

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 52 of 2008

Sadanand @ Kana Son of Bishahu Pandey, aged about 31 years,
Resident of Kolda, Police Station – Bagbahra, District
Mahasamund, CG.

---- Applicant

Versus

State of Chhattisgarh through District Magistrate Mahasamund,
District Mahasamund, CG.

---- Respondent

For Applicant : Smt. Indira Tripathi, Advocate

For State/Respondent : Shri Himanshu Sharma, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

10/04/2019

Facts necessary for disposal of this revision petition, in brief, are that on 30.09.2005 at about 5.30 PM when the prosecutrix was going to the field to answer the call of nature, the accused/applicant along with two others came there on a motorcycle, caught hold of her hand, pulled out her sari, and when she raised an alarm, he fled away with the chain worn by her. On hearing the alarm raised by the complainant her mother (PW-2) and one Hari prasad (PW-4) came there to whom she narrated the entire incident and then lodged the FIR report Ex. P-1. On the basis of said report, offence under Section 354 IPC was registered against the accused/applicant. After completion of investigation *challan* was filed under the same section followed by framing of charge.

2. Learned Judicial Magistrate First Class, Mahasamund vide judgment dated 28.03.2007 convicted the accused/applicant under Section 354 IPC and sentenced him to undergo RI for three months and pay fine of Rs. 500/- plus default stipulation. In appeal also the findings recorded by the trial Court

have been affirmed vide judgment impugned dated 16.01.2008 passed in Criminal Appeal No. 34/2007. Hence this revision.

3. Counsel for the accused/applicant submits that the statement of the complainant (PW-1) is full of contradictions and omissions and therefore, the same should not have been made a basis for conviction of the accused/applicant under Section 354 IPC. She submits that though the complainant has stated that in the scuffle she received certain injuries but there is no medical evidence to prove this fact. She further submits that even if the entire case of the prosecution is taken as it is, the accused/applicant cannot be convicted under Section 354 IPC.

4. State counsel however supports the judgment impugned and submits that looking to the conduct of the accused/applicant where he caught hold of the complainant and tried to remove her sari with an intention to outrage her modesty, both the Courts below have been fully justified in convicting the accused/applicant u/s 354 IPC and, therefore, no interference with the well reasoned conclusion drawn by Courts below is called for.

5. Prosecutrix (PW-1) has categorically stated that on the date of incident in the evening hours when she was going to answer the call of nature, the accused/applicant along with two others came there on a motorcycle, caught hold of her hand and pulled her sari and decamped with the chain worn by her. She has further stated that on hearing the cries raised by her, PW-2 and PW-4 rushed the spot to whom she narrated the entire incident and thereafter lodged the report Ex. P-1. In cross examination also she has reiterated the things which find place in the examination-in-chief. The sari worn by the prosecutrix was also seized under Ex. P-3. PW-2 - her mother has also supported the version of PW-1 stating that when she had gone to fetch water, she heard the cries of the prosecutrix and when she rushed to the spot, the prosecutrix was found in torn sari and blouse alone and informed her about the act of the accused/applicant trying to remove her sari after catching hold of her hand with intention to outrage her modesty. She

is also stated to have seen the accused/applicant fleeing away along with his companion on a motorcycle. PW-4 who rushed to the spot after hearing the alarm of the prosecutrix has stated that the prosecutrix had informed him about the incident where the accused/applicant had pulled out her sari. He also stated that the accused/applicant was seen by him fleeing away on the motorcycle along with his colleagues.

6. Over all evidence of the witnesses in particular that of PW-1 goes to show that on the date of incident at about 5.30 PM when she was going to the field for answering the call of nature, the accused/applicant came there on motorcycle along with his companioning and caught hold of her and tried to remove her sari with intention to outrage her modesty. The version of the prosecutrix also gets corroboration from her mother (PW-2). The Courts below, therefore, do not appear to have committed any error in holding the accused/applicant guilty under Section 354 IPC. Conviction part of the judgment impugned is, therefore, maintained.

7. As far as sentence part of the judgment impugned is concerned looking to the fact that the incident had taken place in the year 2005 and also keeping in mind fact that the accused/applicant has remained in jail about a week, this Court is of the opinion that no useful purpose would be served in again sending him to jail. Accordingly, the sentence imposed on him is reduced to the period already undergone.

8. Revision thus allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge