

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1000 of 2012

State Of Chhattisgarh, Through the District Magistrate Korea, District Korea, Chhattisgarh.

---- **Petitioner**

Versus

B.Tigga, S/o. Late Poulus Tigga, Aged about 57 years, R/o. Mana Camp, Raipur, District Raipur, Chhattisgarh.

---- **Respondent**

For Petitioner/State : Mr. Ashish Shukla, Govt. Advocate
For Respondent : Ms. Neha Verma, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

06.02.2018

Heard

1. The present petition, leave to appeal, is against the order dated 16.03.2012 passed by the First Additional Session Judge Manendragarh in Criminal Appeal No.66/2011 whereby the judgment of conviction dated 30.03.2011 passed in Criminal Case No.162/2010 for the offence under Section 294, 323 & 354 of I.P.C. was set aside by the learned appellate Court.
2. As per the prosecution case, the victim was working as Nagar Sena at Baikunthpur and on 02.07.2010 after pored while all were standing in the Verandah of office in police pared ground at 9:30, the accused came there and placed his hand on her shoulder. It was objected by her and thereafter when she went inside the store room and was standing alongwith one another Sainik/Constable Rekha Tandey wherein Santlal & Balram were also there, the accused again came there and placed his hand on the neck of the victim and embraced her. Thereafter again the respondent

accused caught hold of her neck and dragged her to store room and slapped her cheek and abused which was seen by Balram & Santlal. It was further stated that one Kalawati had intervened and other persons also appeared on the scene of incident and saved the victim thereafter the report was made on the next date by victim.

3. In the defence, it was contended by the respondent that on the date of incident 100-150 constables were there and it is not probable that before 100-150 constables the accused would indulge in such act. It is further stated by the defence that since victim was scolded for coming late to office she was angry. It was stated in order to avoid the victim from disciplinary action, the false report has been made.
4. Learned State counsel would submit that the statement of the victim who is examined as PW-1 would show that she has supported the case and even if it has not been supported by the other witness then in such case the statement of the victim could have been relied upon and thereby the order of the conviction made to the respondent by J.M.F.C. was well merited but subsequent appellate Court has misappreciated the evidence. He further submits that the present petition is delayed by 190 days, sufficient ground has been shown and delay was not deliberate; consequently, the appeal may be admitted for hearing.
5. Learned counsel for the respondent vehemently opposes the submission made and would contend that the delay has not been sufficiently explained and further the appellate Court while appreciating the evidence has come to finding that the statement given by the PW-1 cannot be relied upon. The said appreciation of

evidence when has not been supported by the other witness, the statement of prosecution witness PW-1 cannot be solely relied in view of the facts of this case.

6. Perused the documents and statement of the witnesses. The victim PW-1 has narrated the fact that on 02.07.2010 when she reached to the paved ground at 9:30 after paved while she was standing in the Verandah alongwith others, the accused came there and caught hold of her and embraced. Having objected when she went to the store room wherein Balram and Santlal present, again the accused came and placed his palm over her neck and pulled her. When she went away from the spot, again the accused came there caught hold of her by neck and slapped twice her cheek and abused, which was intervened by the other constables.
7. The statement of the PW-1 would show she has named the presence of Santlal who is examined as PW-2 and Balram who is examined as PW-3. These witnesses i.e. PW-2 & PW-3 have not supported the contention of the prosecutrix. The eye-witness Rekha Tandey PW-4 and one Kalawati PW-6 have also not supported the case of the prosecution. The witnesses were not declared as hostile. The statement of PW-2 would show that since the victim had come late as such accused has scolded and was warned to come on time in future. It is stated when she was scolded, she started crying. Thereby except the victim no independent witness has supported the case of the prosecution.
8. The report was made on 03.07.2010 while the incident was stated to be on 02.07.2010 and the victim is a police constable. In facts of case if there is any delay has been caused then it cannot be

equated to that of delay caused by the general public at large. Moreso in the place of incident presence of 100-150 constables is shown. Therefore, if the accused was intended to outrage the modesty then as a natural consequence the same would have been done in isolation not in an open public domain. Considering the same and statement of the witness, it appears that it would be wrong to re-appreciate the facts in the given set of evidence to arrive at a different conclusion that of appellate Court. Moreso the delay has been caused by the State in filing the appeal and it was stated that the judgment was passed on 16.03.2012 thereafter the permission was accorded on 06.12.2012. Therefore, for a long period from 16.03.2012 to 06.12.2012 the sanction was not accorded or obtained and what was the reason behind the same has not been explained properly. Therefore, in such circumstances, as a matter of right, it cannot be stated that the delay can be condoned in absence of cogent reasons for the delay.

9. Taking into the above discussions, I am not inclined to condone the delay or allow the application for leave to appeal as no ground is made out to reappreciate the facts on record. Accordingly, the petition is dismissed.

Sd/-
(Goutam Bhaduri)
Judge