

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 874 of 2006**

- Dharmprakash Bada, S/o Vitul Bada, aged about 35 years, R/o Village- Mohanpur, Lali Tongi, P.S. Darima District Sarguja, C.G.

----Appellant

Versus

- State of Chhattisgarh, Through Police Station Darima, District Sarguja, C.G.

---- Respondent

For Appellant	Shri Arun Shukla, Advocate.
For Respondent/State	Shri Sudeep Agrawal, Deputy A.G.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

31/08/2020

1. The matter is heard through Video Conferencing.
2. Challenge in this appeal is to the judgment of conviction and order of sentence dated 14.11.2006 passed by 3rd Additional Sessions Judge, Ambikapur, Sarguja, F.T.C, C.G. in Sessions Trial No.330/06, whereby the appellant stands convicted for the offence under Section 354 of Indian Penal Code (for short, 'IPC') and sentenced to undergo rigorous imprisonment for two years and fine of Rs.100/-, in default of payment of fine amount to undergo additional imprisonment for 15 days.
3. Case of the prosecution in brief is that on the date of

incident i.e. 28.06.2006 at about 3:00 pm, prosecutrix, aged about 30 years, was sleeping under the jackfruit tree, at that time, accused/appellant came there with an intent to outrage the modesty of the prosecutrix and to humiliate her, caught hold of her hands, removed her Saree and tried to rape her. On this, she raised hue and cry and somehow came out of his clutches, ran away from there. Hearing her voice, Simon and Chuvanti came there to save her, and on seeing them accused/appellant fled from the spot. On the next day i.e. 29.06.2006, she went to the police station and lodged FIR Ex.P-1 against the accused/appellant which was registered in police station Darima, Sarguja, under Crime No.71/2006.

4. During investigation, Spot Map Ex.P-2 was prepared by Investigating Officer, one battle axe (tabbal) was seized from the prosecutrix Ex.P-2 and accused/appellant was arrested on 30.09.2006 vide Ex.P-4. After recording statements of the witnesses, charge sheet was filed against the accused/appellant under Sections 376 read with 511 and 506B of IPC. The trial Court framed the charges under Sections 376 read with 511 and 506B of IPC against the accused/appellant which were denied by him and he prayed for trial.
5. So as to hold the accused/appellant guilty, the prosecution examined as many as 4 witnesses i.e. PW-1 Prosecutrix, PW-2 Simon, PW-3 Maktdan and PW-4 M.P. Gupta.

Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the incriminating circumstances appearing against him in the prosecution case, pleaded innocence and false implication. However, no witness was examined by him in his defence.

6. 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-2 of this judgment.
7. Learned counsel for the appellant submits that due to previous enmity with the prosecutrix, the appellant has been falsely implicated in this case. He also submits that prosecutrix has lodged the FIR after the delay of one day on 29.06.2006 and explanation given by the prosecutrix regarding delay in lodging the FIR is not acceptable. He further submits that no independent witness has supported the prosecution case. There are material contradictions and omissions in the statements of the prosecutrix and other witnesses. No cogent evidence is available on record against the appellant. Therefore, the impugned judgment of conviction and order of sentence deserves to be set aside and the appellant be acquitted of the said charge.

Alternatively, he submits that if this Court ultimately comes to the conclusion that the appellant is guilty of the said offence, considering the fact that the incident took place

around 14 years ago, the age of the appellant at the relevant time was 35 years and he has no criminal antecedent, he has already remained in jail for 4 months and 14 days, the accused be sentenced to the period already undergone by him.

8. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction and sentence of the accused/appellant are strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
9. Heard learned counsel for the parties and perused the material available on record.
10. PW-1 Prosecutrix specifically and categorically stated that on the date of incident i.e. 28.06.2006 at about 3:00 pm, she was sleeping under the jackfruit tree, at that time, accused/appellant came there with an intent to outrage her modesty and to humiliate her, caught hold of her hands, removed her Saree and tried to rape her, on which she raised hue and cry and somehow came out of his clutches, ran away from there. Hearing her voice, Simon and Chuvanti came there to save her, and on seeing them accused/appellant fled from the spot. On the next day i.e. 29.06.2006, she went to the police station and lodged FIR Ex.P-1 against the accused/appellant because on the date of incident it was raining and the police station was far away from her house.

