

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 441 of 2003

- Satish Kumar S/o Shobharam Satnami, Aged about 24 years, R/o Village Kumhari, Police Chowki Bhakhara, Police Station Kurudh, District Dhamtari (C.G.)

---- Appellant

Versus

- State of Chhattisgarh through Police Chowki Bhakhara, Police Station Kurudh, District Dhamtari (C.G.)

---- Respondent/State

For Appellant	:	Shri Shobhit Koshta, Advocate
For Respondent/State	:	Shri Ayaz Naved, Government Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment

25.06.2020

1. This appeal is heard through Video Conferencing.
2. This appeal arises out of the judgment of conviction and order of sentence dated 20.03.2003 passed by the Additional Sessions Judge, Dhamtari (C.G.) in Sessions Case No. 366 of 2002, whereby the Appellant stands convicted and sentence as under:-

<u>Conviction</u>	<u>Sentences</u>
Under Section 452 of the Indian Penal Code (for short 'IPC')	S.I. for two years and pay a fine of Rs.1,000/-, in default of payment to further undergo R.I. for six months
Under Section 354 of IPC	R.I. for one year and pay a fine of Rs.500/-, in default of payment to further undergo S.I. for three months.
Both sentences to run concurrently	

3. Facts of the case in brief is that PW-1 prosecutrix was residing with her parents at village Bhaisabod. On 25.05.2002 at about 10:30 pm, when PW-1 prosecutrix, her younger sister Parwati (PW-2) and her neighbour Kamlesh Kumar (PW-3) were present in her house, the appellant entered her house and told Kamlesh Kumar to go out from the house. The appellant used criminal force and caught hold of neck and hand of the prosecutrix and put vermilion (*sindoor*) on her hair-parting and told that he would keep her as his

wife. When prosecutrix (PW-1) was resisting the act of the appellant, he told the prosecutrix that if you would not be mine then you would not be of anyone. Thereafter, the appellant opened the lid/tap of chimney which was kept in verandah and poured kerosene on the body of the prosecutrix. When the appellant was about to fire by matchstick, at the same time she snatched the matchstick from the appellant and ran outside the house. Later on, her uncle Dharam Singh (PW-4) and her parents reached the house. The prosecutrix narrated the incident to them. Just after the incident, named F.I.R. (Ex.-P/1) was lodged by the prosecutrix (PW-1) on 25.05.2002 at about 14:15 hours against the appellant in police station- Out Post Bhakhara, Dhamtari. On the basis of Ex.-P/1, numbered F.I.R. (Ex.-P/1A) was also lodged by the Ram Yadav on 26.05.2002 at about 12:30 pm against the appellant in police station- Kurudh, Dhamtari.

4. Spot map was prepared vide Ex.-P/2. One yellow coloured chimney, one matchbox containing 10 sticks and one pair of clothes (*Salwaar* of the prosecutrix) from which smell of kerosene was coming out, were seized by the police vide Ex.-P/3. One yellow coloured full-shirt stained with vermilion from which smell of kerosene was coming out was seized by the police at the instance of the appellant vide Ex.-P/6. Seized articles were sent for chemical examination to FSL, Raipur vide Ex.-P/8, from where a report was received vide Ex.P/12. As per FSL report, kerosene smell was present on Article-'A' yellow coloured chimney; Article-'C1' *Salwaar*-suit of the prosecutrix; Article-'C2' orange coloured shirt of the prosecutrix and Article-'D' yellow coloured full-shirt of the appellant.
5. The prosecutrix (PW-1) was sent for medical examination to Primary Health Centre, Gujra, Kurud, Dhamtari vide Ex.-P/4 where she was examined by Dr. Pradeep Hishikar (PW-8) and he gave MLC report Ex.-P/4A. As per MLC report, Doctor found injury on the neck of the prosecutrix which was simple in nature, pain was reported on touching the front part of the neck and found

tenderness on her neck. The injury was caused by hard & blunt object.

