

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 53 of 2008**

1. Hari Prasad Uraon S/o Karan Ram Uraon, aged about 19 years, R/o village Gamhardih, Police Station Shankargarh, District Surguja (C.G.)

---- Appellant**Versus**

1. State of Chhattisgarh, through Police Station Shankargarh, District Surguja (C.G.)

---- Respondent

For Appellant	:	Shri Bhupendra Singh, Advocate.
For Respondent/State	:	Shri Vimlesh Bajpai, Govt. Advocate.

Hon'ble Justice Shri Gautam Chourdiya**Judgment****15/09/2020**

- 1) The matter is heard through video conferencing.
- 2) This appeal is filed under section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 29/09/2007 passed by 2nd Additional Sessions Judge, Ambikapur, District Surguja (C.G.) in Session Trial No. 14/2007; whereby the appellant stands convicted and sentenced as under:-

Conviction	Sentence
U/s. 456 of Indian Penal Code (in short "IPC")	R.I. for 6 months & fine of Rs. 1,000/- in default of fine additional R.I. for 1 month.
U/s. 506 (B) of IPC	R.I. for 1 year & fine of Rs. 2,000/- in default of fine additional R.I. for 2 months.
(Both the sentences were directed to run concurrently)	

- 3) Case of the prosecution in brief is that on 23/10/2006 at around 11:00 PM appellant Hari Prasad Uraon alongwith another two

juvenile co-accused S & B entered the house of the complainant Jai Narayan Uraon by house breaking after sunset and before sunrise and committed lurking house trespass. Accused Hari Prasad alongwith juvenile S & B also set on fire the bed of the complainant Jai Narayan Uraon. The accused persons filthily abused the complainant and his family members, threatened to kill them, assaulted upon the daughters of the complainant namely B & V and tried to outrage their modesty. On 25/10/2006 complainant Jai Narayan Uraon lodged FIR vide Ex. P-3. During investigation one burnt Bed and Roof Tiles were seized vide Ex. P-2 Seizure memo. Statements of the witnesses were recorded and after completing investigation, charge sheet under Sections 354, 294, 506(B), 456 and 436 of IPC was filed against the accused appellant. Co-accused S & B were minor and therefore charge sheet against them was file before the Juvenile Justice Board separately.

- 4) The Trial Court framed charges against the accused/appellant under Sections 456, 436/34, 294, 506(B) and 354 (twice), in respect of daughters of the complainant namely B & V, of IPC which was denied by him and he prayed for trial.
- 5) The prosecution in support of its case examined as many as 13 witnesses namely PW-01 Kaili Bai, PW-02 Pramod Kumar, PW-03 Kumari Tara, PW-04 Prosecutrix (B), PW-05 Prosecutrix (V), PW-06 Kripa Shankar Shukla, PW-07 Jai Narayan, PW-08 Umar Ali, PW-09 Pramila, PW-10 Sarita, PW-11 C.D. Tirkey (Inspector), PW-12 Dinesh Uraon and PW-13 Pandaram (Watchman). The 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 his defence accused appellant stated that on 23/10/2006 Yashoda, daughter of complainant Jai Narayan PW-07, went missing and at the instance of wife and mother-in-law of complainant, they went in search of her and for trapping her at her house. As Jai Narayan was suspecting that his daughter was taken away by him, he

committed Marpeet with them and lodged a false report. No witness was examined by the accused in his defence.

- 6) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused/appellant as mentioned above in para 2 of this judgment.
- 7) Learned counsel for the appellant submits that in this case no any reliable and clinching evidence against the appellant was adduced by the prosecution and on the same set of evidence, offence under Sections 436/34, 294 and 354 (twice) was not proved by the prosecution beyond all reasonable doubt and therefore, the accused was acquitted. The prosecution has failed to prove the necessary ingredients for substantiating the offence under Section 456 and 506(B) of IPC the appellant on the basis of evidence adduced by it and as such the Trial Court was not justified in holding the appellant guilty under the aforesaid sections. Therefore, the impugned judgment is liable to be set aside and the appellant shall be acquitted from the charges under Sections 456 and 506(B) of IPC.
- 8) On the other hand learned counsel for the respondent/State supporting the impugned judgment submits that the Trial Court considering the overall evidence available on record has rightly convicted and sentenced the appellant by the impugned judgment which calls for no interference by this Court.
- 9) Heard counsel for the parties and perused the material available on record.
- 10) PW-07 Jai Narayan, complainant lodged FIR vide Ex. P-3 against the appellant Hari Prasad and 2 juvenile B and S. this witness has stated that all the three persons including present appellant came to his house on 23/10/2006 at night, started beating the door with legs, abusing filthily and threatened of life. Juvenile B entered his house from behind and opened the door, on which the other accused persons entered his house and

