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HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 453 of 2001**

- Makhan Singh S/o Itwar Singh Gond, aged about 35 years, resident of Village Kharaiban, Thana Pali District- Bilaspur, S.A. F. Constable No. 42, 12th Battalian E Company, Thana Farsagaon, District Bastar.

---- Appellant**Versus**

- The State of Chhattisgarh, through the Station House Officer, Police Station Farasgaon, Bastar District- Bastar.

---- Respondent

For Appellant	: Shri Saurabh Sharma, Advocate.
For Respondent/State	: Ms. Seema Dixit, Panel Lawyer

Hon'ble Shri Justice Gautam Chourdiya**Judgment On Board****05/09/2019**

This appeal arises out of the judgment of conviction and order of sentence dated 23.02.2001, passed by the 3rd Additional Sessions Judge, Bastar at Jagadapur in ST No.481/1993, convicting the accused/appellant under Section 354 of Indian Penal Code (in short "IPC") and sentencing him to undergo RI for one year.

02. Brief facts of the case are that on 06.02.1993 at about 9 to 10 pm, the prosecutrix was sleeping at her house, at that point of time two Police persons opened the door of house of the prosecutrix, entered into the house and used criminal force on prosecutrix intending to outrage her modesty and one police man committed sexual intercourse

with the prosecutrix against her consent. After seven days of this incident FIR (Ex.P/3) under crime No. 0/93 was lodged by the prosecutrix, at Police Station Jagdalpur. On the basis of written complaint filed by the prosecutrix on 13.02.1993 vide Ex.P/2 FIR was lodged against unknown person and as per Ex. P/3 offence was registered against the unknown persons under Section 376, 34 of IPC. The petticoat of the prosecutrix was seized vide Ex. P/7 and sent for examination to the doctor. Dr. Smt. S. Pandey (PW-3) vide Ex.P/11, found that there were semen like stain on the petticoat Dr. Smt. S. Pandey (PW-3) also medically examined the prosecutrix and found no internal or external injury on her person. The doctor also did not notice any sign of forcible sexual intercourse vide Ex. P/10.

03. After investigation charge sheet was filed against the appellant under Section 376 & 450 of IPC. After filing of chargsheet the trial Judge framed charge under Section 376 of IPC against the appellant/accused.

04. So as to hold the accused/appellant guilty, the prosecution examined as many as 5 witnesses namely Laxmi Viswas (PW-1), Sushila Tekam (PW-2), Dr. Smt. S. Pandey (PW-3), Pyarelal (PW-4), Dinesh Devnath (PW-5) Statement of the accused 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.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned

judgment convicted and sentenced the appellant as mentioned in para-1 of this judgment.

06. Learned counsel for the appellants submits that the conviction on the basis of statement of Laxmi Viswas (PW-1) is unsustainable as she has been declared hostile. He further submits that the examination report of seized petticoat (Ex.P/7) and her medical report (Ex. P/10) of the prosecutrix also do not support the prosecution case. He also submits that the testimony of witnesses- Pyarelal (PW-4) & Dinesh Devnath (PW-5) are not trustworthy as they both are not the eyewitness of the incident and they are hear say witness. He lastly submits that prior to this incident one SAF Camp was organised in the village- Borgaon and the villagers were against this camp, consequent to this the villagers falsely implicated the present appellant. Therefore, it is prayed that this Court may kindly be pleased to set aside the conviction and sentence of the appellant.

07. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the appellant is based on proper appreciation of the evidence and as such, there is no scope for interference in the judgment impugned.

08. Heard counsel for the respective parties and perused the material on record.

09. Admittedly in this case the prosecutrix has not been examined who had lodged the FIR. As such the appellant could not get the opportunity of cross-examination of the prosecutrix regarding the allegations made by her (prosecutrix) in the FIR. The trial Court has convicted the

appellant on the basis of statements of Pyarelal (PW4) & Dinesh Devnath (PW-5) but from the perusal of their statements it is found that they are not the eyewitnesses and heard about the incident through villagers. Therefore, it would not be safe to rely upon their evidence to hold the appellant guilty under Section 354 of IPC. Pyarelal (PW-4) & Dinesh Devnath (PW-5) have not mentioned the name of the accused persons at the time of recording of their statements under Section 161 of Cr.P.C. No test identification parade was conducted during investigation.

10. The village people chased two persons but they are not identified by Pyarelal (PW-4). When notice was received from the court below he for the first time became aware of the name of the accused- Makhan Singh therefore, Pyarelal also not identified the accused at the time of incident. As per statement of Devnath (PW-5), he admitted this fact that two Policemen had caught hold of one village girl (prosecutrix) and she was also in a drunken condition, and he saw one person with the help of burning lamp (*Chimni*), therefore, he cannot identify who is the real culprit and what happened in the night.

11. Thus, considering the facts & circumstances of the case the evidence of Pyarelal (PW4) & Dinesh Devnath (PW-5), the fact that the incident occurred on 06.02.1993 whereas the FIR was lodged on 13.02.1993 i.e. after seven days delay against the unknown person, she (prosecutrix) had not been examined before the Court, the evidence of Dr. Smt. S. Pandey (PW-3) who medically examined the prosecutrix and found no sign of sexual intercourse, any internal or external injury on her person, the fact that no test identification parade

was conducted by the police to ascertain the identity of the accused, the ingredients required to be proved for holding a person guilty under Section 354 of IPC, this Court is of the opinion that the trial Court was not justified in convicting and sentencing the appellant under Section 354 of IPC on the basis of material available on record.

12. In the result, the appeal is allowed and the impugned judgment is hereby set aside. The appellant is acquitted of the charge under Section 354 of IPC. The appellant is reported to be on bail, therefore, his bail bond shall remain in force for a period of six months from today in terms of provisions of Section 437A of Cr.P.C..

Sd/-

(Gautam Chaudriya)
Judge

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