

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1168 of 2002**

- Teeju Ram, S/o Sadhu Ram Sahu, aged about 20 years, Occupation Labour, R/o Village Ghoghopuri, P.S. Gurure, District Durg, C.G.

----Appellant

Versus

- State of Chhattisgarh

---- Respondent

For Appellant	Shri Vivek Sharma, Advocate.
For Respondent/State	Shri H.S. Ahluwalia, Additional A.G.

Hon'ble Shri Justice Gautam Chourdiya
Judgment

22/06/2020

1. The matter is heard through Video Conferencing.
2. In this appeal filed under Section 374(2) Cr.P.C., the appellant has challenged the legality, validity and propriety of the judgment of conviction and order of sentence dated 17.10.2002, passed by the Special Judge / Additional Sessions Judge, Durg, C.G. in Special Case No.118/2001, whereby and whereunder the appellant stands convicted and sentenced as under:-

Conviction	Sentence
Under Section 354 of Indian Penal Code	R.I. for one year and fine of Rs.1,000/-, in default of payment of fine to further undergo simple imprisonment

	for four months.
Under Section 451 of Indian Penal Code	R.I. for six months and fine of Rs.500/-, in default of payment of fine to further undergo simple imprisonment for two months.

3. Case of the prosecution in brief is that on the date of incident i.e. 01.05.2001 at about 2:00 pm, prosecutrix, aged about 30 years, a member of Scheduled Tribe, was alone at her brother's house. At that time, accused/appellant entered her house with an intent to outrage the modesty of the prosecutrix and to humiliate her, caught hold of her hands, pushed her on the floor 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, her neighbours came there to save her and at that time accused/appellant ran away from the spot. Then, she went to the police station, Gurur, District Durg along with her brother and lodged FIR Ex.P-1 against the accused/appellant which was registered on zero number and transferred to the concerned police station where it was registered under Crime No.47/01. Prosecutrix was medically examined by PW-9 Dr. R.S. Bhardwaj vide Ex.P-7A wherein he noticed no external injury on the person of the prosecutrix. During investigation, Caste Certificate Exs.P-3 & P-4 were seized from Prosecutrix. Spot Maps were prepared vide Exs.P-2 & P-5 and since accused/appellant had absconded,

Panchnama to this effect was prepared vide Ex.P-6. Statements of the witnesses were recorded. After completion of investigation, charge sheet was filed against the appellant under Sections 354 and 451 of Indian Penal Code and under Section 3 (1) (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth 'the Act of 1989'). The trial Court framed the charges under Sections 354 and 451 of Indian Penal and under Section 3 (1) (xi) of the Act against the appellant which were denied by him and he prayed for trial.

4. So as to hold the accused/appellant guilty, the prosecution examined as many as 9 witnesses i.e. PW-1 Prosecutrix, PW-2 Bishunuram, PW-3 Agasiya Bai, PW-4 Chitrakhan, PW-5 Anil Gujeer, PW-6 R.K. Rai, SDOP, PW-7 L.M. Mishra, S.I., PW-8 S.K. Dwivedi and PW-9 Dr. R.S. Bhardwaj. Statement of the accused 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. In his defence, he examined three witnesses i.e. DW-1 Gareebaram, DW-2 Jugubai and DW-3 Sehdev.
5. 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.
6. Learned counsel for the appellant submits that in this case no independent witness has supported the prosecution case.

There are material contradictions and omissions in the statements of the prosecutrix PW-1 and other witnesses. No cogent evidence is available on record against the appellant. He also submits that no injury was found on the body of the prosecutrix. Therefore, the impugned judgment of conviction and order of sentence deserves to be set aside and the appellant be acquitted of the aforesaid charges.

7. 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.
8. Heard learned counsel for the parties and perused the material available on record.
9. PW-1 Prosecutrix stated in her deposition that on 01.05.2001 at about 2:00 pm, when she was alone at her brother's house, accused/appellant entered her house with an intent to outrage her modesty and to humiliate her, caught hold of her hands, dragged her and pushed her on the floor, on which she raised hue and cry and somehow escaped from there. Then, she lodged FIR Ex.P-1 against the accused/appellant on the next day. In cross-examination, she has denied the adverse suggestion by the defence and reiterated as to the manner in which the incident occurred. She states that the children of the

village call her "*Khori-Khori*" and on this she run after them to beat.

10. PW-2 Bishnuram, brother of prosecutrix, has stated that the prosecutrix told him about the incident on the same day when he returned from his duty. He also stated that on the next he along with prosecutrix went to the police station and lodged FIR Ex.P-1 against the accused. Thereafter, spot map was prepared in presence of the prosecutrix and her brother vide Exs.P-2 and P-5 and that the accused also absconded from village as per Ex.P-6. In the examination in chief as well as in the cross-examination, this witness states that the prosecutrix was not of feeble mind and that is why she could not be married.

11. PW-3 Agasia Bai also states that the prosecutrix is of feeble minded and, therefore, her marriage could not be solemnized. Supporting the version of the prosecutrix, she states that the prosecutrix informed her about the incident. In cross-examination, this witness remained firm and the defence could not elicit anything from her to render her evidence untrustworthy or doubtful.

12. PW-4 Chitrakhan is the village Kotwar. He proved the seizure memo Ex.P-4, spot map Ex.P-5 and absconsion panchnama Ex.P-6.

13. PW-5 Anil Gujeer is the Patwari. He proved the spot map Ex.P-5.

- 14.** PW-6 R.K. Rai, SDOP, proved the FIR, absconsion panchnama Ex.P-6 & seizure memo Ex.P-4. He recorded the statements of the witnesses. The evidence of this witness is uncontroverted in his cross-examination.
- 15.** PW-7 M.L. Mishra, Sub-Inspector, proved the FIR Ex.P-7 which was lodged by the prosecutrix.
- 16.** PW-8 S.K. Dwivedi, A.S.I. lodged the FIR Ex.P-1 and prepared the spot map Ex.P-2. This witness also proved the memo of Ex.P-7 whereby the prosecutrix was sent for medical examination.
- 17.** The defence witnesses DW-1 Gareebaram, DW-2 Juggu Bai and DW-3 Sehdev have only stated that that prosecutrix was of feeble mind but no incident was seen by them and they have no knowledge about the incident. Therefore, their statements have no legal value.
- 18.** From the evidence of the prosecutrix as well as the evidence of PW-2 Bishnuram and PW-3 Agasia Bai, who had duly supported the evidence of the prosecutrix, it is seen that the prosecutrix was of feeble mind and it is the accused/appellant who outraged the modesty of the prosecutrix. There is no major contradictions or omissions in the statements of the above witnesses which could suggest of false implication of the appellant in the crime in question. The evidence of the prosecutrix also finds corroboration from the promptly lodged FIR. The evidence of the defence witnesses, as discussed

above, is of no help to the appellant as they have not stated anything specific in favour of the appellant and have not seen the incident. In these circumstances, this Court is of the opinion that the trial Court has rightly convicted and sentenced the accused/appellant under Sections 354 and 451 of IPC by the impugned judgment which needs no interference by this Court.

19. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed. As per report dated 23.02.2020 submitted by Office Superintendent, Central Jail Durg, C.G., the appellant having completed the jail sentence has been released from jail on 16.12.2003. Therefore, there is no requirement of passing any order in respect of arrest, surrender etc. of the appellant.

Sd/-
Gautam Chourdiya
Judge

Akhilesh