

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1781 of 1998

Mukut @ Shashi Bhusan, S/o Goshnar Ekka, age 35 years, resident of village Godhanpur, PS Ambikapur, District Sarguja

**---- Appellant
(In Jail)**

Versus

The State of M.P. (now C.G.) through PS Ambikapur, Distt. Sarguja.

---- Respondent

For Appellant
For Respondent

Shri Bhupendra Singh, Advocate.
Shri Ajit Singh, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker

Judgement on Board

28/07/2015

1. This appeal arises out of the judgment of conviction and order of sentence dated 6.8.1998 passed by the 1st Additional Sessions Judge, Ambikapur, District Sarguja (CG) in S.T. No.194/1990 convicting the accused/appellant under Section 366 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo R.I. for 07 years.
2. As per case of prosecution, on 22.3.1990 at about 7.00 p.m. the complainant (PW-2) lodged the report to the effect that on the same day at about 12.30 in the afternoon while she was returning from her brother's house along with her friend Lalita, the accused/appellant met her on the way, stopped her and started abusing her filthily. Accused/appellant asked her friend Lalita to go away from the spot and thereafter he again abused her filthily, gave fist blows on her waist & head and while saying that he could insult her publicly tried to take her towards the agricultural field. When Simon tried to intervene, the accused/appellant

called other accused persons and thereafter accused/appellant caught hold her braid and dragged her upto some extent. She has further stated that accused/appellant also said that he would marry her and thereafter took her inside the hut, however, after the intervention of other villagers, she was set free. Based on this report, Dehati Nalisi (Ex.P-2) was recorded and on 22.3.1990 itself FIR (Ex.P-7) was registered against acquitted accused persons namely Rajesh Singh, Oscar Isai, Ajay Tiwari, Raj @ Rajesh Kumar and present accused/appellant under Sections 366, 452, 323, 294, 34 of the IPC. After completion of investigation, charge sheet was filed against six accused persons including present accused/appellant. While framing charge, the trial Judge has framed charges under Sections 366 & 323 of the IPC against the accused persons.

3. So as to hold the accused persons guilty, the prosecution examined as many as 05 witnesses. Statements of the accused persons were recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. They have examined Arun Kumar Minj (DW-1) in their defence.
4. After hearing counsel for the respective parties and considering the material available on record, the trial Court by the impugned judgment while acquitting co-accused Raju @ Rajesh Kumar, Santosh Kumar, Oscar @ Uskar, Rajesh Singh & Ajay Kumar from the charges under Sections 366 & 323 of the IPC, convicted & sentenced the accused/appellant as mentioned in para-1 of this judgment.
5. Learned counsel for the accused/appellant submits that:
 - (i) considering that on the same set of evidence other accused persons

have already been acquitted, the trial Court has committed an error of law in convicting the accused/appellant herein.

- (ii) even if the entire prosecution case is taken as it is, the basic ingredients contained in Section 366 of IPC are not attracted.
 - (iii) mere say of accused/appellant that he would marry the complainant does not mean that he compelled her to do so.
 - (iv) statement of the complainant (PW-2), dehati nalishi and FIR lodged by her do not tally with each other.
 - (v) It appears that there was affair between the accused/appellant and the complainant and since they were seen together in isolated place, a false story has been cooked-up against the accused/appellant leading to his false implication in the case.
 - (vi) the incident took place in the year 1990 and about 25 years have rolled by therefrom, no useful purpose would be served in unsettling their already settled life by sending the accused/appellant to jail.
6. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
7. I have heard learned counsel for the parties and perused the material available on record.
8. Dr. V.K. Shrivastava (PW-1) had medically examined Ajay Kumar Philips (PW-4) vide Ex.P-1 and noticed minor injuries.
9. The complainant (PW-2) has stated in her evidence that she knew the accused persons persons and at the relevant time she was studying in the 2nd Year of her graduation. On the date of incident, she was returning from her brother's house along with her cousin brother Simon & friend

Lalita and when they reached near an agricultural field, the accused/appellant on seeing them started hurling abuses and asked her friend Lalita to go away from there. She has further stated that accused/appellant told her that he knew her since her childhood, he is not afraid of police and then he assaulted her by fist. She has further stated that her brother Simon had intervened but as she was not interested in quarrelling with accused/appellant, she tried to move ahead whereupon accused/appellant caught hold her braid and took her near a hut. Meanwhile, the accused/appellant had also called Arun Minj. She has further stated that when her brother Simon followed them, accused/appellant asked his brother to leave the place from his bicycle but she asked him not to go. Thereafter accused/appellant said to her that he would marry her. She has further stated meanwhile Ajay Kumar Philips & two other persons came for her rescue and she somehow managed to reach to the house of Ajay Kumar but the accused/appellant along with other accused persons armed with weapons came there also. On seeing the accused persons, Arbina, sister-in-law of Ajay, took her inside the house, but the accused persons forcibly entered the house of Ajay and assaulted him & his family members. After departure of accused persons, she came out of the house of Ajay and lodged the report. She has further stated that at the time of incident she was aware with the names of accused/appellant and acquitted accused Oscar & Rajesh Singh, but was not aware with the names of others and even she did not see other accused persons at the time of incident. She has denied the fact that earlier there was any dispute between Ajay Philips and Rajesh Singh. She has denied that she was having any illicit relation with Simon.

10. Kripa Shankar Dwivedi (PW-3) is the Investigation Officer and has duly supported the prosecution case.
11. Ajay Kumar Philip (PW-4) & Anand Kumar (PW-5) are independent witnesses of incident but they have not supported the prosecution case and declared hostile. However, they have stated that on the date of incident some quarrel took place in the village.
12. Arun Kumar Minj (DW-1), cousin brother of complainant, has been examined as defence witness and he has stated that on the date of incident, the complainant & Simon were roaming together, accused/appellant asked her not to roam with Simon as there is rumour about them in the locality, whereupon she asked the accused/appellant as to why he is interfering and then the incident occurred.
13. In order to bring the act of accused/appellant within the ambit of Section 366 of the IPC, it is necessary for the prosecution to prove that the accused/appellant induced the complainant or compelled her by force to go from any place and such inducement was by deceitful means with intent to seduce her to illicit intercourse or to marry the accused against her wish. Close scrutiny of the evidence available on record, particularly of the complainant (PW-2), makes it clear that on the date of incident some quarrel took place between the accused/appellant & the complainant and the accused/appellant had abused & assaulted the complainant, but the complainant has nowhere alleged that she was kidnapped or abducted by the accused/appellant with intention to compel her to marry him or she has been forced or seduced to illicit intercourse. Moreover, the court statement of complainant is at variance with the one made in FIR (Ex.P-7) as also her case diary statement.

This apart, independent witness Ajay Kumar Philips (PW-4), who had intervened in the quarrel, & Anand Kumar (PW-5) have not supported the prosecution story and have been declared hostile. Furthermore, said Lalita & Simon present on the spot with the complainant were not examined by the prosecution. In these circumstances, it is apparent that the prosecution has failed to prove its case beyond reasonable doubt and this Court reaches an unflinching conclusion that the findings recorded by the trial Court in respect of present accused/appellant not being based on proper appreciation of evidence available on record are liable to be set aside.

14. In the result, appeal is allowed. Conviction and sentence of the appellant under Section 366 of the IPC are hereby set aside and he is acquitted of that charge by extending him benefit of doubt. The appellant is on bail, therefore, his bail bonds shall continue for a period of six months from today in view of provisions of Section 437-A of Cr.P.C.

Sd/-
(Pritinker Diwaker)
J U D G E

roshan