6. The accused was arrested on 26.05.2002 vide Ex.-P/13 and was sent for medical examination to Primary Health Centre, Gujra, Kurud, Dhamtari vide Ex.-P/5 where he was examined by Dr. Pradeep Hishikar (PW-8) and he gave MLC report Ex.-P/5A. As per MLC report, Doctor found swelling and tenderness on the left elbow and found pain (tenderness) on touching the lower side of back of the appellant. The injury may be caused by hard & blunt object and was simple in nature.
7. Case diary statements of prosecutrix (PW-1), Ku. Parwanti (PW-2 – younger sister of prosecutrix) and Dharam Singh (PW-4 – uncle of the prosecutrix) were recorded by the police vide Ex.-D/3, Ex.-D/4 & Ex.-D/5.
8. After completion of investigation, charge-sheet was filed by the police for the offence under Sections 307, 452 & 506 of IPC. While framing the charges, the Additional Sessions Judge, Dhamtari (C.G.) framed the charges against the accused/appellant under Sections 450, 354 & 307 of IPC.
9. So as to hold the accused/appellant guilty, the prosecution examined 08 witnesses namely prosecutrix herself (PW-1), Ku. Parwati (PW-2), Kamlesh Kumar (PW-3), Dharam Singh (PW-4), Kamal Sahu (PW-5), Bharti Sori (PW-6), C.L. Koshre (PW-7) and Dr. Pradeep Hishikar (PW-8) in support of its case. Statement of the accused/Appellant 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. The accused/appellant examined one Bhoj Kumar as DW-1 in support of his defence.
10. After appreciation of the evidence available on record, the learned Additional Sessions Judge, Dhamtari (C.G.) by the impugned judgment, while acquitting the appellant of the charges under Sections 450 & 307 of IPC, convicted and sentenced the accused/appellant as mentioned in para- 2 of this judgment, hence this appeal.

11. Learned counsel for the appellant submits that the appellant was falsely implicated in this case and there was no any reason for the appellant to commit such offence. He further submits that the prosecutrix had written many love letters to the appellant, but the trial Court has not properly considered the same and has also not considered the evidence of defence witness namely Bhoj Kumar (DW-1), therefore, the trial Court has wrongly convicted and sentenced the appellant for the offence under Sections 452 & 354 of IPC.
12. Lastly, learned counsel for the appellant submits that if this Court finally comes to conclusion that the appellant has rightly been convicted by the trial Court for offence under Sections 452 & 354 of IPC, considering the fact that the appellant is the first offender aged about 24 years at the time of incident, the incident took place around 18 years ago, he may be given the benefit of Probation of Offender Act and sentenced to the period already undergone by him. In support of his contention reliance has been placed on the decision of the Hon'ble Supreme Court in the matter of **George Pon Paul Vs. Kanagalet and Others, (2009) 13 SCC 478.**
13. On the other hand, learned counsel for the State supporting the impugned judgment and submits that the trial Court has rightly convicted and sentenced the appellant for the above offence which needs no interference by this Court.
14. Heard learned counsel for the parties and perused the evidence available on record.
15. PW-1 prosecutrix has stated in her deposition that on the date of incident i.e. 25.05.2002 at about 10:30 am when she, her younger sister Parwati (PW-2) and her neighbour Kamlesh (PW-3) were present in her house and her parents had gone to the field, appellant Satish Kumar entered her house and told Kamlesh to go out from the house. Thereafter, the appellant forcibly caught hold of her hand and neck and put vermilion (*Sindoor*) on her hair-

parting saying that she would be his wife and if she would not become his wife, then she would not become wife of anyone. That time her sister Parwati (PW-2) went out from there to call her uncle Dharam Singh (PW-4). PW-1 has further stated that when her sister Parwati was in her house, the appellant poured kerosene from the chimney on her, which was kept on the verandah (*parchhi*) of her house and tried to set her on fire through matchstick. Then suddenly she snatched the matchstick from the appellant and ran outside the house. At that time her uncle Dharam Singh (PW-4) reached there and the appellant fled away from her house.

16. PW-2 Ku. Parwati who is younger sister of the prosecutrix (PW-1) supports the version of the prosecutrix. PW-2 has stated that the appellant had caught hold of prosecutrix's hair, put vermilion (*Sindoor*) on her hair-parting and poured the kerosene on her and then she went to call her uncle because she was very scared. PW-3 Kamlesh Kumar and PW-4 Dharam Singh have supported the evidence of prosecutrix (PW-1).

