

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 09.10.2018****Pronounced on 10.10.2018****CRIMINAL APPEAL No. 434/2001**

(Arising out of judgment of conviction and order of sentence dated 25.04.2001 passed by Special Judge, Rajnandgaon in Special Case No. 1/2001)

Dayal Das Sahu aged about 52 years, S/o. Late Shri Hanuwa Das Sahu, Agriculturist and Resident of village Mahoba, P.S. Lalbag, Rajnandgaon Tahsil and District Rajnandgaon, CG

-v-

State of Chhattisgarh

For appellant : Mr. P.K.C. Tiwari, Sr, Advocate with Mr. Ashutosh Trivedi, Advocate
 For State : Mr. S.K. Mishra, PL

Hon'ble Shri Sharad Kumar Gupta, Judge**C.A.V. JUDGMENT**

1. In this criminal appeal the challenge levied is to the judgment of conviction and order of sentence dated 25.04.2001 passed by Special Judge, Rajnandgaon in Special Case No. 1/2001 whereby and whereunder she convicted and sentenced the appellant as under :-

Section	Sentence
1. 354 IPC	RI for 2 years.
2. 509 IPC	SI for 1 year.

Both the sentences are directed to run concurrently.

2. In brief the prosecution story is that prosecutrix was about 30 years old at the time of the incident. She was a resident of village – Mohba. On 06.07.1999 at about 11:00 pm she and her small children

were present in the house. Her husband had gone outside. Appellant reached there and knocked the door. Prosecutrix believed that her husband has come and opened the door. Appellant offered her Rs.50/- and told her to come inside. He had caught hold her hand. She ran away outside and narrated the incident to neighbor Girdhari Yadav. During scuffle her bangles had broken and blouse was torn. On 09.07.1999, her husband returned back. Thus, on 10.07.1999 she gave the application before the SO, AJAK. On very day, the FIR was lodged in police station AJAK. After completing the investigation a charge was filed against him. Trial Court framed the charges against him u/s 354, 509 IPC and 3(1)(XI) Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereafter called as 'SCST Act'). He abjured the charges and faced trial. After conclusion of the trial, Trial Court acquitted him of the charge punishable u/s 3(1)(XI) SCST Act however convicted and sentenced him as aforesaid.

3. Counsel for the appellant argued that Trial Court has not appreciated the evidence in proper perspective. FIR is delayed, prosecution has not examined Girdhari Yadav to whom she narrated the alleged incident immediately, appellant approached first to the police station and lodged the report against prosecutrix and his family members, thus to escape from that case, she has lodged false report against him. Therefore, the conviction and sentences of the appellant are bad in eyes of law. Thus, he may be acquitted of the aforesaid charges.

4. Counsel for the State argued that the conviction and sentences of the appellant are based on clinching evidence. The conviction and sentences of the appellant do not call for interference by this Court.

5. As per the MLC report Ex.P-4, PW-2 Dr. Kesharwani had examined the prosecutrix and found abrasion on her body. He opined that the injury may be caused by hard and blunt object.

6. There is no such evidence on record on strength of which it can be said that Ex. P-4 is not believable. Thus this Court believes on Ex. P-4.

7. As per the alleged seizure Ex.P-6, P.W. 3 Rohit Kumar Kurre, CSP had seized broken pieces of the bangles, and one unbroken bangle after removing it from hand of prosecutrix.

8. As per the alleged seizure Ex.P-7 P.W. 3 Rohit Kumar Kurre had seized one torn blouse from the prosecutrix.

9. There is no such evidence on record on strength of which it can be said that Ex. P-6 and Ex. P-7 are not believable. Thus, this Court believes on Ex. P-6 and Ex. P-7.

10. PW4 prosecutrix says in para 2 of her statement given on oath that at about 11 pm appellant had come in his house. She opened the door believing that her husband had come. He caught hold her hand. He asked her to come inside.

11. PW5 Kumbhlal who is the husband of the prosecutrix says in para 1 of his statement given on oath that his wife had told him that appellant had come at 11:00 pm and caught hold her hand.

12. There are no such material omissions and contradictions in the statements of P.W. 4 prosecutrix and P.W. 5 Kumbhlal which may affect the credibility of the aforesaid statements of P.W. 4 prosecutrix and P.W. 5 Kumbhlal.

13. P.W. 4 prosecutrix says in para 5 during her cross-examination

that this is true that appellant earlier than her had reached in police station to lodge report. P.W. 5 Kumbhlal says in para 3 during his cross-examination that the appellant had already reached in police station prior to their reaching and lodged the report. This fact is not sufficient to doubt the veracity of the aforesaid statements of P.W. 4 prosecutrix and P.W. 5 Kumbhlal.

14. Looking to the above-mentioned facts and circumstances, this Court finds that non-examination of Girdhari Yadav is not fatal to the prosecution case.