After the report, the police came to the spot and prepared the spot map vide Ex.P-2. One battle axe (tabbal) was seized by police from her vide Ex.P-3

11. PW-2 Simon and PW-3 Makatdan have duly supported the statements of prosecutrix PW-1.
12. PW-4 M.P. Gupta, Assistant Sub-Inspector, has lodged FIR Ex.P-1, prepared spot map Ex.P-2, seized one battle axe (tabbal) from the prosecutrix Ex.P-3 and arrested the accused/appellant Ex.P-4 and duly proved the same.
13. So far as delay in lodging the FIR is concerned, the incident is said to have taken place on 28.06.2006 at about 3:00 pm whereas the FIR was lodged by the prosecutrix on 29.06.2006 at about 5:00 pm. The reason offered for delay in lodging the FIR was that it was raining, the police station is far away and there was no means of conveyance to reach there. It is a well settled principle of law that delay in lodging of FIR in the cases of sexual assault does not invariably affect the creditability of the prosecution case and it has to be considered in the facts and circumstances of each case. More often than not, it is seen that there is some delay in reporting the matter to the police of sexual assault as the victim takes some time to over come trauma suffered, the agony and the anguish that create the turbulence in her mind and to acquire the psychological inner strength to undertake a legal battle against the culprit. Keeping in view all these things, delay of

about a day in the present case in lodging the FIR, can, by no stretch of imagination, be said to be fatal to the prosecution case.

14. Close scrutiny of the evidence available on record goes to show that on the date of incident i.e. 28.06.2006, when the prosecutrix was sleeping under the jackfruit tree, the appellant made indecent advancement towards her, caught hold of her hands and removed her saree, thereby trying to outrage her modesty. The prosecutrix has remained firm during her cross-examination and her statement is also supported by PW-2 Simon and PW-3 Makatdan and FIR Ex.P-1. No any evidence to the contrary has been adduced by the appellant.
15. So far as argument regarding false implication of the appellant due to previous enmity with the prosecutrix is concerned, no such evidence has been adduced by the defence to substantiate the plea of previous enmity between the parties. There is no such complaint showing previous enmity between the parties. Though, a suggestion has been given by the defence to PW-2 Simon, father-in-law of the prosecutrix, that the appellant has been falsely implicated due to land dispute but the same has been categorically denied by this witness. Thus, from the over all evidence on record, the defence has utterly failed to prove the plea of false implication due to previous enmity between the parties.

16. Having considered the facts and circumstances of the case and the manner in which the offence took place as stated by the prosecutrix which is duly corroborated by the evidence of PW-2 Simon and PW-3 Makatdan and the FIR, though lodged belatedly but the delay was properly explained and further considering the fact that there is no major contradiction or omission in her statement affecting the creditability of her version, this Court is of the opinion that the prosecution has successfully proved its case under Section 354 of IPC against the appellant.

17. As regards the sentence under Section 354 of IPC, as per Criminal Law (Amendment) Act, 2013 which came into force with effect from 03.02.2013, the minimum sentence prescribed under Section 354 of IPC is one year and the maximum is 5 years with fine as well. However, the present incident took place in the year 2006 i.e. prior to the amendment and at that time the aforesaid offence was punishable with imprisonment of either description for a term which may extend to two years or with fine, or with both. In the present case, considering the facts and circumstances of the case, the manner in which the incident occurred, the fact that the incident took place around 14 years ago, that at the time of incident accused/appellant was the first offender of 35 years and at present he must be 49 years of age, the fact that he has already remained in jail for 4 months and 14 days,

keeping in view the judgment of Hon'ble Supreme Court in the matter of ***George Pon Paul vs. Kanagalet and Others, (2009) 13 SCC 478*** wherein considering the fact that the fine amount has been deposited and paid to the victim as also the long passage of time, the accused was sentenced to the period already undergone, this Court is of the opinion that no useful purpose would be served in sending the accused/appellant back to jail at this stage and the ends of justice would be served, if he is sentenced to the period already undergone by him while maintaining the fine amount as awarded by the trial Court with default stipulation.

18. In the result, the appeal is allowed in part. While maintaining the conviction of the appellant under Section 354 of IPC, he is sentenced to the period already undergone by him. However, the fine amount imposed on him with default sentence by the trial Court shall remain intact.

19. The appellant is reported to be on bail, therefore, his bail bonds shall continue for a period of six months from today in view of provisions of Section 437-A of Cr.PC.

Sd/-
Gautam Chourdiya
Judge

Akhilesh