threatened them of life. PW-04 Prosecutrix (B), daughter of the complainant has stated the same fact that the accused entered her house, first the accused persons tried to break upon the door of the house by kicking with legs and thereafter juvenile accused B entered the house from back side and open the door. The accused persons were threatening to kill her father. PW-05 Prosecutrix (V) and PW-08 Umar Ali have stated the same fact by the above witnesses.

- 11) In this case PW-01 Kaili Bai has though supported the prosecution case in her examination-in-chief but in the cross-examination she denied to have seen the accused persons at the place of occurrence and not supported the prosecution case. PW-02 Pramod has also not supported the prosecution case. Likewise, PW-03 Kumari Tara, PW-09 Pramila and PW-10 Sarita have also not supported the prosecution case.
- 12) PW-08 Umar Ali is the independent witness he has stated in para 2 of his deposition that after sending the three persons (accused persons) he called the watchman and then he alongwith Dinesh (PW-12) and the watchman (PW-13 Pandaram) slept in the house of the complainant at night. He has stated that when he asked the accused persons to go home, the accused persons told that they would not go home till they would kill the complainant. In para 5 he states that he had given the same statement to the Police and if it is not written in his statement Ex. D-2 he cannot said the reason. He has stated that when he asked the accused persons as to why they are quarreling, the accused persons told him that as complainant Jai Narayan has committed Marpeet with them without any reason, therefore, they are quarreling with him. He has denied the suggestion that the has not seen the instance.
- 13) For substantiating the offence under Section 456 of IPC, the necessary ingredients are entry into any building, tent or vessel used as a human dwelling with any of the following intents :(a) to commit an offence; or (b) to intimidate, insult or annoy any

person in possession of such property, after having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel and (c) trespass was after sunset and before sunrise.

- 14) For bringing home an offence under Section 506 of IPC the prosecution is required to prove (a) that the accused threatened the victim; (b) that this threatening was with any injury to his person, reputation or property, or to the person, reputation or property of another in whom the victim is interested; (c) that this threatening was intended to cause alarm to the victim or to cause the victim to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat; (d) that the victim has in fact been alarmed by the threat; the threat to injury may be in relation to reputation of a deceased person.
- 15) In this case from the entire evidence of PW-04 Prosecutrix (B), PW-05 Prosecutrix (V), PW-07 Jai Narayan and PW-08 Umar Ali it is seen that all these witnesses have proved this fact that the accused appellant entered the house of the complainant in the night forcibly after the door of the house was opened by juvenile accused B who entered the said house from the back side. The accused appellant was threatening to kill the family of the complainant and therefore hearing the hue and cry PW-08 and PW-13 reached the house of the complainant to protect his family and slept there. There is no major omission or contradiction in the evidence of the above witnesses and as such there is no reason to disbelieve them. In these circumstances, the Trial Court was fully justified in convicting the appellant under Sections 456 and 506(B) of IPC.
- 16) True it is that the prosecution has failed to prove the charges against the accused appellant under Sections 354, 294 and 436 read with Section 34 of IPC on the basis of evidence adduced by it beyond all reasonable doubt and therefore, the appellant has

been acquitted from the aforesaid charges by the Trial Court. However, in the FIR Ex. P-3 lodged by the complainant he has categorically stated as to the manner in which the accused appellant forcibly entered his house in the night and threatened him as well as his family member to kill. As such, the prosecution has successfully proved the evidence under Section 456 and 506(B) of IPC against the appellant.

- 17) In the result, the appeal being without any substance is liable to be dismissed and is, accordingly dismissed. As per Jail Report of Central Jail, Ambikapur Surguja (C.G.) dated 23/06/2020, the appellant has been released from jail on 30/11/2008 after remission and completion of the sentence including the fine sentence. Therefore, there is no need to pass any further order.

**-Sd/-
(Gautam Chourdiya)
Judge**

Chandrakant