

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 131 of 2007

1. Mohd. Iqbal Khan, son of later Washi Ahmed, aged about 38 years, R/o Near Railway Cabin, Station Maroda – Bhilai, PS Newai, Tehsil and District Durg, CG

---- Applicant

Versus

1. The State of Chhattisgarh through District Magistrate, Durg, CG

---- Respondent

For Applicant	:	Smt. Fouzia Mirza, Advocate
For Respondent/State	:	Shri Vaibhav Goverdhan, PL

Order on Board by Pritinker Diwaker, J

03/05/2017

This revision petition has been filed by the applicant against the judgment and order dated 16.3.2007 passed by Additional Sessions Judge, Durg in Criminal Appeal No. 429/2003 affirming the judgment and order dated 16.9.2003 passed by Judicial Magistrate First Class, Durg in Criminal Case No. 343/2002 convicting the applicant for the offence punishable under Section 354 IPC and sentencing him to undergo RI for one year.

2. Case of the prosecution in brief is that prosecutrix (PW-1) had given her sewing machine to the applicant for being repaired but in spite of her several visits to his shop he did not repair it. Likewise, on 16.10.1997 also she went to the accused/applicant but as the machine was not repaired she asked him to give the same back as it is. Further, case of the prosecution is that when she tried to take away the machine, the applicant took her inside and pressed her breasts. Immediately thereafter, the FIR was lodged by her against

the applicant under sections 354 and 506-B IPC. Prosecutrix was medically examined by Dr. Krishna Devnani (PW-4) vide report Ex. P-3. After investigation, charge-sheet was filed by the police under Sections 354 and 506-B IPC followed by framing of charge by the Court below accordingly.

3. In order to hold the accused/applicant guilty, the prosecution examined as many as five witnesses. Statement of the accused/applicant was also recorded under Section 313 of the Code of Criminal Procedure where he denied his guilt and pleaded innocence and false implication in the case.

4. The trial Court, after considering the material available before it, acquitted the applicant of the charge under Section 506-B but has convicted him under Section 354 IPC which has subsequently been affirmed by the lower appellate Court in appeal. Hence this revision.

5. Counsel for the applicant submits that the applicant has been falsely implicated in the case for the reason that he could not repair and return the sewing machine which caused annoyance to her. She submits that even if the entire prosecution story is taken as it is, the act of the accused/applicant would come under Section 352 and not 354 IPC.

6. Counsel for the respondent/State however supports the judgment impugned and submits that the findings recorded by both the Courts below are strictly in accordance with law and there is no infirmity in the same.

7. Heard counsel for the parties and perused the documents on

record.

8. Prosecutrix (PW-1) has stated that as the applicant did not return her sewing machine after repairing though she visited his shop for this purpose on several occasions, on the date of incident she asked him to return her machine as it is and she would get it repaired somewhere else. On this, accused/applicant came to her, caught hold of her breasts and tried to take her inside the room but she somehow pushed him aside and tried to come out. She has stated that the applicant had asked her not to disclose this to anyone or else he would kill her. In cross-examination also this witness remained firm to what she has stated in the examination-in-chief. Chaitram (PW-2) – the father of the prosecutrix has stated that he was informed by his daughter as to how the applicant caught her hand when she asked for the machine unrepaired, and threatened her if she disclosed the incident to anyone. T.S. Rajput (PW-3) is the investigating officer who has duly supported the case of the prosecution. Dr. Krishna Devnani (PW-4) is the witness who medically examined the prosecutrix and gave her report Ex. P-3 stating that she noticed pain, swelling and tenderness on her wrist; abrasion – 4-5 in number, on right breast; multiple abrasions on left breast and pain and tenderness in neck. In cross-examination, this witness has specifically stated that such injuries could not come by nail-scratch. She has further denied such injuries to be self inflicted.

9. Material on record thus clearly establishes the guilt of the accused/applicant where he pressed the breasts of the prosecutrix and tried to pull her inside the house, and thus used criminal force on her intending to outrage her modesty. Evidence of the prosecutrix is further corroborated by the medical evidence which

shows abrasions on her both breasts. Findings of both the Courts below are thus well reasoned and based on proper appreciation of the evidence of the witnesses. Being so, conviction of the applicant under Section 354 IPC is hereby maintained. However, looking to the facts and circumstances of the case and the fact that the incident took place 17 years back, this Court is of the opinion to reduce the jail sentence to six months from that one year as has been imposed by the Court below. Order accordingly. He however is directed to pay a fine of Rs. 5,000/- in addition to what has already been imposed on him by the Court below, which would be given to the prosecutrix as compensation under Section 357 of the Code of Criminal Procedure. Let this amount be deposited in the trial Court within a period of four months, and on that being done the said Court to disburse the same to the prosecutrix as compensation. If applicant fails in doing so, he will not have the benefit of this order.

10. Applicant is on bail. He is directed to be arrested forthwith and put behind the bars to undergo the sentence imposed on him.

11. Revision thus allowed in part to the extent indicated above.

Sd/-
(Pritinker Diwaker)
Judge