

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 3413 of 1999**

- Charan Singh, son of Ganga Singh Punjabi, aged about 37 years, resident of Lal Khadan, Police Station Torwa, Distt. Bilaspur (CG)

---- Appellant**Versus**

- The State Of Madhya Pradesh (Now Chhattisgarh)

---- Respondent

For Appellant	:	Shri A.K. Gupta, Advocate.
For Respondent/State	:	Shri Vikas Shrivastava, P.L.

Judgment On Board By Justice Gautam Chourdiya**13/03/2020**

01. In compliance of the order dated 18.4.2018 of this Court, Shri Tarun Dadsena, Advocate was appointed by the Secretary, High Court Legal Service Committee to argue the matter on behalf of the appellant. However, despite repeated calls on 12.3.2020 and today also Shri Dadsena did not turn up for arguing the matter. Therefore, considering the long pendency of this appeal i.e. since 1999, this Court deems it appropriate to appoint another empaneled counsel of the High Court Legal Services Committee.

02. Mr. A.K. Gupta, empaneled counsel of the High Court Legal Services Committee, present in the Court, on being asked is ready to argue the matter. Hence, Secretary, High Court Legal Services

Committee, is directed to issue authorization letter in favour of Mr. A.K. Gupta, Advocate.

03. This appeal arises out of judgment of conviction and order of sentence dated 29th November, 1999 passed by the Special Judge under Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 in Special Criminal Case No.25/1998 whereby the appellant has been convicted under Sections 452 & 354 of IPC and sentenced to undergo RI for three years, fine of Rs.300/- in default whereof to suffer additional RI for two months and RI for one year, fine of Rs.300/- with default sentence of two months' additional RI respectively. Both the sentences were directed to run concurrently.

04. Brief facts of the prosecution case are that when PW-1 prosecutrix, a tribal lady, was alone at her home on 31.1.1998 at around 11-12 noon, the accused/appellant entered her home in drunken condition, closed the door, used criminal force against her and thereby outraged her modesty. When the prosecutrix cried for help, Jamuna Bai, Mitthu, Usha Bai, Sudarshan and other villagers witnessed the incident. Prompt FIR (Ex.P/1) was lodged by the prosecutrix on the same day at 15:00 hours. During investigation statements of the witnesses were recorded and spot map Ex.P/3 was prepared. However, the prosecutrix refused for her medical examination. After completing investigation, charge sheet was filed against the accused/appellant Sections 452, 354 of IPC and Section 3, (1)(x) & 3(1)(xi) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short "the Act, 1989"). Thereafter, the trial

Court framed charges under Sections 452, 354 of IPC and Section 3(1) (xi) of the Act, 1989 against the appellant, which were denied by him and he prayed for trial.

05. So as to hold the accused guilty, the prosecution examined as many as 06 witnesses. 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. In defence, he stated that the prosecutrix is a woman of easy virtue, therefore, he alongwith the people of the locality persuaded her to live properly and due to this animosity he has been falsely implicated by the prosecutrix in this crime. In his defence, the appellant examined one DW-1 Karabai.

06. 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 accused/appellant as mentioned in para-3 of this judgment.

07. Learned counsel for the appellant submits that no independent witness has supported the prosecution case. No injury was found on the body of the prosecutrix and she herself refused to be medically examined by the doctor. In fact, the appellant has been falsely implicated by the prosecutrix due to animosity as the appellant along with other villagers used to object to the conduct of the prosecutrix. He submits that the trial Court has wrongly convicted the appellant for the offence under Section 452 of IPC whereas the necessary ingredient for attracting this offence i.e. preparation for committing house trespass is

completely missing in this case. Alternatively, he submits that if this Court finally confirms the conviction of the appellant, then considering the fact that the incident took place way back in the year 1998, the appellant is a young offender having no criminal antecedents, he has been in jail for about 56 days, by giving him benefit of Probation of Offenders Act, he may be sentenced to the period already undergone by him.

08. On the other hand, supporting the impugned judgment it has been argued by the State counsel that in this case conduct of the prosecutrix is not of such a nature which could have been objected by the appellant. She was neighbour of the appellant and on the date of incident while she was alone at her home, the appellant entered her home in drunken condition and outraged her modesty. Evidence of the prosecutrix (PW-1) is fully supported by the prompt FIR (Ex.P/1), spot map Ex.P/3 and the evidence of PW-5 GS Darro, Additional S.P. Though the independent witnesses have not supported the prosecution case, but the evidence of the prosecutrix is sufficient enough for holding the appellant guilty of the offence under Sections 452 & 354 of IPC. Therefore, the impugned judgment needs no interference by this Court.

