

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1301 of 2003

- Shiva @ Shivanand @ Shivshankar S/o Bakshiram Nakhate, aged 24 years, R/o Itwari Railway Quarter, Behind P.W. Office, Qr. No. 30/A, or Ramsupratap Nagar, Kawda Ped, Nagpur, P.S. Kalmana, Nagpur, Maharashtra, present Address -Runningroom Dongargarh, District Rajnandgaon (C.G.)

---- Appellant

Versus

- The State of Chhattisgarh, through Railway Police Dongargarh, District Rajnandgaon (C.G.)

---- Respondent/State

For Appellant	:	Shri Pravin Kumar Tulsyan, Advocate
For Respondent/State	:	Shri Vikash Shrivastava, Panel Lawyer

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

13.09.2019

1. 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 the counsel through the High Court Legal Services Committee.
2. Shri Pravin Kumar Tulsyan, 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 Pravin Kumar Tulsyan, 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.
3. This appeal arises out of the judgment of conviction and order of sentence dated 22.11.2003 passed by the Fourth Additional Sessions Judge, Raipur (C.G.) in Sessions Trial No. 114 of 2003, whereby the Appellant stands convicted and sentence as under:-

<u>Conviction</u>	<u>Sentence</u>
Under Section 354 of Indian Penal Code	R.I. for six months and pay a fine of Rs.500/-, in default of payment to further undergo R.I. for one month.
Under Section 145(c) of the Railways Act, 1989	R.I. for three months
Both sentences to run concurrently	

4. The prosecution case is that the prosecutrix (PW-1), who is resident of village Gogaon, Raipur, was studying in 7th Class and the accused/appellant was cook in Railway Running Room, Dongargarh. As per unnumbered F.I.R. (Ex.-P/1) lodged 01.02.2003 in G.R.P. Raipur by the prosecutrix (PW-1), she and her friend Gunja Lahre (PW-12), resident of Gogaon, were studying in 7th Class. On 31.1.2003 both PW-1 and PW-12 were going from Raipur to Nagpur by train, when the train reached at Dongargarh railway station, both stayed at Dongargarh station for *Devi-Darshan*. After *Devi-Darshan*, at about 08:00 pm when they were sitting at Platform No.1 near Canteen of Railway Station, Dongargarh, the accused/appellant came there and offered them job in STD at Nagpur. Thereafter, at about 12:00 pm in the night, the appellant took both PW-1 and PW-12 to his house situated at Misiya-Bada, where the appellant's friend Ramesh (PW-7) was also present. After taking meal at about 01:00 am in the night, the appellant locked her friend Gunja Lahre (PW-12) in toilet, thereafter on the point of knife, the appellant pushed the prosecutrix on the cot with intention to outrage her modesty and in the said process, the bangles of the prosecutrix were broken. Based on this FIR (Ex.-P/1), the offence under Sections 363, 366, 342, 354 & 506B of IPC and Section 145(c) of the Railways Act was registered against the accused/appellant. During investigation, railway tickets (Ex.-P/2, Ex.-P/3 and Ex.-P/4) were seized vide Ex.-P/5 by the

Investigating Officer on 01/02/2003. Thereafter, since the offence occurred within jurisdiction of G.R.P. Station, Dongargarh, the case diary was submitted to the Station House Officer, G.R.P. Dongargarh. Based on F.I.R. (Ex.-P/1), the F.I.R. (Ex.-P/15) was registered at Dongargarh Station. Broken bangles of the prosecutrix were seized from near the window of house of Punaram (PW-4) vide Ex.-P/10. As per Ex.-P/12, memorandum statement of accused/appellant was recorded on 02.02.2003 consequent to which knife was recovered from Railway Running Room at the instance of the appellant vide Ex.-P/13. Ex.-P/6 is the test identification parade of broken bangles of the prosecutrix and knife used by the appellant at the time of incident. Ex.-P/7 is the certificate of date of birth of Gunja Lahre (PW-12) and Ex.-P/8 is the certificate of date of birth of the prosecutrix (PW-1). Ex.-P/9 is the spot map. After completion of investigation, charge-sheet was filed by the police on 28.02.2003 for the offence under Sections 363, 366, 342, 354 & 506B of IPC and Section 145(c) of the Railways Act against the appellant.

5. While framing charge, the learned Fourth Additional Sessions Judge, Raipur (C.G.) framed the charges against the accused/appellant under Sections 363, 366, 342, 354 & 506 of IPC and Section 145(c) of the Railways Act.
6. So as to hold the accused/appellant guilty, the prosecution examined 12 witnesses namely prosecutrix (PW-1), Jaipal Verma (PW-2), Jawaharlal Bhagaut (PW-3), Punaram (PW-4), Badri Prasad Sankrey (PW-5), Gopal Singh Chauhan (PW-6), Ramesh Mundu (PW-7), D.R. Singh (PW-8), P.N. Elade (PW-9), Keshamlal Lahre (PW-10), Arun Kumar Uikey (PW-11) and Gunja Lahre (PW-12) 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.
7. After appreciation of the evidence available on record, the learned Fourth

Additional Sessions Judge, Raipur (C.G.) by the impugned judgment, while acquitting the appellant of the charges under Sections 363, 366, 342 & 506 of IPC, convicted and sentenced the accused/Appellant as mentioned in para- 3 of this judgment, hence this appeal.

