

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Revision No. 500 of 2007**

Gouri Shanker Paswan, S/o Shri Ramjeet Paswan, aged about 43 years, R/o Ward No. 15, P.S. & Town Ramanujganj, District Sarguja, Chhattisgarh.

**---- Applicant (in Jail)****Versus**

State of Chhattisgarh through District Magistrate, Ambikapur, District Sarguja, Chhattisgarh.

**---- Respondent**


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|---------------------------|---|----------------------------------|
| For the Applicant         | : | Shri Arun Shukla, Advocate.      |
| For the Respondent/ State | : | Shri Sameer Behar, Panel Lawyer. |

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**Hon'ble Shri Justice Rajendra Chandra Singh Samant****ORDER****13.12.2016**

1. The applicant has brought this revision against the judgment dated 14.9.2007 passed in Criminal Appeal No. 218 of 2006, by the Learned Second Additional Sessions Judge (F.T.C.), Ramanujganj, District Sarguja, Chhattisgarh, whereby the Learned Second Additional Sessions Judge has affirmed the judgment of conviction and order of sentence dated 29.11.2006 passed by the Judicial Magistrate, First Class, Ramanujganj, District Sarguja, Chhattisgarh in Criminal Case No.203 of 2005, by which the Learned Judicial Magistrate has convicted the applicant under Section 354 of the Indian Penal Code (for short 'the IPC') and sentenced him to undergo RI for six months and to pay fine of Rs.500/-, in default of payment of fine, to further undergo RI for three months.

2. The case of the prosecution, in brief, is that complainant Renu Devi (PW-1) was left under the charge of the applicant as her father had to go to Patna for treatment of his wife. On the date of incident, i.e., on 10.7.2005, in the night between 11:30 pm and 12:00 am, complainant Renu Devi (PW-1) alongwith two brothers was sleeping in her residence at Ward No. 15, Ramanujganj. The complainant felt that somebody was pulling her underwear and loosening her saree. She awoke and saw that it was the applicant. When the parents of Renu Devi (PW-1) came back from Patna, she narrated them about the incident. On 1.8.2005, the First Information Report was lodged in Police Station Ramanujganj. Statements of the witnesses were recorded and on completion of the investigation, the applicant was charge-sheeted. The applicant was charged for the offence punishable under Section 354 of the IPC. On his denial of the charge, trial was conducted. After giving opportunity of hearing and leading evidence to the prosecution and defence, the impugned judgment has been passed by which the applicant has been convicted and sentenced as mentioned above. This judgment of conviction was challenged before the Sessions Court which was registered as Criminal Appeal No.218 of 2006 and thereafter vide order dated 14.9.2007 the case was heard and decided by the Second Additional Sessions Judge (FTC), Ramanujganj, whereby the conviction and sentence imposed upon the applicant by the trial Court was upheld.

3. The grounds of challenge in this revision are that the judgment of conviction and order of sentence passed by the courts below is bad and illegal. The prosecution has failed to prove its case beyond reasonable doubt. The applicant is entitled for benefit of doubt. Hence, it is prayed that the impugned judgment passed by the courts below may be set aside.

4. Learned counsel for the applicant submits that the evidence on record is not convincing and cannot be considered as beyond reasonable doubt. Hence, the applicant is entitled for acquittal of the charge. In the alternative, it is prayed that the applicant has already undergone about 53 days in custody, therefore, he may be sentenced with imprisonment for the period of custody already undergone by him.

5. Renu Devi (PW-1), complainant stated that due to illness of her mother, her father took her to Patna for treatment. For this reason, the applicant was given the responsibility of looking after her and her two brothers. On the date of incident, when she was sleeping at her residence alongwith her brothers and the applicant was also sleeping in another room of her residence, at about 12 midnight, the applicant came to her room and pulled her saree and underwear. She awoke all of a sudden and saw that the applicant was pulling her saree and underwear. She slapped the applicant. On this, the applicant immediately fled from the spot. She told about the incident to Rita and her brothers. Later on, in the morning, she told about the incident to her neighbours and when her parents came back from Patna, she narrated them the incident and after narrating the incident they lodged a report. Her statement has remained unrebutted in her cross-examination. Krishna (PW-2), mother of the complainant was told about the incident by the complainant. Krishna (PW-2) has not supported the case of the prosecution. Inspector D.C. Tiwari (PW-4) recorded the First Information Report (Ex. P/1). As per the statement given by complainant Renu Devi (PW-1), Pancham Prasad Pandey (PW-5) conducted some part of the investigation.

6. The conviction of the applicant is solely based on the evidence of the complainant, who is the only witness to the incident although there is support and corroboration from the statements of Krishna (PW-2) and Inspector D.C. Tiwari (PW-4). No specific defence has been raised by the applicant. Hence, the finding of conviction recorded by the trial court does not suffer from any infirmity and it does not call for any interference.

7. Considering the prayer of the applicant that the sentence part may be modified to the extent of the period already undergone by him, the record is perused. After passing of the judgment by the lower appellate court, the applicant was taken into custody on 14.9.2007. He was enlarged on bail by the order dated 6.11.2007 passed by this Court. There are no papers on record to ascertain the date of his release, even then the period of his custody comes to 53 days.

8. Considering all the above aspects, it appears that the prayer made on behalf of the applicant deserves to be allowed. Hence, this revision is allowed in part. The conviction imposed upon the applicant under Section 354 of the IPC is upheld, but the jail sentence awarded to him thereunder is reduced to the period already undergone by him. However, the sentence of fine imposed upon him is enhanced to Rs.1,000/-, in default of payment of fine, the applicant shall have to undergo further RI for three months.

**Sd/-**

**(Rajendra Chandra Singh Samant)**  
Judge