

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.84 of 2010**

Anand Ram s/o Bisahu Ram Chandan, aged about 37 years,
Grocery Shopkeeper, R/o Village Kanakot, Chowki
Machandur, PS Utai, District Durg (CG)

---- Appellant**Versus**

The State Of Chhattisgarh Through P.S. Utai, District Durg
(CG)

---- Respondent

For Appellant : Shri Aditya Chopra, Advocate on behalf
of Shri A.K. Prasad, Advocate

For State/ Respondent : Shri Lav Sharma, Panel Lawyer

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****05/10/2018**

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against the judgment dated 27.1.2010, passed by the Special Judge under the Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act, Durg, District Durg (CG) in Special Case No. 40/2009, whereby the appellant has been convicted under Section 354 of the Indian Penal Code, 1860 (for short the IPC) and sentenced to undergo R.I. for 1 year.

2. As per the case of prosecution, on 3.8.2009 at about 9.30 am, the appellant caught hold the prosecutrix and tried to outrage her

modesty. The matter was reported and investigated and after completion of trial, 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) There is no reliable evidence warranting conviction of the appellant and the trial Court has overlooked the material contradictions and omissions in the statement of the prosecution witnesses.

(ii) The prosecutrix has not made any hue and cry at the time of incident and did not inform about the incident to any responsible person and therefore, her version is not sustainable.

(iii) The trial Court has not considered the evidence of defence witnesses that due to outstanding amount, the prosecutrix has falsely implicated the present applicant, therefore, finding of the trial Court is liable to be reversed.

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 6 witnesses.

7. The case of the prosecution is based on statement of the prosecutrix who is examined as PW1. As per her version, on the date of incident, she was returning from School while she had gone to leave her child to the Classroom, at that time, the appellant came from behind and caught her left hand and asked her to accompany him. She further deposed that she denied accompanying the appellant, at the same time her brother in law Mukesh came there on hearing her cries and thereafter the appellant left the place. Version of this witness is supported by the version of F.I.R. which is lodged on next day of the incident in which name of the appellant is mentioned as culprit. The witness is firm on her statement right from the day of investigation and her earlier version recorded by the Investigating Officer is also corroborating her version as stated before the Court.

8. Smt. Jubeda Bai (PW2) has supported the version of the prosecutrix to whom she informed about the incident and after that report was lodged against the appellant. All the witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of the defence.

9. The defence witness, Jailuram (DW1) deposed that there was some transaction between the appellant and the prosecutrix and on that account the applicant has been falsely implicated. Version of

this witness is hardly tenable because in conservative society woman would not be used as pawn to wreck vengeance.

10. Looking to the overall evidence, the trial Court opined that the appellant used criminal force and tried to outrage the modesty of the prosecutrix. Mischief of the appellant falls within Section 354 I.P.C. for which the trial Court has convicted the appellant and the same is hereby affirmed and this Court has no reason to record a contrary finding.

11. Heard on the point of sentence:

The offence was committed on 3.8.2009 and at that time, corporeal punishment was not compulsory for offence under Section 354 IPC. The appellant has suffered jail term from 6.8.2009 to 11.8.2009 i.e. for 6 days. The corporeal punishment 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