

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.98 of 2010**

Santosh Yadav s/o Dashru Yadav, aged about 25 years, R/o village Saja, Police Station Saja, District Durg (CG)

---- Appellant

Versus

State Of Chhattisgarh Through District Magistrate, Raipur, District Raipur (CG)

---- Respondent

For Appellant : Smt. Indira Tripathi, Advocate

For State/ Respondent : Shri Ramakant Pandey, Panel Lawyer

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****21/08/2018**

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against the judgment dated 8.1.2010, passed by the 14th Additional Sessions Judge(FTC), Raipur (CG) in Sessions Trial No. 151/2009, whereby the appellant has been convicted under Section 354 of the Indian Penal Code, 1860 (for short the I.P.C.) and sentenced to undergo R.I. for 2 years.

2. As per the case of prosecution, on 20.5.2009 at about 9.00 pm, one oral complaint was lodged at Police Station Arang from Smt.Poona Bai w/o Gokul Dewangan of village Semariya that on the same day at about 6-7 pm, her grand-daughter Ku.Meena Bai told

her that a driver of red colour Car called her in the evening near Boring house and removed her underwear and also removed his underwear and slept on her. In the meanwhile, one Niranjana reached there and the driver ran away from the spot. The matter was investigated and the appellant was charge-sheeted. After hearing both the parties, the trial Court has convicted and sentenced the appellant as aforementioned.

3. I have heard learned counsel for the parties and perused the record.

4. Learned counsel for the appellant submits as under :

(i) Number of the vehicle is not mentioned by the witnesses and from other piece of evidence commission of offence is not established against the present appellant.

(ii) The prosecutrix herself has not deposed at first instance against the appellant and her evidence is shaky in nature and same is not sufficient to convict the appellant for the above offence.

(iii) Test Identification parade has been proved to be false as Poona Bai (PW7) and Umesh (PW8) have not supported that they identified the present appellant. The trial Court has overlooked the material contradictions in the statement of prosecution witnesses and their testimony is not reliable.

5. On the other hand, learned counsel for the State supporting the judgment submits that the finding recorded by the trial Court is

based on proper marshalling of evidence and same is not liable to be interfered with.

6. To substantiate the charge prosecution has examined as many as 12 witnesses.

7. Prosecutrix is PW5. She is aged about 7 years. Firstly, her competency to understand the questions put to her is tested by the Court and upon ascertaining that she is able to understand the questions and also competent to reply the same, her statement was recorded. She identified the appellant in the Court and from her statement, it is established that the appellant removed her under garment and touched her private part. Version of this witness is unrebutted during cross-examination and her version is supported by Niranjana (PW2) whom she informed about the incident and stated against the present appellant. This witness has seen the appellant in vehicle and his version is corroborative piece of evidence.

8. True it is that other witnesses have not supported the incident, but the fact remains that version of the prosecutrix and Niranjana (PW2) established that the appellant intentionally undressed the prosecutrix and contacted to her body and thereby used criminal force.

9. Looking to the evidence, intention of the appellant can be easily inferred that he was intending to outrage the modesty of the

prosecutrix. Act of the appellant falls within mischief of Section 354 I.P.C. in which the trial Court has convicted the appellant and the same is hereby affirmed.

10. Heard on the point of sentence:

11. The date of incident is 20.5.2009. On that date Criminal Law Amendment Act 2013 was not in force. It came into force from 3.2.2013. Before 3.2.2013, the maximum punishment that can be awarded for the offence under Section 354 I.P.C. was for 2 years, but no minimum sentence was prescribed. Looking to this legal aspect of the matter and also considering the fact that the appellant was in custody from 21.5.2009 to 8.1.2010 and from 8.1.2010 to 17.2.2010 which comes out to about 8 months and 27 days, I am of the view the ends of justice would be served if the appellant is sentenced to the period already undergone, therefore, the corporeal sentence is reduced to the period already undergone by him. The appellant is reported to be on bail. His bail bonds shall continue for a period of six months in view of Section 437-A Cr.P.C.

12. With these modifications, the appeal is partly allowed.

Sd/

(Ram Prasanna Sharma)
JUDGE