

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 20-8-2019****Pronounced on 21-8-2019****CRA No. 950 of 2002**

(Arising out of judgment of conviction and order of sentence dated 23/08/2002 passed by the Special Judge and Additional Sessions Judge, Durg (CG) in Special Case No. 45/2002)

Dilharan, S/o Chintaram Kenwat, aged about 29 years, Occupation Labour, R/o Village Changori, P.S. Pulgaon, District Durg (CG).

---- Appellant**Versus**

State of Chhattisgarh.

---- Respondent

For Appellant	:	Mr. Atul Pandey, Advocate
For State	:	Mr. D.K.Tiwari, Dy. Govt. Advocate

Hon'ble Shri Sharad Kumar Gupta, J.**C.A.V. JUDGMENT**

1. Challenge in this appeal is levied to the judgment of conviction and order of sentence dated 23/08/2002 passed by the Special Judge and Additional Sessions Judge, Durg (CG) in Special Case No. 45/2002 whereby and whereunder, he has convicted and sentenced the appellant as under :-

Conviction u/S.	Sentence RI.	Fine	In default of payment of fine
354 Indian Penal Code (in short 'IPC')	6 months	Rs.1,000/-	3 months RI

2. In brief, the prosecution story is that at the time of alleged incident prosecutrix was aged about 11 years. She is a member of Scheduled Caste. She is a resident of village Changori. On 11.02.2002 at about 7:30 p.m., she was returning back from the grocery shop. On the way, appellant caught hold her, pressed her breast. She returned back in her house and narrated the incident to her father. On 13.02.2002 she lodged an F.I.R. in police station Ajak, Durg against him. After completion of the investigation, a charge sheet was filed

against him for the offence punishable under Section 354 of IPC and Section 3(1) (xi) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. The trial Court framed the charges against him under Sections 354 of IPC and Section 3(1)(xi) of SC, ST Act. He abjured the charges and faced the trial. To bring home the charges against him, the prosecution examined as many as 6 witnesses in all. He did not examine any witness on his defence. After conclusion of trial, the trial Court convicted and sentenced him as mentioned above. However, the trial Court acquitted him for the offence punishable under Section 3(1)(xi) of SC, ST Act.

3. Being aggrieved by the aforesaid judgment of conviction and order of sentence, the appellant has preferred this criminal appeal.

4. Counsel for the appellant submits that the appellant has been falsely implicated. Trial Court has not properly appreciated the evidence available on record in proper perspective. FIR is delayed. Therefore, the impugned judgment of conviction and order of sentence may be set aside and he may be acquitted of the aforesaid charge.

5. On the other hand, Deputy Government Advocate appearing for the State supported the impugned judgment and submitted that the trial Court has rightly convicted and sentenced the appellant. Hence, the appeal may be dismissed.

6. P.W.4 prosecutrix says in para No.1 of her statement given on oath that she was returning back from grocery shop in the evening. On the way, the appellant overpowered her and used criminal force upon her body.

7. P.W.5 Hardayal, who is the father of the prosecutrix says in para No.1 of his statement given on oath that prosecutrix told him that she was returning back from the grocery shop in the evening the appellant used criminal force on her body.

8. P.W.6 Padumlal, who is the uncle of prosecutrix says in para No.1 of his statement given on oath his brother had told him that the appellant molested prosecutrix.

9. There is no such material available on record on strength of which it can be said that aforesaid witnesses had stated aforesaid statements only because prosecutrix had got compensation from State Government, knowingly that appellant has not committed any offence.

10. There are no such omissions and contradictions dealt during

cross-examination of P.W. 4 prosecutrix, P.W. 5 Hardayal, P.W. 6 Padumlal, on strength of which it can be said that aforesaid statements of P.W. 4 Prosecutrix, P.W. 5 Hardayal, P.W. 6 Padumlal are untrustworthy.

11. As per the alleged FIR Ex. P-2, prosecutrix was returning back from grocery shop in the evening, on the way appellant used criminal force on her body.

12. In the case in hand the alleged date of incident is 11-2-2002 at about 7.30 pm and Ex. P-2 has been lodged on 13-2-2002 at 9.45 hours.

13. In the Indian society it is very natural conduct that normally a report of alleged sexual exploitation is lodged after consultation because honour and reputation of the family are involved in such a matter. Thus, in the case in hand, delay in lodging Ex. P-2 is not fatal for the prosecution case.

14. There is no such evidence on record on strength of which it can be said that Ex. P-2 is fabricated or concocted to falsely implicate the appellant in alleged offence.

15. There is no such material available on record on strength of which it can be said that aforesaid statements of P.W.4 prosecutrix, P.W.5 Hardayal, P.W.6 Padumlal are not simple, not natural, not normal. Thus, this Court believes on aforesaid statements of P.W.4 prosecutrix, P.W.5 Hardayal, P.W.6 Padumlal.

16. After the appreciation of the evidence discussed herebefore this Court finds that prosecution has succeeded to prove beyond reasonable doubts the charge punishable under Section 354 IPC against the appellant. Thus, aforesaid conviction of appellant is affirmed.

17. So far as sentence is concerned for the offence punishable under Section 354 IPC, the appellant remained in jail from 18.02.2002 to 19.02.2002. Near about 17 years have passed from the date of incident. At the time of incident, he was aged about 29 years, now he is about 46 years old. Now he is in mainstream of society. Sending him to jail would disturb him as well as his family members' life. At the time of the incident, no minimum jail sentence was provided for the offence punishable under Section 354 of IPC. Hence, no useful purpose would be served if he is sent to jail after 17 years of the incident. Looking to

these circumstances and observation made by Hon'ble Supreme Court in the matter of **Manjappa -v- State of Karnataka** [(2007) 6 SCC 231] this Court is of the opinion that cause of justice would be sub-served, if RI for six months for the offence punishable under Section 354, IPC is reduced to the sentence for the period already undergone by him and fine amount be suitably enhanced.

18. Consequently, the appeal is partly allowed. The sentence of the appellant under Section 354, IPC RI for six months is reduced to the period already undergone by him and fine amount of Rs. 1000/- is enhanced to Rs. 25,000/- (Rupees twenty five thousands only), in default of payment of fine, to further undergo additional RI for three months.

19. The appellant is granted two months' time from the date of this order for depositing the fine amount. The fine amount deposited earlier by the appellant shall be adjusted in the fine amount of Rs. 25,000/-.

20. After the prescribed period of legal remedy available to the parties, Rs. 20,000/- (Rupees twenty thousands only) out of the fine amount of Rs. 25,000/-, if deposited, be given to the prosecutrix as compensation.

21. The appellant is reported to be on bail. His bail bonds stands cancelled subject to the provisions of Section 437-A, Cr.P.C.

Sd/-

(Sharad Kumar Gupta)
Judge