Through : Station House Officer, Ratanpur, Tahsil Kota, District – Bilaspur (M.P.) (Now C.G.)

---- Respondent

For Appellant	: Ms. Jyoti Rathore, Advocate
For Respondent	: Mr. Suryakant Mishra, Panel Lawyer.

Hon'ble Shri Justice Inder Singh Uboweja

CAV JUDGMENT

Delivered on : 28-09-2015

- 1) Challenge in this appeal is to the judgment of conviction and order of sentence dated 16.10.1998 passed by the Special Judge (Atrocity) Bilaspur in Special Case No.42/1997, whereby and whereunder the trial Court after holding the appellant guilty for commission of assault or criminal force to woman with intent to outrage her modesty, convicted him under Section 354 of the IPC and sentenced him to undergo R.I. for one year and to pay fine of Rs.500/-, in default of payment of fine to undergo additional R.I. for two months.
- 2) Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality.
- 3) As per case of prosecution, prosecutrix Sahodra Bai (PW-1) while going to field for ease along with bowl (*lota*) , accused/appellant

whistled, but she ignored it, he followed and caught hold her hands with an intent to outrage her modesty and when she raised alarm, he fled from the spot. Two witnesses, namely Dhanesh (PW-4) and Ahilyabai (PW-2) claiming to be eyewitness stated that they saw the accused/appellant fleeing from the spot. Prosecutrix had narrated the incident to them and after coming of her husband, she reported the incident on next day at police station, Ratanpur vide Ex.P-1. Spot map was prepared vide Ex.P-2.

- 4) Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short, 'the Code'). After completion of investigation charge sheet was filed before the Court of Special Judge.
- 5) In order to prove the guilt of the accused/appellant, the prosecution examined as many as eight witnesses to support its case. Accused was examined under Section 313 of the Code, in which he denied the circumstances appearing against him and pleaded innocence and false implication in crime in question.
- 6) After providing opportunity of hearing to the parties, learned Special Judge has convicted and sentenced the appellant as aforementioned.
- 7) I have heard learned counsel for both the parties and perused the judgment impugned including record of trial Court.

- 8) Learned counsel appearing for the appellant has submitted that prosecution witnesses are not reliable as there are major contradictions and omissions in their statements. She further submitted that prosecution has not satisfactorily explained the delay in lodging the FIR and has also failed to prove his case with legally admissible evidence, therefore, the appellant be acquitted from the said charges on benefit of doubt.
- 9) *Per contra*, learned Panel Lawyer for the State opposed the appeal and submitted that the prosecution has proved its case beyond shadow of doubt. Evidence of prosecutrix Sahodra Bai (PW-1), Ahilyabai (PW-2) and Dhanesh (PW-4) is sufficient to prove guilt of the accused/appellant. Therefore, the appellant does not deserve to be acquitted from the charges.
- 10) In order to appreciate the arguments advanced on behalf of the parties, I have to examine the evidence adduced on behalf of the prosecution.
- 11) Prosecutrix Sahodra Bai (PW-1) has deposed that while she was going to ease in the field, accused whistled, but she ignored it, thereafter, he caught hold of her hand, she raised alarm "ये दाई मेरे हाथ को पकड़त हे" and called Dhanesh (PW-4) and asked him to call Devi, her brother-in-law, accused was holding her hand and arm. She further stated that incident was also narrated to Ahilyabai (PW-2), thereafter, she came to house. At about 7.00 p.m., when her husband Sushil (PW-3)

came to house, she narrated the incident to him and on the next day she reported the incident at police station, Ratanpur vide Ex.P-1.

- 12) In her cross-examination, she admitted that Dhanesh (PW-4) was present near the place of incident and he was seeing the incident, but Dhanesh (PW-4) has not supported the statement of prosecutrix Sahodara Bai. He has not stated that he neither saw the accused whistling nor caught hold hands of the prosecutrix. He has only stated that prosecutrix called him and asked to call Devi, her brother-in-law. He has not supported prosecutrix statement that she has narrated the offence committed by accused, therefore, statement of the prosecutrix is shaky and unreliable. It is also not possible that if this witness was present very near to the place of occurrence and was seeing the prosecutrix from there, if incident happens, then this witness could have seen the incident, therefore, prosecutrix statement about the incident is not cogent and reliable.
- 13) Prosecutrix has also stated in her cross-examination that bowl fell on the ground, but was not seized for supporting the material evidence and there is no medical evidence to show that any injury was caused to her by catching her hand. She has not explained that when at evening 7.00 p.m. her husband came to house and police station was only 4 k.m. away from

her house why they have not gone, therefore, explanation of delay FIR is not plausible and satisfactorily.

- 14) Ahilyabai (PW-2) is a witness, before whom prosecutrix has narrated about the incident and she saw the accused fleeing before her. In the cross-examination she has clearly stated that she did not know in which field incident had taken place. It is clear that her evidence is based on hearing from prosecutrix, therefore, hearsay evidence has no value.
- 15) After appreciating the evidence available on record, I am of the opinion that while convicting and sentencing the appellant as aforementioned the trial Court has not considered the relevant aspects of the matter and thereby committed an illegality and the benefit of doubt goes in favour of the appellant as there is no direct evidence to connect him with the crime in question.
- 16) Consequently the appeal is allowed. Conviction and sentence of the appellant under Section 354 of the IPC are hereby set aside. He is acquitted of the charges framed against him.
- 17) It is stated that the appellant is on bail, his bail bond shall continue for a further period of 6 months, in view of Section 437A of the Code.

(I.S.Uboweja)
JUDGE