

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 220 of 2011**

- Ashwani Kumar S/o Bhagwat Jharia, aged about 23 years, R/o village Mandalatola, Thana Bodla, district Kabirdham (C.G.)

---- Applicant

Versus

- State of Chhattisgarh, through District Magistrate, Kawardha and Police Station Bodla, District Kabirdham (C.G.)

---- Respondent

For Applicant	:	Shri P.K. Tulsyan, Advocate
For Respondent/State	:	Shri Suryakant Mishra, PL

Hon'ble Smt. Justice Rajani DubeyOrder On Board**26.04.2019**

1. The present revision arises out of the impugned judgment of conviction and order of sentence dated 31/03/2011 passed by the Sessions Judge, Kabirdham (Kawardha), in Cr. Appeal No. 47/2009 whereby, the learned appellate Court below has confirmed the conviction and sentence of the accused/applicant as awarded by the learned Chief Judicial Magistrate First Class, Kabirdham (Kawardha), vide its judgment dated 10/12/2009 in Criminal Case No. 420/2006 for the offence under Sections 451 and 354 of IPC and sentenced him to undergo R.I. for six months with fine of Rs. 500/- and R.I. for six months, plus default stipulation Respectively.

2. Brief facts of the case are that on 10.04.2006 the prosecutrix was all alone in the house, her parents had gone to some other village and her younger sister had gone to watch T.V. in neighbour's house. At about 1:30 AM, the applicant entered the prosecutrix' house and tried to outrage her modesty. The prosecutrix, somehow, managed to push

the applicant and, thereafter, ran away towards kitchen garden where applicant caught hold of her and started quarreling which was seen by neighbours Urmila Bai, Mangleen and Kumari Bai. Thereafter, an FIR was lodged against the accused/applicant. After completion of investigation, charge-sheet was filed and charges were framed under Section 451, 354, 506-B and 323 of IPC.

3. So as to hold the accused/applicant guilty, the prosecution has examined as many as 08 witnesses. Statement of the accused/applicant was also recorded under Section 313 of the Cr.P.C. in which he denied the charge leveled against him and pleaded innocence and false implication in the case.

4. After hearing the parties, vide impugned judgment of conviction and order of sentence dated 10/12/2009, learned Chief Judicial Magistrate, has acquitted the accused/applicant for the offence under Section 506-B and 323 IPC and convicted him under Section 451 and 354 and sentenced him to undergo R.I. for six months with fine of Rs. 500/- and R.I. for six months, plus default stipulation Respectively. This order was appealed by the applicant and in the appeal, learned Appellate Court has affirmed the conviction and sentence of the appellant. Hence, the present revision.

5. Heard learned counsel for the parties and perused the material on record including the impugned judgment.

6. Counsel for the applicant submits that he is not pressing the revision so far as it relates to the conviction part of the judgment and would confine his argument to the sentence part thereof only. According to him, the incident is said to have taken place in the year 2006, and thereby more than 13 years have rolled by since then. He is aged about 40 years. The applicant has already remained in jail for one month, and no useful purpose would be served in again sending him to jail, therefore, in the interest of justice, it would be appropriate if the sentence imposed upon him may be reduced to the period already undergone by him.

7. Learned counsel for the State has no objection to this

preposition.

8. Having gone through the material on record and the evidence of the witnesses prosecutrix (PW-1), Urmila Bai (PW-2), Kumari Bai (PW-4), Sharda (PW-5), Kunti Bai (PW-6), Nandram (PW-7) and Champalal (PW-8) involvement of the accused/applicant in the crime in question stands proved beyond reasonable doubt. This Court does not see any illegality in the findings recorded by both the Courts below as regards conviction of the appellant under Sections 451 and 354 of IPC.

9. As regards sentence, keeping in view the facts that incident had taken place in the year 2006, and further that the appellant had already remained in jail for one month therefore, his sentence is liable to be reduced to the period already undergone by him.

10. In view of the above consideration, the revision is partly allowed. While maintaining the conviction of the appellant, he is sentenced to the period already undergone by him.

Sd/
(Rajani Dubey)
JUDGE