8. Shri Pravin Kumar Tulsyan, learned counsel for the appellant, submits that the prosecutrix (PW-1) has falsely implicated the appellant by alleging that the appellant abducted her and her friend Gunja Lahre (PW-12) from platform No. 1 of railway station Dongargarh and took both PW-1 and PW-12 to his house where one Ramesh (PW-7) was also present. He submits that Gunja Lahre (PW-12) and Ramesh (PW-7) have completely turned hostile and have not supported the prosecution case. He further submits that after considering the prosecution case in light of evidence adduced by it, learned trial Court has rightly acquitted appellant of the charges under Sections 363, 366, 342 & 506 of IPC, but, has wrongly convicted him under Section 354 of IPC and Section 145(c) of the Railway Act as the prosecution has utterly failed to prove guilt of the appellant under the aforesaid Sections.
9. Per contra, Shri Vikash Shrivastava, learned Panel Lawyer for the State, submits that after due appreciation of prosecution evidence, the learned trial Judge found the offence proved against the appellant, which requires no interference.
10. Heard learned counsel for the parties and also perused the records of the trial Court.
11. PW-1 prosecutrix stated in para-1 that on 01.02.2003, she and her friend Gunja Lahre (PW-12) were going to Dongargarh by train for *Devi-Darshan*. After *Devi-Darshan*, both were sitting in Dongargarh railway station and they were hungry. At that time appellant met them, and told her to come to his quarter to have their meal and on this, both (PW-1 & PW-12) went to the appellant's quarter where she and her friend prepared meal and ate the same. In para-2 of her evidence, she stated that after taking the meal, the

appellant caught hold of her hand and told that he wanted to marry her and in this process her bangles were broken. She stated that prior to outraging of her modesty, the appellant had locked her friend (PW-12) in a bathroom. She stated that another boy was also there in another room. She stated that after getting herself free from the hold of the appellant, she went towards bathroom where her friend (PW-12) was locked by the appellant and opened the door. In para-3, she stated that in another room in the quarter where the appellant's friend was sitting, the door of that room was also opened by prosecutrix, then appellant's friend told the appellant not to evetease them, then the appellant left her and her friend Gunja to Dongargarh Station. Therefore, she lodged the report (Ex.-P/1) against the accused/appellant. PW-1 further stated in para-8 that in her police statement (Ex.-D/1), she had informed the police that Ramesh was locked by the appellant in a room and if this fact was not written in her police statement Ex.-D/1, she cannot tell the reason. The prosecutrix stated in her police statement (Ex.-D/1) that her friend Gunja Lahre was locked by the appellant in toilet.

12. PW-2 Jaipal Verma is the father of the prosecutrix. He stated that in the month of February, 2003, when he came to his house in the evening, his daughter (prosecutrix) was not in the home. He further stated that his wife told him that their daughter (prosecutrix) and her friend Gunja had come after taking leave from school and she (wife of PW-2) did not know as to where they had gone. He also stated that when her daughter did not come to the house, he searched for her and on the next day he went to her school, where he met the Head Master. He stated that the Head Master told him that his daughter and Gunja both had taken leave for five minutes and their bags were left in the school. Thereafter, he (PW-2) and brother of Gunja searched for them. PW-2 stated that on next day at about 12:00 Noon, his daughter (prosecutrix) returned along the police. PW-2 also stated that his wife told him that in Dongargarh, one boy took their daughter in a room and outraged

her modesty. In his police statement Ex.-D/2, he stated that the prosecutrix had not told about the incident.

13. PW-3 Jawaharlal Bhagaut is the Head Master of the school where the prosecutrix was studying. He is not an eyewitness. PW-3 stated that on 31st January, he was teaching in 7th Class, then the prosecutrix and Gunja came and took leave for five minutes for going to bathroom, but both of them did not return to the Class. He gave the certificate (Ex.-P/8) on the basis of admission register of the school regarding date of birth of the prosecutrix which was required by the police.

14. PW-4 Punaram is a witness of spot map (Ex.-P/8) and seizure of broken bangles (Ex.-P/10). PW-5 Badri Prasad Sankre is the witness of memorandum (Ex.-P/12) and seizure of knife (Ex.-P/13), but he has not supported the prosecution case and he has been declared hostile. PW-6 Gopal Singh Chouhan stated that both girls (prosecutrix and her friend) went to the appellant's house for taking meal and after taking meals, both girls came back at railway station. PW-6 has not supported the prosecution case and he has been declared hostile.

