

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 325 of 2010****Reserved on : 06.10.2018****Delivered on : 30.10.2018**

Mohammad Rafique, aged about 50 years, S/o Late Abdul Kadir,
Occupation General Store, R/o Bakharupara, Narayanpur, District-
Bastar (C.G.)

---- Appellant**Versus**

State of Chhattisgarh, Through: Police Station Chhote Donger,
District- Bastar (C.G.)

---- Respondent

For Appellant : Mr. Vishnu Koshta, Advocate.

For State/respondent : Mr. Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV JUDGMENT**

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 08.04.2010 passed by Sessions Judge (Atrocities), Bastar at Jagdalpur (C.G.) in Session Trial No. 85/2007, wherein the said court convicted the appellant for commission of offence under Sections 448 & 354 of IPC and Section 3(1)(xi) of Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989 (for short "the Act, 1989") and sentenced to R.I. for 6 month and fine of Rs. 200/-, R.I. for 1 year and fine of Rs. 500/- & R.I. for 1 year and fine of Rs. 500/- respectively with further default stipulations.
2. In the present case, prosecutrix are PW-3 & PW-4. As per case of the prosecution, both are member of Schedule Tribe

and were living for study at Kanya Ashram, Dhodhai which is situated within police station- Chhote Donger of Bastar District. It is alleged that on 13.10.2006 at mid-night, when they were sleeping, someone knocked the door. The In-charge of the Ashram opened the door and found that 4-5 persons entered in the Ashram and they entered into room of both the prosecutrix and took them in kitchen. They started to open button of her shirt and used criminal force on their body. The matter was reported and after completion of trial, the trial court convicted the appellant as mentioned above.

3. Learned counsel for the appellant submits that as per evidence of Sunil Kumar Vishwas (PW-1), it is not established that the appellant committed any offence which is charged against him. Statement of Raimati (PW-4), Karun Kumar Jain (PW-6) is overlooked by the trial court and they do not support the prosecution case. Evidence of prosecutrix (PW-3) is also not reliable looking to the statement of Smt. Puple Nureti (PW-5), therefore, finding recorded by the trial court is not sustainable.
4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.
5. Prosecutrix (PW-3) lodged FIR on 16.10.2006 in which name of the appellant is mentioned as culprit and act of the

appellant regarding outraging her modesty is also mentioned. This witness has deposed before the trial court that he opened button of her shirt and touched her breast. Version of this witness was subjected to searching cross-examination, but nothing could be elicited in favour of the defence. This witness is firm in her statement from date of incident and she is stable in it till date before the court. It is settled law that for proving any guilt, no minimum number of witnesses shall be required as per Section 134 of the Indian Evidence Act, 1872. It has enshrined the well recognized maxim that evidence has to be weighed and not counted. As the witness is stable for the charge since date of incident, there is nothing to discard her testimony and she is fully reliable witness.

6. Now, the point for consideration is whether the act of the appellant falls within the mischief under Section 354 of IPC.

As per Section 354 of IPC- Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty shall be punished. The essential ingredients of offence under Section 354, IPC are:-

- (a) That the assault must be on a woman.
- (b) That the accused must have used criminal force on her.
- (c) That the criminal force must have been used on the woman intending thereby to outrage her modesty.

7. In the matter of **State of Punjab Vs. Major Singh** reported in **AIR 1967 SC 63**, a question arose whether a minor female could be said to be possessed of modesty which could be outraged. In answering the above question it has been held by their lordship the essence of a woman's modesty is her sex and from her very birth she possesses the modesty which is the attribute of her sex. From the test for ascertaining whether modesty has been outraged is whether the action of the offender is such as could be perceived as one which is capable of shocking the sense of decency of a woman. Same view was reiterated in the matter of **Rupan Deol Bajaj (Mrs.) and Anr. Vs. Kanwar Pal Singh Gill & Anr.**, reported in **1995 (6) SCC 194**.
8. Looking to the evidence of the prosecutrix (PW-3), it is established that the appellant entered into Kanya Ashram which was established for students studying in the school and outraged her modesty by using criminal force. Act of the appellant clearly falls within mischief of Section 354 of IPC. Again, he entered into said Ashram with intent to commit offence against the prosecutrix, his act falls for the offence punishable under Section 448 of IPC.
9. There is no material contradiction in the statement of the prosecutrix which go to the route of the case. Any minor contradiction which do not go to the route of the case is insignificant and on the basis of any minor contradiction, case of the prosecutrix cannot be doubted with, therefore,

argument advanced on behalf of the appellant is not acceptable.

10. The case laws cited on behalf of the appellant in the matter of **Udai Singh Vs. State of C.G.** reported in **2011 (3) CGLJ 455**, **Jhamman alias Jayman Vs. State of C.G.** reported in **2011 (3) CGLJ 458**, **Surendra Agrawal Vs. State of Chhattisgarh** reported in **2017 SCC OnLine Chh 243** & **Tribhuwan Ramadhar Kashyap Vs. State of Madhya Pradesh (now Chhattisgarh)**, reported in **ILR 2017 Chh 2283** decided by this Court in CRA No. 1420/2000, are distinguishable in the facts and circumstances of the case, because all the cases are not related to the offence against student residing at Ashram. In the present case, offence is committed after entering into Ashram which is serious in nature because the same is threat to the institution at large, therefore, citations have no help to the present appellant.
11. So far as offence under Section 3(1)(xi) of the Act, 1989 is concerned, no one examined on behalf of the prosecution that prosecutrix is member of Schedule Tribe. Unless she is member of Schedule Tribe, offence under Section 3(1)(xi) of the Act, 1989 is not established. Conviction of offence under Section 3(1)(xi) of the Act, 1989 is set aside and he is acquitted of the said charge.
12. Conviction of the appellant for commission of offence under Sections 354 & 448 of IPC is not liable to be interfered with and the same is hereby affirmed.

13. The trial court awarded sentence of 1 year for commission of offence under Section 354 of IPC and 6 months for commission of offence under Section 448 of IPC. Looking to the fact that the appellant has committed crime against the institution, it cannot be said that the sentence awarded by the trial court is harsh, disproportionate or unreasonable and the same is not liable to be interfered with. The sentence part is also not liable to be interfered with. Accordingly, the appeal is hereby dismissed.
14. The appellant is reported to be on bail and his bail bonds are cancelled. The trial court will prepare super-session warrant and issue warrant of arrest against the appellant and after his arrest, he be sent back to the concerned jail for serving out the remaining part of the jail sentence. The trial court shall submit compliance report on or before 29th January, 2019.

Sd/-
(Ram Prasanna Sharma)
Judge