

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 606 of 2004

Case reserved on 26.10.2016

- Mohar Sai, s/o Ghaskuram Kanwar, aged about 37 years, R/o village: Chulhakona, PS Shankargarh, distt Surguja (CG)

---- Applicant

Versus

- State of Chhattisgarh, through district Magistrate Surguja (CG)

---- Respondent

For Applicant	:	Shri Vivek Kumar Pandey, Advocate
For Respondent/State	:	Shri Neeraj Kumar Sharma, Dy Govt Advocate

Hon'ble Shri Justice Anil Kumar Shukla

CAV Judgment delivered on 03.11.2016

1) This revision is directed against the judgment dated 04.12.2004 by which learned Sessions Judge, Ambikapur in Criminal Appeal No.186 of 2004 maintained the conviction and sentence of the applicant arising out of judgment dated 28.09.2004 passed by the Judicial Magistrate First Class, Ambikapur in Criminal case No.91 of 2000, whereby and whereunder learned Judicial Magistrate after acquitting the applicant under Section 323 of IPC, hold the applicant guilty for commission of offence under Section 354 of IPC, sentenced him to undergo 3 months RI and to pay fine of Rs.500/-.

2) Judgment is challenged on the ground that without any clinching evidence, the Court below has convicted and sentenced the applicant as aforementioned.

3) Prosecution story in brief is that on 18.08.2000 at about 9.30 pm., when Gosai Ram (PW-2), husband of the prosecutrix was in the field for nature call, she was standing at some distance near to him. At that time, the applicant came there in drunken condition and caught hold of her hand with an intention to outrage her modesty. When she shouted at this, her husband came to her; then the applicant left her and quarrelled with Gosai Ram and on hearing the noise other witnesses came there. On the next day the matter was reported to Police Station Shankargarh by the prosecutrix and offences under Sections 354 and 323 of IPC were registered against the applicant.

4) I have heard learned counsel for the parties, perused the judgment impugned, copies of statements of the witnesses and other documents filed on behalf of the applicant.

5) Learned counsel for the applicant argued that the applicant has been falsely implicated in the case and he has been acquitted of the charge under Section 323 IPC by the trial Court. He submits that the prosecution has not proved the intention of the applicant. There is contradiction in the statement of the prosecutrix (PW-1) regarding caught hold of her left or right hand by the applicant. In the FIR, it was recorded that the applicant caught hold of her right

hand, whereas in her deposition, she stated that he caught hold of her left hand. Therefore, her evidence is not trustworthy. He further submits that there was previous enmity between the applicant and prosecutrix. The factum of outraging modesty of the prosecutrix has not been corroborated by any independent witness. The trial Court while convicting and sentencing the applicant has not considered the relevant aspects of the matter, thereby committed error in passing the impugned judgment. Therefore, the impugned judgment be set aside and the applicant may be acquitted of the charge under Section 354 of the IPC.

6) On the other hand, learned State counsel opposes the revision and submits that the appellate Court has awarded minimum sentence and the prosecution case has been proved beyond all reasonable doubts. He further submits that though there is confusion in the statement of prosecutrix (PW-1) in her evidence, the fact remains that the incident of outraging modesty of the prosecutrix took place.

7) In exercise of revisional jurisdiction, this Court may examine the concurrent findings of the Courts below for the purpose of satisfying itself as to the correctness, legality or propriety of any finding of the impugned judgment.

8) According to the prosecutrix (PW-1), when Gosai Ram (PW-2), her husband went for natural call towards the garden, she went along with him and stood at some distance in a corner. In the

meantime, the accused/applicant in drunken condition, came near and caught hold of her hand with an intention to outrage her modesty. On her rising noise, her husband came there, caught hold of the applicant from his back and there was a quarrel between them. On hearing this, other witnesses Chandar (PW-5) and Bhagalram (PW-3) came there. The applicant then left Gosai Ram and ran away from the spot. On the next day, prosecutrix reported the matter in the Police Station Shankargarh vide Ex.P/1 (FIR).

9) Evidence of prosecutrix (PW-1) has been corroborated by Gosai Ram (PW-2), husband of the prosecutrix. From the evidence of Bhagalram (PW-3) and Chandar Ram (PW-5), it has been proved that a quarrel took place between the applicant and Gosai Ram (PW-2), husband of the prosecutrix as the accused outraged the modesty of the prosecutrix. There is also a statement of the prosecutrix that the applicant has been asked to reconcile the dispute with her, but on his refusal only, she lodged FIR against him and there was no delay in lodging the same.

10) After appreciating the evidence available on record, learned Court below has convicted and sentenced the applicant vide the judgment impugned.

11) In view of the above, at the minimum 3 months RI, the applicant shall be punished for the offence under Section 354 IPC with imprisonment of either description for a term which may extend to two years, or with fine, or with both. Learned Court below has

imposed the minimum sentence 3 months RI provided for the offence under Section 354 IPC and it has not committed any illegality or impropriety warranting interference in exercise of revisional jurisdiction. Fine amount of Rs.500/- already deposited by the applicant in the trial Court itself.

12) Consequently, I do not find any scope for interference in the judgment impugned. The revision is, accordingly, liable to be and is hereby dismissed.

Sd/-

(Anil Kumar Shukla)
JUDGE

padma