15. PW-7 Ramesh stated that he is posted as railway electrical driver in Dongargarh and he is living in the house of one P.C. Darbade (PW-4) on rent basis. PW-7 stated that the accused/appellant never took the girls to his house. PW-7 has not supported the prosecution case and he has been declared hostile.

16. PW-10 Kesamlal Lahre is the father of Gunja Lahre (PW-12). He has stated that his daughter (PW-12) has returned on the next day at about 01:00 pm and his daughter told him that she had gone for *Devi-Darshan* at Dongargarh. He stated that his daughter did not tell about the incident of Dongargarh. PW-10 has not supported the prosecution case and he has been declared hostile.

17. PW-12 Gunja Lahre is the girl who accompanied the prosecutrix from

Raipur to Dongargarh. She has stated that she and the prosecutrix (PW-1) were sitting in Dongargarh Station, then the appellant came there and asked as to from where both of them have come. Then she and the prosecutrix told the appellant that they are dying of hunger. Thereafter, the appellant took both of them to his house near the station and both of them took the meals. PW-12 Gunja has stated that after taking meals, she had slept. She also stated that what the appellant did with the prosecutrix, she did not know. PW-12 did not support the prosecution case and she has been declared hostile.

18. PW-8 D.R. Singh, Sub Inspector, has seized the broken bangles of the prosecutrix vided Ex.-P/10 and on the basis of memorandum statement of the accused/appellant, he seized one knife. But broken bangles and knife were not produced before the Court and were not marked as articles.

19. In the present case, the incident happened on 31.01.2003 and the FIR (Ex.-P/1) was lodged on 01.02.2003. As per statement of the prosecutrix (PW-1), on the point of knife, the appellant caught hold of her hand, tried to outrage her modesty and in this process her bangles were broken. If the bangles of the prosecutrix were broken during resisting, she would have been injured, but no injury was found on her hands and she was not medically examined by the prosecution. Therefore, it seems that the prosecutrix (PW-1) and her friend Gunja Lahre (PW-12) both had voluntarily gone to the house of the appellant, where both of them took the meals and thereafter returned to the station. Looking to the contradictory statement (Ex.-D/1) of the prosecutrix, it is very unsafe to convict the appellant.

20. Considering the evidence adduced by the prosecution, in particular the statement of prosecutrix (PW-1), the trial Court has come to the conclusion that there is no evidence against the appellant with regard to offence punishable under Sections 363, 366, 342 & 506 of IPC and thus, acquitted the appellant of the above charges of IPC.

- 21.** But, on the same set of evidence learned trial Court convicted the appellant for the offence punishable under Section 354 of IPC and Section 145 (c) of the Railways Act on conjecture and surmises, which cannot be made basis of conviction at all. Learned trial Court in paragraphs 16 to 18 & 20 of the impugned judgment tried to justify his findings, but, conjecture and surmises cannot take place of the truth. In this case, wife of PW-2, mother of the prosecutrix, has not been examined by the prosecution for the reasons best known to it.
- 22.** Now, the other witness Sub-Inspector D.R. Singh (PW-8) and Astd. Sub-Inspector Arun Kumar Uikey (PW-11), proved their documents for performing their official duties. Their statements are having value in that situation only when the prosecutrix and other independent prosecution witnesses supported the case of the prosecution.
- 23.** In view of the aforesaid discussion, in my considered opinion, the learned trial Court has committed error in holding the appellant guilty of the offence punishable under Section 354 of IPC and Section 145 (c) of the Railways Act, thus, the impugned judgment is liable to be set aside.
- 24.** Resultantly, the appeal filed by the appellant stands allowed. The impugned judgment dated 22.11.2003 is hereby set aside and the appellant is acquitted of the charges levelled against him under Section 354 of IPC and Section 145 (c) of the Railways Act.
- 25.** Vide order dated 12.12.2003, substantive jail sentences of the appellant were suspended by this Court and a condition was imposed that if the appellant fails to appear even once, the bail granted to him shall automatically stand cancelled and in that event, the trial Court shall take action against the appellant and also against the sureties. A report dated 26.07.2010 has been received from the Ninth Additional Sessions Judge (FTC), Raipur that the appellant has jumped bail and he is not appearing. Therefore, by order dated 29.09.2010, this Court has cancelled the bail

bonds and directed that the appellant shall now be arrested and be submitted to serve out the remaining period of sentence. The trial Court shall take action against the appellant and against the sureties and a copy of this order be sent to the Ninth Additional Sessions Judge (FTC), Raipur for taking appropriate action.

Since the appellant has already been acquitted of the charges levelled against him, the arrest warrant issued against the appellant pursuant to the order dated 29.09.2010 of this Court is deemed to be cancelled and he need not surrender.

Sd/-

(Gautam Chourdiya)
Judge