

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 417 of 2005

Order reserved on 11.09.2018

Order pronounced on 19 .11.2018

Raju Sen, S/o Bishoha Ram Sen, aged about 27 years, R/o Potiyadih, Thana - Arjuni, District - Dhamtari, CG.

---- Applicant

Versus

State of Chhattisgarh, through District Magistrate, District Dhamtari, CG.

---- Respondent

For Applicant	: Shri K.K. Dewangan, Advocate
For State/ Respondent	: Smt. M. Aasha, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Order

The accused / applicant has preferred this revision petition against the judgment of conviction and order of sentence dated 15/09/2005 passed by Additional Sessions Judge, Dhamtari, (Session Division, Raipur) CG in Criminal Appeal No. 282/2004 affirming the judgment dated 04.10.2004 passed by Judicial Magistrate First Class, Dhamtari, in Criminal Case No. 385/2000 convicting the accused/applicant under Sections 456 and 354 IPC and sentencing him to undergo RI for two years with fine of Rs. 1,000/- under Section 456 and RI for one year with fine of Rs. 500/- under Section 354 IPC, plus default stipulation.

2. Briefly stated facts of the case leading to the disposal of present revision petition are that on 13.06.2000 at about 2 in the midnight when the prosecutrix was sleeping in her house, the accused/applicant herein gained and entry therein, caught hold of her shoulder, got over the cot in which she was sleeping, pressed her mouth and tried to remover her cloths. Meanwhile, her husband reached there and on seeing him the accused/applicant tried to run away but was apprehended by him - the husband of the prosecutrix. On the basis of FIR (Ex. P-1) lodged by the

prosecutrix, offences under Sections 354 and 456 IPC were registered against the accused/applicant and after completion of investigation charge sheet was filed against the applicant under the same section. From the record it appears that during the pendency of trial the prosecutrix died.

3. On being satisfied with the averments of the parties and evidence on record the trial Court convicted and sentenced the accused/applicant as mentioned above. The findings recorded by the trial Court have been affirmed by the lower appellate Court by the Judgment impugned, and it is that which is under challenge in this revision.

4. Learned counsel for the accused/applicant submits that he is not pressing this revision on merits and would confine his argument to the sentence part of the judgment assailed therein. According to him, as the incident had taken place in the year 2000, and that he has already remained in jail for a period of 10 days, no useful purpose would be served in again sending him to jail, and therefore, the sentence imposed upon him may be reduced to the period already undergone by him.

5. State counsel however, supports the findings recorded by both the Courts below.

6. Heard counsel for the parties and perused the material on record.

7. Though counsel for the accused/applicant is not inclined to press conviction of the accused/applicant, this Court thinks it appropriate to refer to the evidence of the witnesses to ascertain his guilt or innocence and therefore, it proceeds to do so.

8. This Court is not in agreement with the stand of the accused that on account of death of the prosecutrix during trial the conviction of the accused/applicant is not sustainable. It is for the reason that even if she is not there to express her agony, number of witnesses including her husband are there to state the things. From the evidence of PW-2 - the husband of the prosecutrix, it is clear that on the date of incident he had apprehended the accused/applicant in the room of his wife and at that time the accused/applicant was in naked condition. Evidence of this witness has been corroborated by PW-3, PW-4, PW-5, PW-6

and PW-7. Even PW-1 - the investigating officer has also supported the case of the prosecution stating that the prosecutrix while lodging the report had clearly disclosed the act of the accused/applicant that on the date of incident he had entered her house in the midnight and tried to outrage her modesty. Thus, taking into consideration the material collected by the prosecution including the evidence of the witnesses, it is apparent that on the date of incident the accused/applicant had committed a house tress-pass and used criminal force on the prosecutrix with an intention to outrage her modesty.

9. Thus, in view of the factual discussion made above in the light of the evidence of the witnesses, this Court is of the opinion that both the Courts below have been quite justified in holding the accused/applicant guilty under Sections 354 and 456 IPC, and being so, the same is hereby maintained.

10. As regards sentence, keeping in view the fact that the incident had taken place about 18 years back and the applicant has already remained in jail for a period of 10 days, this Court is of the opinion that it would be in the interest of justice to reduce the sentence to the period already undergone by him. Order accordingly.

11. Resultantly, the revision petition is hereby allowed in part with the modification in the judgment impugned as above.

Sd/-
(Vimla Singh Kapoor)
Judge