

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 634 of 2007**

1. Rupesh Yadav S/o Mahadev Yadav, aged about 24 years, R/o Sambalpur, Bus Stand, Police Station Bhanupratappur, District Kanker (C.G.)

---- Appellant**Versus**

1. State of Chhattisgarh through Police Station Antagarh, District Kanker (C.G.)

---- Respondent

For Appellant : Shri Rakesh Thakur, Advocate.

For Respondent/State : Shri H.S. Ahluwalia, Dy. Advocate General.

Hon'ble Justice Shri Gautam Chourdiya**Judgment****04/09/2020**

- 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 11/07/2007 passed by Special Judge, under Scheduled Castes and Scheduled Tribes "Prevention of Atrocities" Act 1989) Kanker, District Uttar Bastar, Kanker (C.G.) in Special Sessions Trial No. 175/06; whereby the appellant stands convicted and sentenced as under:-

Conviction	Sentence
U/s 451 of Indian Penal Code (in short "IPC")	R.I. for 1 year & fine of Rs. 500/- in default of fine additional R.I. for 2 months.
U/s 354 of IPC	R.I. for 1 year.
(Both sentences were directed to run concurrently)	

- 3) Case of the prosecution in brief is that FIR Ex. P-2 was lodged by the prosecutrix at Police Station Bhanupratappur on 29/05/2006 after 1 day of the incident informing the Police that

she lives with her uncle (Bade Papa) Sukhram and does domestic work. The accused used to harass and tease her since long and make obscene gestures at her. Once he had given her a note of Rs. 20/- and told her to meet at Pintu's house at night. At that time, friend of the prosecutrix namely Sunita was also present there. Due to fear and being defamed, she did not inform anyone about the incident which encouraged the accused and thereafter whenever the accused would see the prosecutrix, he used to tease her. It was further stated by the prosecutrix that she returned to her house on 28/05/2006 at about 03:30 PM after attending the marriage ceremony at her locality/colony. At that time she was alone in the house, the accused entered her house, caught her by arms and threatened her to go with him to his house. When the prosecutrix refused, the accused threatened to defame her. When the prosecutrix warned him of raising alarm if he did not leave her, the accused slapped her and ran away from there. The prosecutrix felt disgrace by this incident and was thinking of committing suicide. At that time her family members returned and questioned her on which she narrated the entire incident to them. Her family members called the persons of the vicinity through village Kotwar, to whom the prosecutrix also narrated the entire incident and thereafter on their advise the report Ex. P-2 was lodged at the Police Station. One caste certificate of the prosecutrix Ex. P-7 was seized vide Ex. P-6. Accused was arrested vide Ex.-8. Statement of the prosecutrix and other witness Sunita were recorded by Investigating Officer. After completion of usual investigation charge-sheet was filed against the accused appellant for the offence punishable under Sections 452, 354, 323 and 509 of IPC and under Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989.

- 4) The Trial Court framed charges under Sections 452, 354 and 323 of IPC and under Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 against the accused/appellant. The accused abjured his guilt and prayed

for trial.

- 5) The prosecution in support of its case examined as many as 07 witnesses namely PW-01 Sukhram (father of the prosecutrix), PW-02 Prosecutrix, PW-03 Sunita, PW-04 Vishambhar, PW-05 Salikram (Kotwar), PW-06 Pankaj Chandra (I.O/CSP) and PW-07 Virendra Satparthi (Inspector). 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. No witness was examined by him 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 independent witness was examined by the prosecution, the statement of prosecutrix was exaggerated and all the family members of prosecutrix were examined by prosecution. He submits that FIR Ex. P-2 is lodged after one day delay and no any explanation is given by the prosecutrix. The incident happened on 28/05/2006 at around 03:30 PM and FIR was lodged on 29/05/2006 at the Police Station which is only 4 KM away from the place of occurrence. No any injury was found on the body of the prosecutrix. Therefore, appellant has been falsely implicated in this case and learned Trial Court has wrongly convicted the appellant under Sections 451 and 354 of IPC which is liable to be set aside.
- 8) He further submits that if this Court ultimately confirms the conviction of the appellant, considering the facts and circumstances of the case, the fact that the incident took place around 14 years back, the appellant is the first offender having no criminal antecedents, his age at the time of incident i.e. 24 year and he has remained in jail for 8 days, he may be given the

benefit of Probation of Offenders Act or sentenced to the period already undergone by him.

