

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No.277 of 2010**

Smt. Ganga Bai W/o Govind Chandrakar, aged about 23 years,
Resident of Village Kunwa Thana Pipariya, Tahsil Kawardha,
District Kabirdham (CG)

---- Appellant**Versus**

1. Gautam Chandrakar S/o Paras, aged about 26 years, Resident of Village Kunwa, Tahsil Kawardha, District Kabirdham (CG)
2. State of Chhattisgarh, Through PS Pipariya, District Kabirdham (CG)

---- Respondents

For Appellant	: Mrs. Ranjana Jaiswal, Advocate
For Respondent 1	: Mrs. Indira Tripathi, Advocate
For Respondent 2/State	: Mr. Bhaskar Payashi, Panel Lawyer

DB: Hon'ble Shri Justice Prashant Kumar Mishra &
Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board**Per Prashant Kumar Mishra, J.****13.03.2018**

1. Challenging the acquittal of respondent No.1- Gautam Chandrakar for the offence under Sections 451, 376 and 354 IPC in S.T. No.33/2009 by the Sessions Judge, Kabirdham (Kawardha) (CG) vide judgment dated 4.2.2010, the prosecutrix has preferred this appeal on the ground that the trial Court has not appreciated the evidence in its true perspective and has recorded illegal and perverse finding in respect of the offence committed by respondent No.1.

2. Mrs. Ranjana Jaiswal, learned counsel for the appellant would submit that the prosecutrix had in fact, lodged the report for offence under Section 354 IPC, however, on wrong advise, she preferred a private complaint before the concerned Magistrate, on which, offence under Sections 451 and 376 IPC was also registered. Therefore, even if the offence under Section 376 IPC was not made out, the trial Court should have convicted the accused/respondent No.1 for offence under Section 354 IPC on the basis of First Information Report (FIR) which depicted the true incident happened with the prosecutrix.

3. To appreciate the submission, we have perused the entire record.

4. For an incident which occurred on 7.9.2008 at about 9.00 am, the prosecutrix lodged FIR at 13.30 hrs. on the same day alleging that when she had gone to the grainyard of her house to bring gram husk, the accused came over there, caught hold of her hand, pressed her breast and instructed her to remove her Saree, on which, she shouted by calling "Chor Chor", whereafter, her husband proceeded towards the place, seeing whom, the accused ran away. After some days, the prosecutrix lodged a private complaint under Section 200 Cr.P.C. in which her statement was recorded on 2.1.2009. In this statement, she alleged that the accused/respondent No.1 has also performed sexual intercourse with her.

5. Admittedly, the prosecutrix was never sent for medical examination. The trial Judge having found the nature of allegations in the private complaint lodged by the prosecutrix and the contents of the charge sheet filed by the Police, committed both the matters for Sessions Trial.

6. Considering the evidence of Ganga Bai (PW1), Govind Chandrakar (PW2), Kanti Bai (PW3), Loknath Chandrakar (PW4) and Sanjay Pundhir (PW5) and the defence witness Lalaram (DW1), the trial Court has recorded a finding that in view of the previous land dispute between the parties which is reflected from the document Ex. D/9 and two different stories narrated by the prosecutrix, first in her FIR and the second in private complaint, her case appears to be doubtful. It is also to be seen that after lodging the FIR, her statement was recorded under Section 161 Cr.P.C., in which also she did not inform the Police that the accused/respondent No.1 has committed sexual intercourse with her.

7. In our considered view, when the prosecutrix appears to have made a false complaint of rape against the accused, the trial Court has rightly concluded that the first FIR for offence under Section 354 IPC also becomes doubtful.

8. Considering the previous land dispute between the parties, the trial Court has rightly held that it is not a fit case for convicting the accused/respondent No.1 for any of the offence.

9. There is no substance in this appeal, which fails and is hereby dismissed.

Sd/

Sd/

Judge

(Prashant Kumar Mishra)

Judge

(Ram Prasanna Sharma)

