

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 31 of 2010

Rajkumar Kashyap, S/o Mandhar Kashyap, aged about 44 years,
R/o Sagaounbadi, Police Station Deobhog, District Raipur (CG)

---- Applicant

Versus

State of Chhattisgarh, through the District Magistrate, District
Raipur (C.G.)

--- Respondent

For Applicant : Smt. Mandwi Bhardwaj, Advocate, on behalf
of Shri Shivedu Pandya, Advocate

For Respondent : Shri Aman Kesharwani, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

02/05/2019

Case of the prosecution discloses that on 26.11.2004 at about 8 PM when the prosecutrix and her son were sleeping in her house, the accused/applicant gained an entry therein and by catching hold of her hand he tried to outrage her modesty. Next day after disclosing the incident to her neighbours she along with others went to the Police Station and gave a type-written report under her thumb impression and thereafter FIR (Ex.P-5) was registered under Sections 354 and 451 IPC and after investigation *challan* was also filed under the same sections.

2. On the basis of material available on record learned Judicial Magistrate First Class, Deobhog held the accused/applicant guilty under Sections 457 and 354 IPC and sentenced him to undergo RI for 6 months with payment of fine of Rs.1000/-, plus default stipulation under each section. Findings recorded by learned Magistrate have also been maintained in appeal vide judgment impugned dated 15.01.2010.

3. Counsel for the accused/applicant submits that both the Courts below have completely ignored the contradictions and omissions in the

evidence of witnesses in particular the prosecutrix (PW-1) and, therefore, the judgment impugned is liable to be set aside. State counsel however supports the judgment impugned.

4. From the evidence of PW-1 it is apparent that on the date of incident in the night hours the accused/applicant entered her house, caught hold of her hand and tried to outrage her modesty and in the effort made by the prosecutrix to wriggle out from the clutches of the accused/applicant her sari was also torn. Evidence of PW-4 also corroborates the version of the prosecutrix by stating that after the incident the prosecutrix had come to his house and disclosed the incident. He is also the witness to seizure of Saree under Ex.P-4. One of the witnesses being PW-5 has also stated that at the time of the incident when he was passing by the house of the prosecutrix he had heard an alarm raised by her. He also admitted his signature on the seizure memo Ex.P-4. Thus having seen the entire evidence in particular that of the prosecutrix (PW-1) and her son (PW-3) who is also stated to have seen the torn saari of his mother it is evident that the accused/applicant had committed the offences alleged against him. Accordingly, the findings recorded by both the Courts below convicting the accused/applicant under Sections 457 and 354 IPC are hereby maintained.

5. As regards sentence, keeping in mind the fact that the incident is of the year 2004 involving about 15 years' substantial period having been elapsed since then, and also not being oblivious of the fact that the accused/applicant has already remained in jail for about a week, according to considered opinion of the this Court no useful purpose is going to be served in again sending him to jail. Accordingly, the sentence imposed on the accused/applicant is reduced to the period already undergone. In lieu thereof the accused/applicant to pay fine of

Rs.3000/- inclusive of the one imposed by the Court below under each section, to be deposited in the trial Court within a period of 4 months from today or else this order will not be available to the accused/applicant.

6. Revision is thus allowed in part.

Sd/-
(Vimla Singh Kapoor)

Judge

Jyotishi/Ajay