

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 200 of 2001

- Ashok Satnami, S/o Jhari Ram Satnami, Aged 28 years, Resident of Sitapar, P.S. Simga, District Raipur (C.G.)

---- Appellant

Versus

- State of Chhattisgarh, Through Station House Officer, P.S. Bhatapara (Rural), District Raipur (C.G.)

---- Respondent/State

For Appellant	:	Shri Anand Kumar Gupta, Advocate
For Respondent/State	:	Shri Vikash Shrivastava, Panel Lawyer

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

19.12.2019

- When the matter is called out twice, no one appears on behalf of the appellant even in first round as well as in second round. In these circumstances, this Court is left with no other option but to appoint a counsel through the High Court Legal Services Committee.
- Shri Anand Kumar Gupta, Advocate, present in the Court, empaneled Lawyer of High Court Legal Services Committee, on being asked by this Court, he is ready to argue the matter. Therefore, this Court has appointed Shri Anand Kumar Gupta, Advocate to argue the matter on behalf of the appellant. Registry is directed to inform High Court Legal Services Committee in this regard for doing the needful.
- This appeal arises out of the judgment of conviction and order of sentence dated 12.01.2001 passed by the Second Additional Sessions Judge, Baloudabazar, District Raipur (C.G.) in Sessions Trial No. 271 of 2000, whereby the appellant stands convicted and sentenced as under:-

<u>Conviction</u>	<u>Sentence</u>
Under Section 354 of Indian Penal Code (for short 'IPC')	R.I. for six months and pay a fine of Rs.2,000/-, in default of payment to further undergo R.I. for four months

4. Facts of the case in brief are that on 26.04.2000 at about 12:00 noon, when the prosecutrix (PW-4) aged 33 years was working in the field (*badi*), the appellant/accused came there, asked her for water and he used criminal force against her with intent to outrage her modesty and offered Rs.100/- for sexual favour and threw her on the cot 3-4 times due to which her bangles were broken. Thereafter, the prosecutrix somehow rescued herself and went to her home where her husband was not there because her husband had gone to attend marriage function. The incident was informed to one Jadgev (PW-5). On the next day i.e. on 27.04.2000, her husband returned to home, the prosecutrix narrated the incident to her husband and Sarpanch of village Sitapar, thereafter, the prosecutrix lodged F.I.R. (Ex.-P/5) against the appellant on the next day i.e. on 27.04.2000 at about 19:00 hours. The prosecutrix (PW-4) was medically examined by PW-1 Dr. Rajesh Kumar Awasthi and he gave his report Ex.P/1. As per report (Ex.-P/1), Doctor found three number of linear abrasions on the back of the prosecutrix in between 8 cm to 6 cm which were of dark brownish colour. The prosecutrix was complaining of pain on her chest. MLC report Ex.-P/1 of the prosecutrix has been proved by Doctor (PW-1).
5. During investigation, spot map was prepared vide Ex.-P/4, 17 pieces of broken bangles of the prosecutrix were seized from the place of occurrence vide Ex.-P/3. Statement of witnesses were recorded by the Investigating Officer. The accused/appellant was arrested on 29.04.2000. After completion of investigation, charge-sheet was filed by the police against the appellant/accused for the offence under Sections 376, 511, 294 & 506 of IPC. The trial Court however framed the charges against the appellant under Sections 376(1)/511, 294 & 506 Part-II of IPC.
6. So as to hold the accused/appellant guilty, the prosecution examined 6 witnesses i.e. Dr. Rajesh Kumar Awasthi (PW-1), Devcharan (PW-2),

Ghanshyam (PW-3), prosecutrix (PW-4), Jagdev Ram (PW-5) and R.K. Dubey (PW-6) in support of its case. Statement of the accused/Appellant 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. The appellant stated that he is capable to perform sexual intercourse but he did not do the same with the prosecutrix. No defence witness has been examined on behalf of the appellant.

