

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 198 of 2005**

- Vishnu Satnami S/o Ramratan Satnami, aged about 20 years, R/o Ward Jalampur, Dhamtari, Tah. & Distt. Dhamtari (C.G.)

----Applicant**Versus**

- State of Chhattisgarh Through : Station House Officer, Police Station Kotwali, Dhamtari (C.G.)

---- Respondent

For Applicant	:	Shri Y.C. Sharma, Advocate.
For State/Respondent	:	Shri Adil Minhaj, P.L.

Hon'ble Shri Justice Pritinker Diwaker**Order On Board****28/06/2018**

01. The present Revision petition is directed against the judgment and order dated 23.03.2005 passed by the Additional Sessions Judge, Dhamtari, Sessions Division Raipur, in Cr.A. No.155/2004 affirming the judgment and order dated 18.06.2004 passed by Chief Judicial Magistrate, Dhamtari in Criminal Case No.343/2004 convicting the applicant under Sections 457 and 354 IPC & sentencing him to undergo R.I. for two years and R.I. for two years with fine of Rs.500/- plus default stipulation respectively.

02. Brief facts of the case are that on 22.02.2004 at 2.30 AM, FIR (Ex.P/1) was lodged by the prosecutrix (PW/1), aged about 15 year, alleging in it that when she was sleeping in the house along with her maternal grand father, the accused/appellant entered the house, caught hold of her hands, tried to pull her and then gaged her mouth

with an intention to outrage her modesty. Based on this FIR (Ex.P/1), offence under Sections 456 and 354 IPC was registered against the applicant.

03. After filing of the charge sheet, the trial Magistrate framed the charges against applicant under Sections 456 and 354 of IPC.

04. So as to hold the applicant guilty, the prosecution examined as many as 06 witnesses. Statement of the applicant 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.

05. Vide judgment and order dated 18.06.2004 the trial Magistrate has convicted the applicant under Sections 354 and 456 IPC. The judgment of the trial Magistrate has been affirmed by the appellate Court vide impugned judgment dated 23.05.2005, hence this revision.

06. Counsel for the applicant submits that he is not pressing this revision on merit and would confine his argument to the sentence part thereof only. He further submits that the applicant has remained in jail for more than five months, the incident took place in the year 2004, no useful purpose would be served in sending him back to jail and he be sentenced to the period already undergone by him.

07. On the other hand, supporting the impugned judgment it has been argued by the State counsel that no leniency be shown to the applicant and considering the evidence available on record, the impugned judgment is liable to be maintained.

08. Heard learned counsel for the parties and perused the material available on record.

09. Prosecutrix (PW/1) while supporting the prosecution case has stated that she knew the applicant. Her parents are not alive and she is residing with his maternal uncle. On the date of incident, the applicant entered her house, pulled her bed-sheet and thereafter gaged her mouth. During this scuffle, her material grand father woke-up and after seeing him, the applicant fled away from the spot. In cross-examination, she remained firm.

10. Samaru Ram (PW/3), material grand father of the prosecutrix, has also supported the prosecution case. Likewise, Vinod Kumar (PW/2) and Radhe Kishan (PW/4), brother and uncle of the prosecutrix respectively, have also supported the prosecution case.

11. C.L. Sidar (PW/5) - Investigating Officer, has duly supported the prosecution case.

12. Close scrutiny of the evidence makes it clear that on 21.04.2004 at about 8.00 PM, applicant gained entry in the house of prosecutrix and when he was trying to outrage the modesty of prosecutrix, her maternal grand father woke up and while the applicant was fleeing from the spot, the prosecutrix identified him and on the same day i.e. on 22.04.2004 at 2.30 AM, prompt FIR was lodged against applicant. Prosecutrix (PW/1), PW/2, PW/3 and PW/4 have duly supported the prosecution case. Considering the statement of prosecutrix (PW/1) and other witnesses, both the Courts below have arrived at a conclusion that the prosecution has successfully proved its case beyond the shadow of all reasonable doubt and held him guilty under Sections 354 and 456 of IPC. This Court finds no reason to interfere with the said findings and therefore, the same is hereby affirmed.

13. The only question which arises for consideration by this Court is as to what would be the appropriate sentence to be imposed upon the applicant.

14. Considering the overall facts and circumstances of the case, in particular the fact that the incident occurred 14 years ago, the applicant has already remained in jail for about five months, by now he may be middle aged person, this Court is of the opinion that no useful purpose would be served in sending him back to jail at this stage and the ends of justice would be served if he is sentenced to the period already undergone by him and is directed to pay additional fine of Rs.2000/- for each section.

15. In the result, the appeal is partly allowed. While maintaining conviction of the applicant under Sections 354 and 456 of IPC, his jail sentence is reduced to the period already undergone by him. However, he is directed to pay an additional fine of Rs.2000/- for each section (total Rs.4000/-) within six months from today. The fine amount so deposited by the applicant before the trial Court be paid to the prosecutrix after due verification by it.

Sd/-

(Pritinker Diwaker)
JUDGE