

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 19 of 2004**

- Ashok Kumar, S/o Ghanshyam @ Koku, aged about 37 years, R/o Village Gota, Thana Berla, Tehsil Berla, District Durg, C.G.

----Appellant

Versus

- State of Chhattisgarh, Through P.S. Berla, District Durg, C.G.

---- Respondent

For Appellant	Shri S.P. Sahu, Advocate.
For Respondent/State	Shri Ayaz Naved, Government Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment**01/07/2020**

- The matter is heard through Video Conferencing.
- Challenge in this appeal is to the judgment of conviction and order of sentence dated 06.12.2003 passed by the Special Judge / Additional Sessions Judge, Durg, C.G. in Special Case No.80/2003, whereby the appellant stands convicted for the offence under Section 354 of Indian Penal Code and sentenced to undergo rigorous imprisonment for six months and fine of Rs.1,000/-, in default of payment of fine amount to undergo additional rigorous imprisonment for three months.

3. Case of the prosecution in brief is that on the date of incident i.e. 02.04.2001 at about 6:45 pm, prosecutrix aged about 32 years, went to attend the nature's call along with her daughter. After attending the call of nature, she was waiting for her daughter at that time accused/appellant came there with an intent to outrage her modesty and to humiliate her, caught hold of her breasts and pushed her hands due to which her bangles were broken. On this, she raised hue and cry and somehow, she came out of his clutches, ran away from there. Hearing her voice, her daughter and elder brother-in-law (Jeth) came there to save her and at that time accused/appellant ran away from the spot. On the next day, she went to the police station, Berla, District Durg and lodged FIR Ex.P-2 against the accused/appellant which was registered on zero number and transferred to the concerned police station where it was registered under Crime No.33/2001. Prosecutrix was medically examined by PW-9 Dr. Chatursingh vide Ex.P-8 wherein he noticed scratch marks on the hands of the prosecutrix which were caused by hard and rough object and were simple in nature. During investigation, Caste Certificate Exs.P-3 and P-4 were seized. Broken Bangles of prosecutrix were seized vide Ex.P-5. Spot Map Ex.P-6 was prepared. Statements of witnesses were recorded. After completion of investigation, charge sheet was filed against the appellant under Section

354 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 Section 354 of Indian Penal Code 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 F.K. Kerkata, PW-2 Shankar Sonwani, PW-3 Prosecutrix, PW-4 Khelu Prasad, PW-5 Bheem Kumar, PW-6 Asha Ram, PW-7 S.R. Salam, PW-8 Kumari Leela and PW-9 Dr. Chatur Singh. Statement of the accused/appellant 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 defence, he examined two witnesses i.e. DW-1 Makhan Das and DW-2 Santosh Kumar Sahu.
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 appellant has been falsely implicated by the prosecutrix and she has lodged the FIR after the delay of one day on 03.04.2001 and explanation given by the prosecutrix regarding delay in

lodging the FIR is not acceptable. He further submits that no independent witness has supported the prosecution case. There are material contradictions and omissions in the statements of the prosecutrix and other witnesses. No cogent evidence is available on record against the appellant. He also submits that at the time of incident accused/appellant was in Noida, U.P. He further submits that according to the defence witnesses, Elder Brother-in-law of prosecutrix- Asharam had assaulted upon the accused/appellant and for this village meeting was also convened but Asharam did not attend the said meeting and after that false report was lodged against accused/appellant. Therefore, the impugned judgment of conviction and order of sentence deserves to be set aside and the appellant be acquitted of the said charge.

Alternatively, he submits that if this Court ultimately comes to the conclusion that the appellant is guilty of the offence under Section 354 of IPC, considering the fact that the incident took place around 19 years ago, the age of the appellant at the relevant time was 37 years and he has no criminal antecedent, he has already remained in jail for 1 day, by granting the benefit of Probation of Offenders Act, the accused may be sentenced to the period already undergone by him.