7. After appreciation of the evidence available on record, the learned Second Additional Sessions Judge, Baloudabazar, District Raipur (C.G.) by the impugned judgment convicted and sentenced the accused/Appellant as mentioned in para- 3 of this judgment, hence this appeal.
8. Learned counsel for the appellant submits that the appellant has been falsely implicated by the prosecutrix and she has lodged the FIR (Ex.-P/5) after delay of one day which was registered on 27.04.2000 and explanation given by the prosecutrix regarding delay in lodging the F.I.R. is not acceptable. He further submits that no independent witness has proved the prosecution case, therefore, the trial Court has erred in law in convicting the appellant under the above mentioned Section of IPC. Alternatively, he submits that if this Court finally comes to conclusion that the appellant has rightly been convicted by the trial Court, considering the age of the appellant i.e. 28 years on the date of incident, the fact that incident took place around 19 years ago, there is no criminal antecedents of the appellant, he may be given the benefit of Probation of Offender Act and his sentence may be reduced to the period already undergone by him.
9. On the other hand, learned counsel for the State supports the impugned judgment and submits that there is no delay in lodging the FIR by the prosecutrix and she has given proper explanation regarding delay in lodging the FIR. He submits that MLC report Ex.-P/1 also corroborates the evidence of the prosecutrix (PW-4), therefore, conviction of the appellant is strictly in

accordance with law.

10. Heard learned counsel for the parties and also perused the records of the trial Court.

11. PW-4 prosecutrix has categorically stated that when she was working in the field (*badi*) of Jagdev, the accused/appellant two times came for taking water, thereafter the appellant again came and offered Rs.100/- for sexual intercourse from her. Then the appellant threw her on the cot 3-4 times and her bangles were broken, when she denied this, the appellant threatened her by knife. Prosecutrix has stated that thereafter, she fled away from the place of occurrence and reached her home to inform about the incident to her husband, but her husband was not in the home because he had gone to attend marriage function. Then, the prosecutrix informed about the incident to Jagdev (PW-5). Prosecutrix has stated that on the next day of incident, her husband came in the house and she narrated the story to him and Sarpanch of village Sitapar, then she lodged the FIR against the appellant. Therefore, explanation given by the prosecutrix regarding delay of one day in lodging the FIR appears to be trustworthy and plausible and can safely be accepted.

12. PW-5 Jagdev has stated that on 26.04.2000, the prosecutrix came to his house weeping and narrated the incident. PW-5 has duly supported the version of the prosecutrix (PW-4).

13. As per Ex.-P/1 (MLC report of the prosecutrix), the injuries found on the body of the prosecutrix were duly proved by PW-1 Doctor Rajesh Kumar Awasthi. As per Ex.P/3, pieces of broken bangles of the prosecutrix were seized from the place of occurrence. Looking to the evidence led by the prosecution, there is no reason to disbelieve the statement of prosecutrix (PW-4) as also MLC report Ex.-P/1. Hence, the learned trial Court has rightly convicted the appellant under Section 354 of IPC.

14. So far as the quantum of sentence is concerned, considering the facts and

circumstances of the case, the incident took place around 19 years back and the fact at the relevant time offence under Section 354 IPC was punishable with imprisonment of either description for a term which may extend to two years, or with fine, or with both, further the age of the appellants 28 years and the age of the prosecutrix 33 years as per charge-sheet at the time of incident, the fact that there is no criminal antecedent of the appellant, he has already remained in jail for seven days and is on bail since 2001 as also the appeal is pending since 2001, this Court is of the opinion that no useful purpose would be served in sending him back to jail at this stage and ends of justice would be served if the appellant is sentenced to the period already suffered by him while maintaining the fine amount as awarded by the trial Court with default stipulation.

15. In the result, the appeal is allowed in part. While maintaining the conviction of the appellant under Section 354 of IPC, he is sentenced to the period already undergone by him. However, the fine amount imposed on him with default sentence by the trial Court shall remain intact. The appellant is reported to be on bail, therefore, his bail bonds shall remain in force for a period of six months from today in view of the provisions of Section 437-A of Cr.P.C.

Sd/-
(Gautam Chourdiya)
Judge