

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1241 of 2000

Judgment Reserved on : 28.11.2017

Judgment Delivered on : 16.1.2018

The State of Madhya Pradesh (now Chhattisgarh)

---- Appellant

versus

Mohd. Abdul Raseed Khan, son of Shri Abdul Sakur Khan, aged about 40 years, Lecturer, Government Higher Secondary School, Badgaon, Village and Police Station Daundi Lohara, District Durg, M.P. (now Chhattisgarh)

--- Respondent

For Appellant/State	:	Smt. Smita Ghai, Panel Lawyer
For Respondent	:	Shri Adil Minhaj, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal preferred by the State/Appellant is directed against the judgment dated 23.9.1999 passed in Criminal Case No.161 of 1999 by the Judicial Magistrate First Class, Balod, District Durg acquitting the Respondent/accused of the charge framed under Section 354 of the Indian Penal Code.
2. Facts of the case, in brief, are that on 1.3.1999 Complainant Triveni Ratre, PW1 submitted a written report, Ex.P1 alleging that on 24.2.1999 at about 5:00 p.m., the Respondent/accused, who, at the time of incident, was a Lecturer at Government Higher Secondary School, Badgaon and where she was a student of 11th standard, during the period of practical, asked the other students to go out, but asked her to stay there and thereafter he caught her

hands and kissed her cheek. On the basis of the written report, Ex.P1, a crime under Section 354 IPC was registered on 1.3.1999 vide First Information Report, Ex.P3. On completion of the investigation, a charge-sheet was filed against the Respondent for offence punishable under Section 354 IPC. Charge was framed against him under Section 354 IPC.

3. To rope in the Respondent/accused, the prosecution examined as many as 7 witnesses. Statement of the Respondent was also recorded under Section 313 Cr.P.C. in which he denied the circumstances appearing against him, pleaded innocence and false implication. No witness has been examined in his defence.
4. Case of the prosecution is mainly based on the evidence of Complainant Triveni, PW1 and Toran, PW2. The Judicial Magistrate First Class, on due scrutiny of the evidence of Triveni, PW1 and Toran, PW2, found that their evidence is suspicious. Therefore, the Judicial Magistrate First Class did not rely upon their evidence and acquitted the Respondent of the charge framed against him. Hence, this appeal by the State.
5. Learned Counsel appearing for the Appellant/State argued that Triveni, PW1 and Toran, PW2 are reliable witnesses. PW1 lodged a prompt written report, Ex.P1, which contains the name of the Respondent/accused. The impugned judgment of acquittal is erroneous on facts and law and it is not sustainable in the eyes of law as there is sufficient legally acceptable evidence to conclude the guilt against the Respondent. The Trial Court ought to have believed on the version of the Complainant and the evidence of the prosecution witnesses as their testimonies cannot be discarded

without any cogent reason. Therefore, the findings of the Trial Court are improper.

6. On the other hand, Learned Counsel appearing for the Respondent supported the impugned judgment and opposed the above arguments.
7. I have heard Learned Counsel appearing for the parties and perused the material available on record minutely.
8. Complainant Triveni, PW1 has deposed that on 24.2.1999 at about 5:00 p.m., after the period of practical, the Respondent asked her to stop in the practical room. She stayed there. Thereafter, he caught her and kissed her on the cheek. Thereafter, other students came in the practical room to keep back the articles of practical. Thereafter, leave was declared in the school and, therefore, all the students went out of the school. She has further stated that on the same day, she informed her parents about the incident. Two days thereafter, she informed her friend Toran, PW2 about the incident. She has further stated that in connection with the incident, police had come to the school and at that time she had given her written report, ExP1 to the police.
9. Toran, PW2 has deposed that on the date of incident, she had not gone to the school. On Saturday, when she went to the school, Triveni, PW1 informed her about the incident.
10. Santosh PW3, Ramsingh PW6, and Tijiyabai PW7, brother, father and mother of Complainant Triveni, respectively, have stated that Complainant Triveni, PW1 had informed them about the incident on

the date of incident itself. Triveni, PW1, in her cross-examination, has stated that at the time of incident, she had not shouted nor did she inform about the incident soon thereafter to anybody. In paragraph 8 of her cross-examination, she has categorically admitted that the incident did not take place in the practical room, but it took place in another room. But, in her police statement, Ex.D1, she has stated that the incident took place in the practical room. She has further admitted that after the incident, she continued to attend the school without absent. From the admission of Triveni, PW1, it is also clear that she had given the written report, Ex.P1 to the police on 1.3.1999

11. Toran, PW2 has admitted that before the date of incident, the Respondent had ousted her and Triveni, PW1 from the classroom. She has further stated that on this the villagers had got angry. Santosh, PW3 has also stated that the Respondent had ousted Triveni, PW1 and Toran, PW2 from the classroom due to which the villagers had got angry and they had surrounded the school. From the above, it is also clear that the written report, Ex.P1 was not given by Complainant Triveni in the police station, but it was given to the police when they had come to the school in connection with the alleged crime. The said written report, Ex.P1 is undated. Sub-Inspector N.K. Suryawanshi, PW5 has also admitted that the written report, Ex.P1 is undated and on the basis of the written report, he had registered First Information Report, Ex.P3. In paragraph 31 of his cross-examination, he has also admitted that in the Rojnamcha Sanha, Ex.D4, 23.2.1999 is mentioned as the date of incident.

- 12.** On minute scrutiny of the evidence available on record, it is clear that the written report, Ex.P1 is undated and date of the incident is not mentioned therein. As per the Court statement of Triveni, PW1, the date of incident is 24.2.1999, but, the date of incident mentioned in the Rojnamcha Sanha, Ex.D4 is 23.2.1999. What is the actual date of incident, whether it is 23.2.1999 or 24.2.1999 is not clear. According to the Court statements of Santosh PW3, Ramsingh PW6 and Tijiyabai PW7, they were informed about the incident by the Complainant on the date of incident itself, but why First Information Report was not lodged immediately is not explained by the Complainant nor by the above witnesses. From a bare perusal of the evidence on record, it is also clear that the Respondent, when he was a Lecturer of the said school, had ousted Complainant Triveni, PW1 and Toran, PW2 from the classroom. Therefore, the villagers had got angry and surrounded the school. When the police had come to the school for inquiry into the said incident, at that time itself, Triveni gave the written report, Ex.P1 to the police.
- 13.** After going through the entire evidence available on record, I find no compelling and substantial reason to interfere with the judgment of acquittal under challenge. It is not a case in which the impugned judgment may be said to be unreasonable or a case in which the relevant and convincing materials have been eliminated in the process of appreciation of the evidence on record. The Learned Judicial Magistrate First Class has taken into consideration all the relevant materials and has considered each and every aspects of the matter to test the veracity of the complaint and has thereafter recorded the finding of acquittal which appears to be reasonable.

- 14.** In view of the foregoing, I do not find any substance in the appeal filed by the State. Therefore, the appeal is dismissed. The impugned judgment of acquittal is upheld.
- 15.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
JUDGE