

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 01-02-2019

Delivered on 8-3-2019

Criminal Appeal No. 268 of 2009

- Ganesh Baretha s/o. Heeraram Baretha, aged about 25 years, r/o. Kamtanagar, Sarangarh, Ward No.1, Police Station Sarangarh, Dist. Raigarh (CG).

---- Appellant**Versus**

The State of Chhattisgarh Through District Magistrate,
Raigarh (CG).

---- Respondent

For the appellant : Mr. Manoj Jaiswal, Advocate

For the respondent/State : Mr. V.B.Singh, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is directed against the judgment of conviction and order of sentence dated 26-3-2009 passed by the Additional Sessions Judge, Sarangarh (CG) in Sessions Trial No. 19 of 2008 wherein the said Court convicted the appellant for the commission of offence under Section 354 of the IPC and sentenced him to undergo rigorous imprisonment for one year and to pay fine of Rs.1000/- with default stipulations.

2. In the present case, prosecutrix is PW/8. As per version of prosecution, on 2-7-2007 at about 11.00 am., at village Puljahariyapara Sarangarh, the appellant attempted to commit sexual intercourse against the prosecutrix and at the same time PW/5 Radheshyam reached there to whom she informed about the incident. The matter was reported to the Police Station and after completion of investigation charge sheet was filed, the appellant did not plead guilty and the trial was conducted. After completion of trial, the trial Court convicted and sentenced the appellant as aforementioned.

3. Learned counsel for the appellant submits as under:

- I) Testimonies of prosecutrix PW/1 and PW/5 Radheshyam are not reliable and other witnesses are hearsay in nature.
- II) Version of Dr. J. Tripathi is also not sufficient to establish guilt against the appellant.
- III) The trial Court has overlooked the material contradictions and exaggerations in the statement of witnesses, therefore, finding of the trial Court is not liable to be sustained.

4. On the other hand, learned counsel for the State submits that the finding recorded by the trial Court is based on proper

marshaling of evidence and the same is not required to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the material available in the record.

6. PW/ Prosecutrix deposed before the trial Court that on the date of incident she went to the house of her grand-mother at about 11.00 am and at the same time, appellant reached there and enquired about her grand-mother. When she replied that her grand-mother had gone to Bank, appellant caught hold her hand, took her to verandah of the house, pressed her mouth and breast, thereafter undressed her and undressed himself and committed intercourse with her. As per version of this witness, when her uncle Radheshyam (PW/5) reached there, the appellant stood from the place and tendered his pardon. Thereafter, the matter was informed to her grand-mother and her father. Version of this witness is supported by version of Radheshyam (PW/5). Again, it is supported by version of Smt. Ramwati (PW/2). Though prosecutrix deposed before the trial Court that appellant committed intercourse with her but her version is different while recording her statement under Section 161 of the Cr.P.C. In her earlier statement she did not depose about sexual intercourse but she deposed about attempt to commit sexual intercourse.

7. Looking to the entire evidence, the trial Court opined that it is a case of outraging modesty which is punishable under Section 354 of IPC. From the statement of the prosecutrix right from beginning it is a case of attempt to rape but since the State has not challenged the finding recorded by the trial Court, therefore, finding of the trial Court cannot be modified by saying that it is a case of attempt to rape, therefore, finding of the trial Court that the appellant has committed offence under Section 354 of IPC cannot be interfered with.

8. On over-all assessment of the entire evidence, argument advanced on behalf of the appellant is not sustainable and the finding of the trial Court is not liable to be set aside. Finding of the trial court is hereby affirmed. The trial Court awarded rigorous imprisonment for one year which cannot be termed as harsh, unreasonable or disproportionate. Sentence part is also not liable to be interfered.

9. Accordingly, the appeal being devoid of merits is liable to be and is hereby dismissed. The appellant is reported to be in jail, therefore, no further arrest for his arrest etc., is required.

Sd/-

(Ram Prasanna Sharma)

JUDGE

Raju