

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 2845 of 1998**

1. Rameshwar S/o Kacharu Ram, aged about 23 years, Occuopation- Agriculturist, R/o Raipara, Keregaon, Police Station Arjuni, Tahsil Dhamtari, District Dhamtari (M.P) now (C.G.)

---- Appellant**Versus**

1. State of Madhya Pradesh now Chhattisgarh.

---- Respondent

For Appellant : Shri Deepak Jain, Advocate.

For Respondent/State : Shri Devendra Pratap Singh, Dy. Govt Advocate.

Hon'ble Justice Shri Gautam Chourdiya**Judgment****27/08/2020**

- 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 09/10/1998 passed by Additional Sessions Judge, Dhamtari, District Dhamtari (M.P.) now (C.G.) in Sessions Trial No. 391/97; whereby the appellant stands convicted and sentenced as under:-

Conviction	Sentence
U/s 354 of Indian Penal Code (in short "IPC")	R.I. for 1 year
U/s 448 of IPC	R.I. for 6 months
(Both sentences were directed to run concurrently)	

- 3) Case of the prosecution in brief is that FIR Ex. P-1 was lodged by the prosecutrix at Police Station Arjuni on 14/12/1994 after 3 days of the incident informing the Police that on 11/12/1994 at about 12 in the night accused Rameshwar entered the house of the prosecutrix when she was sleeping alongwith 75 years old

grand mother and her sister Kumari Sulochana and her parents were sleeping in another room. When accused caught hold of her legs, the prosecutrix woke up and pushed away the accused with her legs and hands. When the accused again used force against the prosecutrix, she started crying for help. Accused was trying to outrage her modesty. Then parents of the prosecutrix reached there and her sister also woke up. Due to fear the accused fled from place of occurrence. During investigation Spot Map (Ex. P-2) is prepared. Statement of witnesses prosecutrix, Samaru, Samarin Bai, Kumari Sulochana were recorded by Investigating Officer. After completion of usual investigation charge-sheet was filed against the accused appellant for the offence punishable under Section 354 of IPC.

- 4) The Trial Court framed charges under Section 450, 376(1) read with Section 511 of IPC 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 05 witnesses namely PW-01 Prosecutrix, PW-02 Kumari Sulochana (sister of prosecutrix), PW-03 Samaru (father of prosecutrix), PW-04 Vipin Bihari Trivedi, I.O. (Retd. T.I.) and PW-05 Ram Sahai Kannouje (Head Constable). 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. DW-01 Rameshri Bai Yadav and DW-02 Budhram were 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, therefore, no fair investigation was conducted by Investigating Officer and defence witness evidence is not properly appreciated by learned Trial Court.

- 8) He submits that the appellant has been falsely implicated in this case and learned Trial Court has wrongly convicted the appellant under Section 354 and 448 of IPC which is liable to be set aside.
- 9) He lastly 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 25-26 years back, the appellant is the first offender having no criminal antecedents, his age at the time of incident i.e. 19 year, he may be given the benefit of Probation of Offenders Act.
- 10) 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.
- 11) Heard counsel for the parties and perused the material available on record.
- 12) PW-01 Prosecutrix, has stated in her deposition that when she was sleeping in her house alongwith her grand mother and sister Kumar Sulochana and her parents were sleeping in another room, at that time accused entered the house of the prosecutrix at about 11 PM in night and caught hold of her legs, due to which she woke up. The accused was not wearing any cloths and he attempted to outrage her modesty. The accused was trying to enter his penis in private part of the prosecutrix. Then prosecutrix caught hold of the penis of the accused and started crying for help. She also stated that when the accused was trying to outrage her modesty, her parents and sister reached at

the place of occurrence. Prosecutrix duly identified the accused and she remained firm on her statement in her cross examination. She explained the delay in lodging FIR in her statement in para 5 & 6 of cross examination by stating that the Police Station is 30 Km away from the place of occurrence, after consultation with the village people they refused to take action against the accused and suggested to lodge FIR, and thereafter they arranged money for going to the Police Station and FIR was lodged by her.

