

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.15 of 2009**

Khelun Verma alias Khelan Verma, S/o. Jagdish Verma, aged 20 years, R/o. Village Kewanечи, PS Bemetara, Tahsil Bemetara, District Durg (CG)

---- Appellant**Versus**

State Of Chhattisgarh, Through District Magistrate, Durg Distt. Durg (CG)

---- Respondent

 For the appellants : Shri Ram Kumar Tiwari, Advocate
 For the respondent/State: Shri Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****09.10.2018.**

1. This appeal is directed against the judgment dated 30.12.2008 passed by Additional Sessions Judge, Bemetara Distt. Durg (CG) in Session Trial No.02/2007 wherein the said Court acquitted the appellant for the charges under Section 306 IPC and convicted him for the commission of offence under Section 354 & 454 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for two years and to pay fine of Rs.1000/-; RI for three years and to pay fine of Rs.5000/- with default stipulations for assaulting or using criminal force on the prosecutrix intending to outrage or knowing it to be likely that he will thereby outrage her modesty and for committing house breaking.

2. As per the prosecution case, place of incident is the house of the prosecutrix situated at village Kewanchi where the appellant entered at about 12.00 noon on 08.01.2007 and used criminal force against the prosecutrix.

3. Prosecutrix has not been examined before the trial Court as she died. To substantiate the charges, the prosecution has examined as many as 11 witnesses. Dhanbai (PW-1) deposed that the prosecutrix informed her regarding entry of the appellant in her house and teasing her. Suresh (PW-2) deposed that the appellant harassed her and threatened her. Narayan Singh (PW-3) deposed that he met with the prosecutrix in the hospital where she informed him that the appellant teased her. Dharmendra (PW-5) and Dhansingh (PW-9) deposed on the same lines. Rest of the witnesses have assisted during investigation.

4. All the witnesses examined by the prosecution have deposed on the basis of what is told to them by the prosecutrix. The prosecutrix has not been examined before the trial Court, therefore, the defence side had no opportunity to cross-examine her and advance their case before her. In that way in absence of statement of the prosecutrix finding regarding outraging the modesty will be prejudicial because the prosecutrix herself has not been examined and defence side lost its opportunity to establish the case by her cross-examination.

5. Again in absence of statement of the prosecutrix it would not be safe to record the finding that the appellant entered into

house of the prosecutrix for commission of any offence. Hearsay evidence of the witnesses is normally not admissible in evidence.

6. In **Kalyan Kumar Gogoi vs. Ashutosh Agnihotri reported in (2011) 2 SCC 532**, Hon'ble the Supreme Court has held as under:

“(a) the person giving such evidence does not feel any responsibility. The law requires all evidence to be given under personal responsibility, i.e., every witness must give his testimony, under such circumstance, as expose him to all the penalties of falsehood. If the person giving hearsay evidence is cornered, he has a line of escape by saying "I do not know, but so and so told me",

(b) truth is diluted and diminished with each repetition and

(c) if permitted, gives ample scope for playing fraud by saying "someone told me that.....". It would be attaching importance to false rumour flying from one foul lip to another. Thus statement of witnesses based on information received from others is inadmissible.”

7. In the present case, only evidence available on record is hear say evidence and the same is not admissible, therefore, it would not be proper to record the finding of guilt by the appellant. Looking to the evidence, the finding arrived at by the trial Court regarding commission of offence under Sections 354 and 454 is not sustainable.

8. Accordingly, the appeal is allowed. Conviction and sentence passed by the trial Court is set aside. The appellant is acquitted of the charge under Sections 354 and 454 IPC. The appellant is reported to be on bail. His bail bond shall remain operative for a further period of six months from today in terms of Section 437A of the CrPC.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**