17. There is no reason to disbelieve the evidence of prosecutrix (PW-1). F.I.R. (Ex.-P/1A) and spot map (Ex.-P/2) were duly proved by the prosecutrix (PW-1) and as per FSL report (Ex.-P/12), the kerosene was found on the clothes of the prosecutrix. As per MLC report (Ex.-P/4A), simple injury was found on the body of prosecutrix and tenderness was also found by Dr. Pradeep Hishikar (PW-8) who has duly proved Ex.-P/4A.

18. PW-5 Kamal Sahu, the father of the prosecutrix, has stated that on the date of incident he alongwith his wife reached his house at about 10:30 am, many people of the village had assembled in front of his house, her daughter (prosecutrix) was weeping and she narrated the incident that the appellant put vermilion (*Sindoor*) on her hair-parting and he (appellant) poured kerosene on her body.

19. PW-6 Bharti Sori is the Sub-Inspector who registered the F.I.R. (Ex.-P/1) and proved this fact that the F.I.R. was lodged by prosecutrix (PW-1). He also

proved this fact that he sent the prosecutrix for medical examination vide Ex.-P/4 and the report of which was given by Doctor (PW-8) vide Ex.-P/4A. He further proved this fact that he sent the appellant for medical examination vide Ex.-P/5 and the report of which given by PW-8 is Ex.-P/5A. PW-6 prepared spot map (Ex.-P/2) and seized article from the appellant vide Ex.-P/6 and seized clothes of the prosecutrix etc and the same were sent for FSL vide Ex.-P/8.

20.In the present case, the appellant examined one defence witness Bhoj Kumar as DW-1. DW-1 has stated that some letters were written by the prosecutrix to the appellant and the same were given to the appellant by him (DW-1). In cross examination in para-10 of the deposition of the prosecutrix (PW-1), two photocopies of the letters were shown to the prosecutrix, but the prosecutrix denied the same and stated that these letters were not written by her. Only copy of the letters were produced before the trial Court and handwriting of the prosecutrix was not examined through handwriting expert as such the said letters were not proved as required under the law. Therefore, the evidence of defence witness has no substance.

21.There is no any major contradiction or omission in the depositions of the prosecutrix and other witnesses. The evidence of the prosecutrix (PW-1) was duly supported by PW-2 Ku. Parwati (younger sister of the prosecutrix) and PW-3 Kamlesh Kumar (neighbour of the prosecutrix) and just after the incident, Dharam Singh (PW-4) also reached the place of occurrence and found that the appellant was fleeing from the house of the prosecutrix. Therefore, the trial Court has rightly convicted the appellant under Sections 452 & 354 of IPC for entering into the house of the prosecutrix, using criminal force against her, forcibly putting vermilion (*Sindoor*) on her hair-parting etc.

22.As regard the sentence, considering the facts and circumstances of the

case, the fact that the appellant was a young offender of 24 years on the date of incident, he has no criminal antecedent, he remained in jail for 55 days and is on bail since 04.04.2003, the incident took place around 18 years back, keeping in view of the judgment of the Hon'ble Supreme Court in the matter of *George Pon Paul* (supra) 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 the appellant 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 subject to enhancement of the amount of fine from Rs.1,000/- to Rs.4,000/- with default stipulation under Section 452 of IPC and enhancement of the amount of fine from Rs.500/- to Rs.3,000/- with default stipulation under Section 354 of IPC.

23. In the result, the appeal is allowed in part. While confirming the conviction of the appellant awarded by the trial Court under Sections 452 & 354 of IPC, he is sentenced to the period already undergone by him. However, the fine amount Rs.1,000/- imposed by the trial Court for the offence under Section 452 of IPC is enhanced to Rs.4,000/- and the fine amount Rs.500/- imposed for the offence under Section 354 of IPC is enhanced to Rs.3,000/-. The fine amount already deposited by the appellant shall be adjusted accordingly. Let the enhanced sum be deposited in the trial Court failing which the appellant shall be liable to remain in jail for a period of three months on each count. The appellant is reported to be on bail, therefore, his bail bonds shall remain in force of a period of six months from today in view of the provisions of Section 437-A of Cr.P.C.

Sd/-
(Gautam Chourdiya)
Judge