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-3 Prosecutrix specifically and categorically stated that on the date of incident i.e. 02.04.2001 at about 6:45 pm, when she was waiting for her daughter after attending the call of nature, at that time accused/appellant came there with an intent to outrage her modesty and to humiliate her, caught hold of her breasts and pushed her hands due to which her bangles were broken. On this, she raised hue and cry and somehow escaped from there. Hearing her voice, her daughter and elder brother-in-law (Jeth) came there to save her and at that time accused/appellant ran away from the spot. Then, she lodged the FIR against the accused/appellant on the next day because on the date of incident her husband was not present in the house. Therefore, explanation given by the prosecutrix regarding delay of one day in lodging the FIR appears to be trustworthy and plausible and can safely be accepted. The said incident was also witnessed by Kumari Leela and Asharam.
10. PW-6 Asharam, Elder Brother-in-law of the prosecutrix, has

supported the statement of prosecutrix. He states that on the date of incident he saw that the accused/appellant had caught hold of hands of the prosecutrix. He also states that when he reached the spot at that time accused/appellant had fled away from the spot.

11. PW-8 Kumari Leela has duly supported the statements of PW-6 Asharam and PW-3 Prosecutrix.
12. PW-7 S.R. Alam, SDOP, prepared the Spot Map Ex.P-6, seized caste certificate of the prosecutrix vide Exs.P-3 & 4 and the broken bangles of prosecutrix vide Ex.P5, prepared absconsion panchnama of accused vide Ex.P-7 and also recorded the statement of Asharam vide Ex.D-1 and duly proved the same.
13. The defence witnesses DW-1 Makhan Das and DW-2 Santosh Kumar Sahu both have stated that PW-6 Asharam had assaulted upon the accused/appellant but no such question was put to PW-6 Asharam whether he assaulted upon the accused/appellant or not and both defence witnesses were not present at the time of incident. Therefore, their statements have no legal value.
14. From the evidence of the prosecutrix as well as the evidence of PW-6 Asharam and PW-8 Kumari Leela, who have duly supported the evidence of the prosecutrix, it stands proved that 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 and medical report. 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 prosecution has successfully proved its case under Section 354 of IPC against the appellant.

15. As regards the sentence under Section 354 of IPC, as per Criminal Law (Amendment) Act, 2013 which came into force with effect from 03.02.2013, the minimum sentence prescribed under Section 354 of IPC is one year and the maximum is 5 years with fine as well. However, the present incident took place in the year 2001 i.e. prior to the amendment and at that time the aforesaid offence was punishable with imprisonment of either description for a term which may extend to two years or with fine, or with both. In the present case, considering the facts and circumstances of the case, the manner in which the incident occurred, the fact that the incident took place around 19 years ago, that at the time of incident accused/appellant was of 37 years and at present he must be 56 years of age, the fact that he has already remained in jail for 1 day, 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 the 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 useful purpose would be served in sending the accused/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 and the fine of Rs.1,000/- imposed by the trial Court is enhanced to Rs.7,000/- and likewise the compensation amount of Rs.1,000/- payable to the prosecutrix is also enhanced to Rs.3,000/-. If the fine amount is not deposited by the accused/appellant, he shall have to suffer additional rigorous imprisonment for 3 months.

16. In the result, the appeal is allowed in part. While maintaining the conviction of the appellant under Section 354 of IPC, he is sentenced to the period already undergone by him. However, the fine amount of Rs.1,000/- imposed by the trial Court is enhanced to Rs.7,000/-. In default of payment of fine, the appellant shall have to undergo additional rigorous imprisonment for 3 months. Out of the total fine of Rs.7,000/-, a sum of Rs.3,000/- shall be payable to the prosecutrix as compensation by the trial Court after due verification. The fine amount deposited by the appellant and the compensation

amount already paid to the prosecutrix shall be adjusted accordingly.

17. The appellant is reported to be on bail, therefore, his bail bonds shall continue for a period of six months from today in view of provisions of Section 437-A of Cr.PC.

Sd/-
Gautam Chourdiya
Judge

Akhilesh