

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 71 of 2010

Judgement reserved on 24-9-2018

Judgement delivered on 29-10-2018

- Ashok Verma aged about 22 years s/o. Gopilal Verma, r/o. Nayadhaba, Thana Lalbag, District Rajnandgaon (CG).

---- Appellant.

Versus

- State of Chhattisgarh through Police Station Lalbag, District Rajnandgaon. (CG).

---- Respondent

For Appellant : Mr. Parag Kotecha, Advocate.

For Respondent/State : Mr. Ramakant Pandey, P.L.

(SB: Hon'ble Mr. Justice Ram Prasanna Sharma)

CAV Judgment

1) This appeal is preferred against the judgment of conviction and order of sentence dated 5-1-2010 passed by Special Judge (Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, "the Act, 1989"), Rajnandgaon District Rajnandgaon in Special Case No. 93 of 2008, wherein the said Court convicted the accused/appellant under Sections 456 and 354 of the IPC and sentenced him to undergo RI for six months and to pay fine of Rs.100/- on each count, with default stipulations.

2) As per prosecution case, on 15-9-2008 at about 12.00 pm the appellant entered into the house of prosecutrix (PW/1) and outraged her modesty and injured her. The matter was reported and

investigated. After completion of trial, the trial Court convicted and sentenced the accused/appellant as mentioned above.

3) Learned counsel for the appellant submits as under:

- i) There is serious contradiction in the statement of the prosecution witnesses, therefore, benefit of doubt ought to have been extended to the appellant.
- ii) As per evidence of prosecutrix, the appellant slept with her daughter and it is out of imagination that she will not resist or raise alarm during the course of investigation.
- iii) Though prosecutrix deposed that she sustained injury but the Doctor who examined the prosecutrix did not find any injury on the body of the prosecutrix, therefore, version of prosecution is not dependable.
- iv) The trial Court came to wrong conclusion which is liable to be reversed.

4) *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.

- 5) I have heard learned counsel for the parties and perused the record of the court below in which impugned judgment has been passed.
- 6) In the present case prosecutrix is PW/1. Date of incident is 15-9-2008 and the report was lodged on the next day i.e., on 16-9-2008 at Police Station Adimjati Kalyan Vibhag in which name of the appellant and his act are clearly mentioned.
- 7) To substantiate the charge, prosecution examined as many as seven witnesses. To nullify the charge, defence side examined one defence witness namely Purushottam Sahu (DW/1).
- 8) Prosecutrix PW/1 has supported the entire prosecution story and as per version of this witness, she was sleeping at about 12.00 pm in the night in her house where appellant entered into her house. When she came out and tried to cry for help, appellant caught hold her and dragged towards kitchen garden and pushed down in the said garden and thereafter he caught her breast. When she tried to cry for help, he shut her mouth. Version of this witness is subjected to searching cross examination but nothing could be elicited in favour of defence. There is no material contradiction or omission in the statement of this witness and there is nothing on record to show that she had any grudge against the appellant to falsely rope him in the charge. Version of this witness is supported by version of PW/2 Tuleshwari Bai who saw that the

appellant caught her mother. PW/4 Ramdas supported the version of this witness and as per version of this witness he saw the appellant near the house of the prosecutrix where the prosecutrix informed him that the appellant outraged her modesty. All these witnesses have been subjected to searching cross examination but they are unshaken and there is nothing on record to discard their testimonies.

9) One Purushottam Sahu was cited as DW/1. As per version of this witness, prosecutrix was demanding money from the appellant, but version of this witness is not sufficient to discard testimony of all the prosecution witnesses, this witness has also established the presence of the appellant on the spot, therefore, version of the prosecution side is not under-stake by the evidence of this witness. There is no material contradiction or omission on the part of the prosecution witnesses regarding the fact of the case and ingredient of the offence. Minor contradictions which do not go to the root of the case are insignificant and same is liable to be ignored. Therefore, the argument advanced on behalf of the appellant on account of contradictions and omissions is without substance.

10) 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.

11) 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 lordships that 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.**

12) In the present case, evidence against the present appellant is clinching in nature. Not only the prosecutrix, but her daughter and other persons have also found the appellant on the spot. From the evidence of the prosecutrix, it is established that the accused knowingly outraged modesty of the prosecutrix by using criminal force

on her and the prosecutrix is firm in reporting the matter to the people of locality and firm in lodging the FIR in Police Station on the next day and looking to the statements of number of witnesses cited by the prosecution, it is clear that criminal force is used by the appellant against the prosecutrix and same amounts to outrage her modesty. Criminal force is defined under Section 350 of IPC.

“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”.

13) 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 under Section 354 of the IPC is hereby affirmed. Again, lurking house-trespass by night is an offence which is punishable under Section 456 of IPC. Conviction of the appellant under Section 456 of IPC is also hereby affirmed.

14) 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.

15) Accordingly, the appeal being devoid of merit is liable to be and is hereby dismissed. The appellant is reported to be on bail. His bail bonds shall stand canceled. The trial Court will prepare supersession warrant and issue warrant of arrest against the appellant. After his arrest, he be sent to concerned jail to serve out the remaining part of the jail sentence. The trial Court shall submit the compliance report before this court on 31-1-2019.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju