

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 590 of 2002**

Santosh Singh S/o. Prahlad Singh Sahu, aged about 25 years,
R/o. Surya Nagar, Station Madauda, Permanent Address
Moinapat, Police Station Balod, District Durg (C.G.)

---- Appellant

Versus

State of Chhattisgarh through Station House Officer, Police
Station Newai, District Durg (Chhattisgarh)

---- Respondents

For Appellant : Mr. R.K. Pali, Advocate
For Respondents : Mr. Anil S Pandey, Govt. Advocate

Hon'ble Shri Justice Ram Prasanna Sharma
Judgment On Board

07.11.2017

- 1) This appeal is directed against the judgment of conviction and order of sentence dated 17.05.2002 passed by Special Judge, Durg, in Special Case No. 2/2002, wherein the trial Court convicted the accused/appellant under Section 354 of the IPC and sentencing him to undergo rigorous imprisonment for six months and to pay fine of Rs. 1000/- with default stipulations.
- 2) As per prosecution case, the accused/appellant is a mason and was working at the relevant time at Sector-5, Bhilai. On 25.03.2001, at the same place the prosecutrix was also working as a labourer. At about 12 PM, in a day time when the prosecutrix carrying bricks to the place of work the accused/appellant all of a

sudden came there from back side of the prosecutrix and caught hold her hands, shoulder and breast. After the incident, she came out weeping from the place and narrated the incident to Basanti Bai (PW-5) and Budharu (PW-3) who were present there. Again, she narrated the story to her aunt Rambai (PW-2). The matter was reported to Police Station Newai and after registration of the FIR (Ex.P-1), the matter was investigated by police authorities. After completion of the investigation, charge sheet was filed against the accused/appellants before the trial Court, the accused/appellants were charge sheeted under Sections 354, 506 of the IPC and 3(1)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities Act) 1989, to which the appellant did not plead guilty, therefore, trial was conducted. After completion of evidence of the prosecution side, statement of the appellant under Section 313 of the Cr.P.C. was recorded and after completion of trial, the trial Court considering the material available on record by the impugned judgement convicted and sentenced the accused/appellant as mentioned above.

- 3) Learned counsel for the appellant submits that the statement of the prosecutrix is not reliable as there is material contradiction in her statement before the Court and the statement recorded under Section 161 of the Cr.P.C. and in First Information Report. He submits that the statement of Budharu (PW-3) and Basanti Bai (PW-5) are not reliable as they denied the fact that they have given any statement before the police but their statements were recorded under Section 161 of the Cr.P.C. Learned counsel for the appellant submits that the offence under Section 354 of the IPC is

not made out even after accepting the evidence as adduced by the prosecution and the same is liable to be reversed. In support of his argument, learned counsel for the appellant placed reliance in **Shyamlal Vs. State of M.P. 2011 (4) C.G. L.J. 98**, **Udai Singh Vs. State of C.G. 2011(3) C.G.L.J. 455** and **Madan Vs. State of M.P. 1997 Part-2, 35 M.P. weekly notes**.

- 5) Per contra, learned State counsel supporting the impugned judgment has submitted that the judgment of the trial Court is strictly in accordance with the law and well founded and there is no illegality or infirmity in it warranting any interference by this Court invoking the jurisdiction of appeal.
- 6) Prosecutrix (PW-1) deposed that she had gone to work at Sector-5, Bhilai, in a day time, and when she was carrying bricks in the house where the work was going on. The accused/appellant was working as a mason in the same place came there from her back and caught the hands, shoulder and breast. She narrated the incident to Basanti Bai (PW-5) and Budharu (PW-3) present there. Thereafter, the matter was reported to Police Station Newai. Version of this witness is supported by the version of Rambai (PW-2), Budharu(PW-3) and Basanti Bai (PW-5). Sub Inspector Suresh Sen (PW-7) is a person who was posted as Sub-Inspector at Police Station Newai and at the relevant time recorded the FIR (Ex.P-1) in the case. R.L. Yadav (PW-4) is a person who investigated the matter. Version of the prosecutrix and version of supporting witnesses is remained unshaken during the cross-examination even after searching cross-examination nothing could be elicited in favour of the appellant.

- 7) Now, the point for consideration is whether the act of the accused/appellant falls within the mischief under Section 354 of the IPC.

As per section 354 of the IPC- Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty shall be punished. The essential ingredients of offence under Section 354, IPC are:-

(a) That the assault must be on a woman.

(b) That the accused must have used criminal force on her.

(c) That the criminal force must have been used on the woman intending thereby to outrage her modesty.

- 8) In *State of Punjab v Major Singh* (AIR 1967 SC 63) a question arose whether a minor female could be said to be possessed of modesty which could be outraged. In answering the above question it has been held by their lordship the essence of a woman's modesty is her sex and from her very birth she possesses the modesty which is the attribute of her sex. From the test for ascertaining whether modesty has been outraged is whether the action of the offender is such as could be perceived as one which is capable of shocking the sense of decency of a woman. Same view was reiterated in *Rupan Deol Bajaj (Mrs) and Anr. v. Kanwar Pal Singh Gill & Anr.* 1995(6) SCC 194 SC. In the present case, the prosecutrix aged 16 years at the time of incident and she had gone to work in a house where the accused/appellant was also working. From the statement of the prosecutrix it is established that after the incident she narrated the story weeping and that shows the act of the appellant

embarrassed her. Knowledge can be attributed to the accused/appellant that he was fully aware while using criminal force on the body of the prosecutrix at a place where the persons were working and the same amounts to outrage her modesty. Reaction of the prosecutrix is very relevant to take note of the whole incident.

Section 350 of the IPC read as under:- Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

- 9) Looking to the evidence adduced by the prosecution it is established that the accused/appellant knowingly outraged the modesty of the prosecutrix by using criminal force upon her and the same is offence under Section 354 of the IPC for which the trial Court convicted the accused/appellant which is not liable to be interfered with by this Court and the conviction of the appellant is hereby affirmed.
- 10) Now the point for consideration is what sentence may be awarded to the accused/appellant proportionate to the offence without considering its effect on the social order, the imposition of sentence will be futile exercise. When the offence is involving moral turpitude or moral delinquency which has great impact on social order, and public interest, the same requires exemplary treatment. Any liberal attitude by imposing meager sentence on account of lapse of time in respect of such offences will be result-

wise counter productive in the long run and against societal interest. The trial Court awarded sentence of six months that cannot be termed as harsh, disproportionate or unreasonable and the same is not liable to be interfered with by this Court therefore, appeal of the appellant stands dismissed.

Sd/-
(Ram Prasanna Sharma)
JUDGE

Santosh