- 13) Looking to the facts and circumstances of the case, the manner in which the incident took place, the explanation given by the prosecutrix for delay in lodging the FIR appears to be probable one. Though there is some exaggeration in deposition of the prosecutrix as compared to the FIR Ex. P-1 lodged by her, however, the complainant being a rustic villager, it seems to be natural and therefore, on this basis alone the evidence of the prosecutrix cannot be discarded. Further the deposition of the prosecutrix is also corroborated by the evidence of PW-02 Kumari Sulochana and PW-03 Samaru. There is no reason to disbelieve the evidence of the above witnesses. PW-01 prosecutrix has also proved the FIR. PW-04 Vipin Bihari Trivedi (I.O.) has also stated that the FIR was lodged by the prosecutrix on 14/12/1994.
- 14) So far as evidence of DW-01 Rameshri Bai Yadav and DW-02 Budhram is concerned, these witnesses are not the eye witness of the incident. DW-01 Rameshri Bai Yadav has stated that the accused has been falsely implicated by the prosecutrix and that on the date of incident the accused appellant was at village Nagri. DW-02 Budhram has also stated in para 5 of his deposition that on the date of incident the accused was not present in the village. No such defence of alibi has been taken by the appellant in his statement under Section 313 of Cr.P.C. and no such suggestion was put to the prosecution witnesses by the defence. Therefore, the defence has utterly failed to prove

the plea of alibi and it appears to be an afterthought.

- 15) So far as the argument of the learned counsel for the appellant that the independent witness has been examined by the prosecution is concerned, there is no any rule of law that in the case of sexual assault the prosecution is required to examine independent witness for proving its case. It is well settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital unless there are compelling reasons which necessitate looking for corroboration of her statement, the Courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is also well settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. The evidence of the prosecutrix is more reliable than that of an injured witness. Even minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. ***{State of Himachal Pradesh Vs. Asha Ram, AIR 2006 (SC) 381 : (2005) 13 SCC 766; Vishnu Vs. State of Maharashtra, AIR 2006 (SC) 508 : (2006) 1 SCC 283}.***
- 16) In the present case, the prosecutrix has categorically stated as to the manner in which the appellant tried to outrage her modesty and satisfactorily explained the delay of about 3 days in lodging the FIR. Though there is some discrepancy/ exaggeration in her deposition as compared to the FIR Ex. P-1 lodged by her, in the given facts and circumstances of the case, the same being insignificant does not affect the credibility of the prosecutrix. The place of occurrence has been proved by PW-05 Ram Sahai

Kannoje (Head Constable) who prepared the Spot Map Ex. P-2. As observed above, the version of the prosecutrix is also corroborated by the evidence of PW-02 Kumari Sulochana and PW-03 Samaru. This apart, raising of false plea of alibi by the appellant also points towards his guilt. Thus, on the basis of the evidence available on record, this Court is of the opinion that the Trial Court was justified in holding the appellant guilty under Section 354 and 448 of IPC.

- 17) As regards the sentence, admittedly the incident took place on 11/12/1994 and at that time offence under Section 354 of IPC was punishable with imprisonment of either description for a term which may extend to two years, or with fine, or with both. Section 354 of IPC prior to Amendment Act 13 of 2013 reads as under:-

“Section 354. 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.”

Section 448 of IPC reads as under:-

“Section 448. Whoever commits house-tresspass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.”

- 18) Thus, from the above, it is clear that jail sentence was not mandatory for either of the offences under Section 354 and 448 of IPC at the relevant time and the offender can be punished with the jail sentence or fine or with both. In the present case, considering the facts and circumstances of the case, the fact that the incident took place 25 years back, the age of the appellant at the time of incident i.e. in between 19 to 21 years as is reflected from the FIR and charge sheet, the appellant has no

any criminal antecedents, he is on bail since December 1998, 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 fine of Rs. 4,000/- under Section 354 of IPC and Rs. 1,000/- under Section 448 of IPC and out of which Rs. 3,000/- is given as compensation to the prosecutrix under Section 357 of Cr.P.C.

- 19) In the result the appeal is allowed in part. While maintaining the conviction of the appellant under Section 354 and 448 of IPC, the jail sentence awarded thereunder by the Trial Court is set aside and instead, he is sentenced to fine of Rs. 4,000/- under Section 354 and Rs. 1,000/- under Section 448 of IPC. In the event of failure of the appellant to pay fine amount, he shall have to suffer R.I. for 3 months and S.I for 1 month respectively. The aforesaid fine amount shall be deposited by the appellant within 3 months from today.
- 20) Out of the total amount of Rs. 5,000/- being deposited by the appellant, a sum of Rs. 3,000/- shall be payable to the prosecutrix as compensation under Section 357 of Cr.P.C. by the Trial court after due verification. 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