

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 27-9-2019****Pronounced on 30-9-2019****CRA No. 825 of 2009**

(Arising out of judgment of conviction and order of sentence dated 12/11/2009 passed by the Special Sessions Judge, Janjgir Champa (CG) in Special Case No. 112/2009)

Ramprasad, son of Shri Paitram Kashyap, aged about 35 years, Resident of Semariya, Police Station Bamhanideeh, District Janjgir Champa (CG).

---- Appellant**Versus**

State of Chhattisgarh, through Police Station Bamhanideeh, District Janjgir Champa (CG).

---- Respondent

For Appellant	:	Mr. Ravindra Sharma, Advocate
For State	:	Mr. Vaibhav K. Agrawal, Panel Lawyer

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 12/11/2009 passed by the Special Sessions Judge, Janjgir Champa (CG) in Special Case No. 112/2009 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 brevity 'IPC')	6 months	Rs.1,000/-	15 days RI

2. In brief, the prosecution story is that at the time of alleged incident prosecutrix was 32 years old. She was the resident of BALCO. She was a Teacher in Government Primary School, Bansula. On 17.03.2009 she was returning back from the school to her house on bicycle, at about 4:30 pm she reached near the small dam (Chhote Bandha) at village Semriya, from the backside the appellant came on bicycle and touched her back by hand twice. She narrated the incident

to Kalesh Ram Kashyap. Thereafter, she went to police station Bamhnidih and lodged an FIR against him at about 17:30 hrs. After completion of the investigation, a charge sheet was filed against him. The trial Court framed the charges against him under Sections 354, 294, 506-II of IPC and Section 3(1)(xi) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for brevity 'SCST Act'). He abjured the charges and faced the trial. To bring home the charges against him, the prosecution examined as many as 6 witnesses. He examined one 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 offences punishable under Sections 294, 506-II IPC and 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. 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, Panel Lawyer 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.-1 prosecutrix says in para 1 of her statement given on oath that on 17.03.2009 about 04:30 pm she was returning to her house from the school on bicycle, on the way ahead of village Semriya appellant came from back side by bicycle, touched her back.

7. D.W.-1 Amar Lal Kashyap says in paras 3 and 4 of his statement given on oath that he was rubbing Gudakhu on other side of the dam, he saw that the bicycles of appellant and prosecutrix met with an accident.

8. There are no such omissions and contradictions dealt during cross-examination of P.W.-1 prosecutrix on strength of which it can be said that aforesaid statement of P.W. 1 prosecutrix is untrustworthy.

9. As per the alleged FIR Ex. P-1, prosecutrix was returning back to

her house on bicycle, on the way appellant came from the back side on bicycle and touched her back by his hand.

10. In the case in hand, the alleged date of incident is 17.03.2009 at about 04:30 pm and Ex. P-1 has been lodged on 17.03.2009 at about 05:30 pm.

11. Ex. P-1 lodged promptly without any delay.

12. There is no such evidence on record on strength of which it can be said that Ex. P-1 is fabricated or concocted to falsely implicate the appellant in alleged offence.

13. D.W.1 Amar Lal Kashyap says in para 6 during his cross examination that at the time of alleged incident he was not rubbing Gudakhu, he was rubbing Gudakhu on next day of incident.

14. There is no such material available on record on the strength of which it can be said that the aforesaid statement of P.W.1 prosecutrix is not natural, not normal, not simple, thus, this Court believes on aforesaid statement of prosecutrix and disbelieves aforesaid statement of D.W. 1 Amar Lal Kashyap.

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

16. So far as sentence is concerned the appellant remained in jail from 20.04.2009 to 23.04.2009. Near about 10 years have passed from the date of incident. At the time of incident appellant was aged about 35 years, now he is about 45 years old. Now, he is in main stream of society. Sending him to jail would disturb him as well as his family members' life. At the time of incident no minimum jail sentence was provided for the offence punishable under Section 354 IPC. Hence no useful purpose would be served if he is sent to jail after 10 years of the incident. Looking to these circumstances and observation made by Hon'ble Supreme Court in the matter of **Manjappa vs. State of Karnataka {(2007) 6 SCC 231}** this Court is of the opinion that cause of justice would be subserved if RI for 6 months is reduced to the sentence for the period already undergone by him and fine amount be suitably enhanced.

17. Consequently, the appeal is partly allowed. The sentence of the

appellant under Section 354 IPC to undergo RI for 6 months is reduced to the period already undergone by him and fine amount of Rs. 1,000/- is enhanced to Rs. 25,000/- (Rupees Twenty Five Thousand only). In default of payment of fine, he shall further undergo additional RI for 3 months.

18. 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/-.

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

20. The appellant is reported to be on bail. His bail bonds stands discharged subject to the provisions contained in Section 437-A of Cr.P.C.

Sd/-
(Sharad Kumar Gupta)
Judge