15. Ex. P-1 had been given to the AJAK Police Station on 10-7-1999. The entire incident with the role of the appellant has been narrated in Ex. P-1.

16. In the matter of **State of H.P. -v- Shree Kant Shekari [(2004) 8 SCC 153]**, Hon'ble Supreme Court has held in para 18 as under :-

“18. The unusual circumstances satisfactorily explained the delay in lodging of the first information report. In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging the first information report cannot be used as a ritualistic formula for discarding the prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the court is to only see whether it is satisfactory or not. In case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand, satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of the prosecution case. As the factual scenario shows, the victim was totally unaware of

the catastrophe which had befallen her. That being so, the mere delay in lodging of the first information report does not in any way render the prosecution version brittle. These aspects were highlighted in *Tulshidas Kanolkar v. State of Goa* [(2003) 8 SCC 590 : 2004 SCC (Cri) 44] .”

17. The relevant portion of para-13 in **Puran Chand -v- State of H.P.** [(2014) 5 SCC 689] wherein the hon'ble Supreme Court has observed as under :-

“13.The delay in lodging the FIR has been clearly explained by the prosecution relating the circumstance and the witnesses supporting the same have stood the test of scrutiny of the cross-examination as a result of which the version of the victim girl cannot be doubted. The delay in lodging the FIR thus stands fully explained.”

18. In Ex. P-1 it has been mentioned that husband of the prosecutrix had gone out. P.W. 4 prosecutrix says in para 3 that her husband had returned back after 3 days. P.W. 5 Kumbhlal says in para 1 that he had returned back after 3 days.

19. P.W. 5 Kumbhlal says in para 4 that this is true that he had returned back on the next day. He had made this statement on suggestion given by the counsel for the appellant. He is a villager. In these circumstances, from this statement truthfulness of aforesaid statements of para 3 of the prosecutrix, para 1 of P.W. 5 Kumbhlal, remained intact.

20. Looking to the above-mentioned facts and circumstances this Court believes aforesaid statements of para 3 of the prosecutrix para No. 1 of P.W. 5 Kumbhlal.

21. After the appreciation of the evidence discussed herebefore, this court finds that prosecution succeeded to give satisfactory explanation

for delay in submitting Ex. P-1. Moreover, looking to the aforesaid judicial precedents laid down in **Shree Kant Shekari** (supra) and **Puran Chand** (supra), this Court finds that inordinate delay in lodging the FIR would not be fatal to the prosecution case.

22. There is no such evidence on record on the strength of which it can be said that appellant had been falsely implicated in the case.

23. There is no such evidence on record on the strength of which it can be said that aforesaid statements of para 2 of prosecutrix, para 1 of P.W. 5 Kumbhlal are not simple, not natural and not normal.

24. Looking to the above-mentioned facts and circumstances of the case, and looking to Ex. P-1, Ex. P-4, Ex. P-6, Ex. P-7, this Court believes on aforesaid statements of Para 2 of prosecutrix, para 1 of Kumbhlal.

25. After appreciation of the evidence discussed herebefore, this Court finds that prosecution has succeeded to prove the charges punishable under Sections 354 and 509 of the IPC against the appellant. Thus, conviction of the appellant under Sections 354 and 509 of the IPC is affirmed.

26. So far as sentence is concerned, the appellant has not remained in jail for a single day. Near about 19 years have passed from the date of incident. At the time of incident, he was aged about 50 years, now he is about 69 years old. Now he is in mainstream of society. Sending him to jail will disturb him as well as his family members' life. At the time of the incident, no minimum jail sentence was provided for the offences punishable under Sections 354 and 509, of IPC. Hence, no useful purpose would be served if he is sent to jail after 19 years of the incident. Looking to these circumstances and observation made by

Hon'ble Supreme Court in the matter of **Manjappa -v- State of Karnataka** [(2007) 6 SCC 231] I am of the opinion that cause of justice would be sub-served, if RI of two years and SI of one year are altered to fine sentence.

27. Consequently, the appeal is partly allowed. The sentence of the appellant for RI for two years and SI for one year are altered to fine of Rs. 15,000/- (Rupees fifteen thousand only) and Rs. 1,000/- (Rupees one thousand only) for offences under section 354 and 509 of the IPC respectively, in default of payment of fine, to further undergo RI for 6 months and 2 months respectively.

28. The appellant is granted three months' time from the date of the judgment for depositing the fine amount.

29. After the prescribed period of legal proceedings available to the parties, Rs. 10,000/- (Rupees ten thousands only) out of the fine amount of Rs. 17,000/-, if deposited, be given to the prosecutrix as compensation.

30. The appellant is reported to be on bail. His bail bonds stands cancelled subject to the provisions of Section 437-A, Cr.P.C.

Sd/-
(Sharad Kumar Gupta)
Judge