- 9) 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.
- 10) Heard counsel for the parties and perused the material available on record.
- 11) PW-02 Prosecutrix has stated in her deposition in paras 1, 2 & 3 that at the time of incident at about 03:30 PM she was alone in her house. At that time the appellant/accused knocked at her door, when she opened the door the appellant/accused caught hold of her hand and forced her to go with him to his house which was refused by her. When the appellant was forcibly taking her, on her raising cry, her friend Sunita came there and due to fear the appellant fled from there. She has further stated that the appellant used to do such act on the earlier occasions also, on account of which she was thinking of committing suicide but her friend Sunita persuaded her not to do so. She informed about the incident to her sister-in-law and elder mother in the evening as also to the villagers. She states that she lodged FIR Ex. P-2.
- 12) PW-03 Sunita, independent witness, neighbour of the prosecutrix, has also proved this fact that the accused had caught hold of hand of the prosecutrix in her house and when the prosecutrix cried for help, she reaches the place of occurrence and saw the appellant saying to the prosecutrix to come with him or else he would defame her. She has further stated in para 2 about the earlier incident at the time of Deepawali when the appellant had caught hold of hand of the prosecutrix, gave her Rs. 20 and asked her to meet at the house of Pintu at night. She states that regarding the said incident a

meeting was convened in the village which was attended by the appellant. This witness remained firm in the cross-examination.

- 13) PW-04 Vishambhar has also supported the evidence of the prosecutrix and stated that a village meeting was convened on Sunday where the appellant and the prosecutrix were called. In the meeting, the prosecutrix disclosed that the appellant had come to her house and eve teased her, on which the appellant was warned not to do so in the future. Thereafter, the meeting was over and next day the prosecutrix went to the Police Station to lodge report.
- 14) PW-01 Sukhram, uncle of the prosecutrix, has stated that prosecutrix informed him that the appellant had come to her house and was misbehaving with her and was forcing her to come alongwith him. On being asked by the Court, this witness admits that he wants compromise in the matter but the prosecutrix does not want to compromise.
- 15) PW-06 Pankaj Chandra is the I.O. and PW-07 Virendra Satparthi, Police Inspector, registered the FIR Ex. P-2. They have supported the prosecution case.
- 16) From the evidence on record it is seen that the prosecutrix PW-02 has categorically stated that on the date of incident while she was alone in the house, the appellant entered her house, caught hold of her hand and was forcibly taking her to his home. When she raised cry, PW-03 Sunita came to her rescue on which the appellant ran away from the spot. The prosecutrix informed about the incident to PW-01 Sukhram, PW-03 Sunita and these witnesses have also supported the version of the prosecutrix. A village meeting was convened in connection with the said incident where the prosecutrix disclosed about the act of the accused and the appellant was warned not to do so in future. PW-04 Vishambhar has proved the fact regarding holding of village meeting. Though there is some contradiction and omission in the statement of the prosecutrix as compared to her

diary statement Ex. P-4 and the FIR where she has stated that during the incident the appellant after slapping her ran away from the spot, but on material particulars the prosecutrix has consistently stated right from the lodging of the FIR, her diary statement as well as in the Court regarding the act of the accused/appellant. The prosecutrix is a rustic villager, her evidence finds due corroboration from the evidence of other witnesses PW-01 Sukhram, PW-03 Sunita and PW-04 Vishambhar. Therefore, in the totality of the facts and circumstances of the case, such omission or contradiction does not affect the credibility of her evidence.

- 17) On the basis of aforesaid discussions, this Court is of the opinion that the prosecution has successfully proved offence under Sections 451 and 354 of IPC against the appellant and as such the Trial court has rightly convicted him under these sections.
- 18) As regards the sentence, admittedly, in this case the incident took place on 28/05/2006 i.e. prior to coming into force of Criminal Law (Amendment) Act 2013 came into force w.e.f. 03/02/2013. At the relevant time, Section 354 of IPC reads as under:-

"354. Assault or criminal force to woman with intent to outrage her modesty.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

- 19) Considering the facts and circumstances of the case, the fact that the incident took place 16 years back, the age of the appellant at the time of incident i.e. 24 years, as it reflected from the FIR and charge sheet, the appellant has no any criminal antecedents, he is on bail since July 2007, he has remained in jail for about 8 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 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 fruitful purpose would be served in awarding jail sentence to the appellant and sending him back to jail at this stage and the ends of justice would be served if the appellant is sentenced to the period already undergone by him while keeping the fine sentence with default stipulation as imposed by the Trial Court under Section 451 of IPC intact and imposing fine of Rs. 5,000/- with default sentence under Section 354 of IPC.

- 20) In the result the appeal is allowed in part. Conviction of the appellant under Section 354 and 451 of IPC is hereby affirmed and the jail sentence imposed thereunder by the Trial Court is reduced to the period already undergone by him. However, the fine sentence with default stipulation as imposed by the Trial Court under Section 451 of IPC shall remain intact.

This apart, the appellant is directed to pay fine of Rs. 5,000/- under Section 354 of IPC, failing which he shall to suffer R.I. for 6 months. The aforesaid fine amount shall be deposited by the appellant within 3 months from today. Out of total fine amount deposited by the appellant, a sum of Rs. 4,000/- shall be payable to the prosecutrix as compensation under Section 357 of Cr.P.C. by the Trial court after due verification.

- 21) Since the appellant is reported to be on bail, therefore, his bail bonds shall remain in force for a period of six months from today in view of provision of Section 437-A of Cr.P.C.

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