

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 907 of 2002

- Bishambhar Lodhi, S/o Sheikhoo Lodhi, aged about 41 years, Agriculturist, Resident of Village – Khamhariya, O.P. Kumhari, Bhilai-3, Tehsil and Distt. Durg (CG)

---- Appellant

Versus

- State Of Chhattisgarh

---- Respondent

For Appellant	:	Shri Praveen Dhurandhar, Advocate.
For Respondent/State	:	Shri Vivek Sharma, Govt. Advocate.

Hon'ble Shri Justice Pritinker Diwaker

Judgment On Board

17/01/2018

This appeal arises out of the judgment of conviction and order of sentence dated 2.8.2002 passed by the Special Judge and Additional Sessions Judge, Durg in Special Case No.26/2002, convicting the appellant under Sections 456 and 354 of IPC and sentencing him to undergo RI for one year, pay a fine of Rs.1000/- and RI for six months and to pay a fine of Rs.1000/- with default stipulations respective.

02. As per prosecution case, on 16.10.2001 FIR (Ex.P/2) was lodged by the prosecutrix (PW-2) alleging in it that on 15.10.2001 at about 9 pm when she was sleeping along with her child in her house, the appellant gained entry in her house, caught hold of her hands with an intent to outrage her modesty. Upon hearing her cries, PW-3

Ramprasad and one Kirit came there and after seeing them, the accused/appellant fled from the spot. Based on this FIR, offence under Sections 456, 354 of IPC and Section 3(1)(xi) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, was registered against the appellant and after filing of the charge sheet, the trial court framed charges accordingly against him.

03. So as to hold the accused/appellant guilty, the prosecution examined 7 witnesses in all. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. In defence, he examined three witnesses.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment while acquitting the appellant of the charge under Section 3(1)(xi) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, convicted and sentenced him as mentioned above.

05. Counsel for the appellant submits that he is not pressing this appeal on merits, however, would confine his argument to the sentence part only. He submits that the appellant has remained in jail for about three days, the incident took place about 17 years back, the appellant is not an old person, aged about 60 years and as such, no useful purpose would be served in sending him back to jail at this stage. He submits that the appellant is willing to compensate the prosecutrix by paying adequate amount.

06. On the other hand, State counsel supporting the impugned judgment has submitted that though the appellant is not pressing this appeal on merits and praying for reduction of sentence, however, his conviction is required to be upheld by appreciation of the evidence on record and further, the sentence awarded to him being proportionate to the gravity of the offence also needs no interference by this Court.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-2 prosecutrix, a lady of 40 years, has stated that on the date of incident when she was in her house along with her child, her husband had gone to Bhilai, the accused/appellant gained entry in her house and caught hold of her hands. When she raised alarm, Rampasad (PW-3) and one Kirit came to her rescue, however, the appellant managed to escape from there. She has stated that the appellant had caught her with an intent to outrage her modesty. She informed about the incident to Kamal Narayan, Sarpanch and thereafter a village meeting was convened where the appellant confessed to have entered her house with intent to outrage her modesty. She has proved the FIR Ex.P/2. In cross-examination she remained firm and reiterated as to the manner in which the incident took place and denied all the adverse suggestions put to her by the defence.

09. PW-3 Ramprasad, the person who reached the house of the prosecutrix upon hearing her cries, has also duly supported the prosecution case. PW-4 Kamal Narayan, Sarpanch of the Village, has stated that after the incident the prosecutrix came to his house and informed him about the act of the appellant and when the appellant

was enquired about the same, he admitted to have done so and thereafter, report was lodged. PW-5 Neelkanth has stated that after the incident the prosecutrix came to his house and informed him about the act of the appellant. However, when he went to her house, the appellant was not there and that after half an hour he saw the appellant roaming in the village in a highly drunken condition. He has stated that the prosecutrix did not inform him about the appellant holding her hands. PW-6 BL Kurre, investigating officer, has duly supported the prosecution case. PW-7 KB Singh, Assistant Sub Inspector, registered the FIR (Ex.P/2).

10. DW-1 Manoharlal has stated that the prosecutrix is a lady of easy virtue and implicates the innocent persons falsely for extracting money from them. However, in cross-examination he has admitted the fact that upon being informed by the prosecutrix about the incident, he along with other villagers went to her house where one person informed that the appellant had entered the house of the prosecutrix.

11. DW-2 Chhannulal has also stated that the prosecutrix was a woman of loose character and he came to know next morning of the incident that the appellant had entered the house of the prosecutrix. Almost similar is the statement of DW-3 Narendra Kumar Vishwakarma.

12. Close scrutiny of the evidence makes it clear that on 15.10.2001 at about 9 pm the appellant entered the house of the prosecutrix while she was sleeping along with her child in her house and then tried to outrage her modesty by holding her hands. According to her when she raised alarm, PW-3 Ramprasad and one Kirit came there to her rescue,

however, the accused/appellant somehow managed to flee from there. She has proved the FIR (Ex.P/2) and her Court statement is consistent with the allegations leveled by her in the FIR. In cross-examination the defence could not elicit anything from her which could render her evidence untrustworthy or doubtful. This apart, her statement finds due corroboration from the evidence of PW-3 Ramprasad, who immediately reached the house of the prosecutrix upon hearing her cries, and PW-4 Kamal Narayan, Sarpanch of the Village, whom the incident was narrated by the prosecutrix soon after the incident. Thus, from the aforesaid evidence, offence under Sections 456 and 354 of IPC stands proved against the appellant.

13. Now the next question which arises for consideration is the quantum of sentence.

14. Considering the peculiar facts and circumstances of the case, in particular the fact the incident took place 17 years ago, by now the appellant must be about 60 years of age; jail sentence is not mandatory u/s 354 of IPC and that no minimum jail sentence is prescribed u/s 456 of IPC, we are of the opinion that ends of justice would be served if the appellant is sentenced to the period already undergone by him i.e. three days, and is directed to pay a sum of Rs.10,000/- as compensation under Section 357 of CrPC to the prosecutrix.

15. In the result, the appeal is allowed in part. While maintaining conviction of the appellant under Sections 354 and 456 of IPC, he is sentenced to the period already undergone by him. However, he is directed to deposit a sum of Rs.10,000/- with the concerned trial Court

within a period of six months from today, failing which he shall have to suffer additional RI for two months. The amount so deposited by the appellant shall be paid to the prosecutrix as compensation under Section 357 of CrPC by the trial Court after due verification.

Sd/

(Pritinker Diwaker)

Judge

Khan