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

10. PW-1 prosecutrix has deposed that on the date of incident she was alone at her home, at around 11-12 noon the appellant came to her home and thereafter moved away. When the appellant again came

to her home, he demanded mirror and comb, on which she told that she is not having mirror and comb. At that time the appellant was drunk. After about 5-10 minutes again the appellant came to her home, bolted the door from inside, caught hold of her and outraged her modesty. While the appellant was trying to throw her on the ground, she caught hold of her collar and dragged him out of the home upto the door. On cry being raised by her, Mitthu Singh who was sitting in front of her house, came to her running and told the appellant that what he (appellant) is doing is not right. She states that hearing her cry, Jamuna Bai and wife of Sudarshan Tiwari also came out of their homes and then she told them that she is going to lodge report. She has proved the FIR (Ex.P/1). There is no major contradiction or omission in her Court statement as compared to the FIR (Ex.P/1) and her diary statement Ex.D/1. In the Court, she has reiterated the entire facts mentioned in the FIR and her diary statement. There are only certain omissions in respect of details of the incident which are not mentioned in the FIR.

The law is fairly well settled that FIR is not supposed to be an encyclopedia of the entire events and cannot contain the minutest details of the events. When essentially material facts are disclosed in the FIR that is sufficient. FIR is not substantive evidence and cannot be used for contradicting testimony of the eye witnesses except that may be used for the purpose of contradicting maker of the report. The question whether a person was impleaded by way of afterthought or not must be judged having regard to the entire factual scenario in each case. Therefore, non-mentioning of certain details of the incident is no

reason to dis-believe the testimony of crucial witnesses.

11. PW-2 Usha Devi has partly supported the evidence of PW-1 prosecutrix. According to her, on the date of incident at around 11-12 noon while she was going with bucket to the tape for fetching water, she heard the sound of quarrel between the appellant and the prosecutrix and thereafter returned to her home. In cross-examination she states that on the date of incident the prosecutrix was abusing the appellant. PW-3 Balkumari has not stated anything specific against the appellant. PW-4 Jamuna Goswami has turned hostile and not supported the prosecution case. PW-5 GS Darro, Additional S.P., has proved the spot map Ex.P/3 and also supported the evidence of the prosecutrix.

12. The only defence taken by the appellant is that as he used to object to the conduct of the prosecutrix as she was a woman of easy virtue, he has been falsely implicated by her. However, there is nothing on record to suggest that on the date of incident, any such quarrel or dispute arose between the appellant and the prosecutrix over her conduct. The evidence of the prosecutrix also finds support from the evidence of PW-2 Usha Devi who at the relevant time heard the sound of quarrel between the appellant and the prosecutrix and also saw the prosecutrix abusing the appellant. PW-5 GS Darro, investigating officer, has also duly supported the evidence of the prosecutrix. Prompt FIR (Ex.P/1) lodged by the prosecutrix also lends corroboration to her evidence. The defence has brought nothing on record to show that the investigating officer was having any ill-will against the appellant and as

such, there is no reason to disbelieve his evidence. Thus, considering the evidence of the prosecutrix and the other witnesses as discussed above, it stands proved that the appellant used criminal force against the prosecutrix (PW-1) to outrage her modesty and as such, his conviction under Section 354 of IPC is just and proper.

13. However, looking to the main ingredients of offence under Section 452 of IPC i.e. house-trespass **after preparation** for hurt, assault or wrongful restraint, it is seen that the prosecution has not been able to prove that the appellant entered the house of the prosecutrix after preparation. The evidence goes to show that the appellant is the neighbour of the prosecutrix, there used to be playful teasing by the appellant to her and on the date of incident he entered her house and outraged her modesty. In the given facts and circumstances of the case and the evidence on record, the act committed by the appellant makes him liable for conviction under Section 451 of IPC i.e. house-trespass in order to commit offence punishable with imprisonment. Therefore, the appellant is acquitted of the charge under Section 452 of IPC and instead convicted under Section 451 of IPC.

14. As regards the sentence, considering the fact that the incident took place around 22 years ago, the appellant has been in jail since 8.9.1999 to 2.11.1999 i.e. for 56 days, he has no criminal antecedents, keeping in view the judgment of the Hon'ble Supreme Court in the matter of **George Pon Paul Vs. Kanagalet and others, (2009) 13 SCC 478**, wherein considering the fact that 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 in the present case also no useful purpose would be served in again sending him 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 for the offence under Sections 451 and 354 of IPC and is directed to pay fine of Rs.300/- on each count with default sentence of two months' RI.

15. In the result, the appeal is allowed in part. While maintaining conviction of the appellant under Section 354 of IPC, his conviction under Section 452 of IPC is altered to 451 of IPC. He is sentenced to the period already undergone by him. However, he is directed to pay fine of Rs.300/- on each count, failing which he shall suffer additional RI for two months. Fine amount already deposited shall be adjusted accordingly.

The appellant is reported to be on bail, therefore, his bail bonds shall remain in operation for a period of six months from today in view of provisions of Section 437A of CrPC.

Sd/

(Gautam Chourdiya)
Judge