

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 30 of 2004**

- Mohd.Tanveer @ Gujru, S/o Tuntun @ Chand Shuddin, aged 20 years, Occupation Driver, R/o Kunkuri, P.S. Kunkuri, District Jashpur, C.G.

----Appellant**Versus**

- State of Chhattisgarh

---- Respondent

For Appellant	Shri Neeraj Mehta, Advocate.
For Respondent/State	Shri Ayaz Naved, Government Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment

25/06/2020

1. The matter is heard through Video Conferencing.
2. Challenge in this appeal is to the judgment of conviction and order of sentence dated 20.11.2003 passed by the Special Judge, Sessions Court, Jashpur, District Jashpur, C.G. in Special Case No.20/2003, whereby the appellant stands convicted for the offence under Section 354 of Indian Penal Code and sentenced to undergo rigorous imprisonment for one year and fine of Rs.2,000/-, in default of payment of fine amount to undergo additional rigorous imprisonment for two months.
3. Case of the prosecution in brief is that on the date of incident i.e. 18.02.2002 at about 10:15 am, prosecutrix aged about 19 years, was going to school. On the way, accused/appellant along with

other person met her and called her but she moved away. Then, appellant with an intent to outrage the modesty of the prosecutrix and to humiliate her, caught hold of her hands and tried to kiss her. On this, she raised hue and cry and somehow, she came out of his clutches, ran away from there and went towards Kesharpara where she narrated the incident to other people. Thereafter, she went to the police station and lodged FIR Ex.P-1 against the accused/appellant on the same day which was registered in police station Kunkuri, Jashpur under Crime No.25/2002.

4. During investigation, Caste Certificate Ex.P-5 of prosecutrix was seized. Spot Map Ex.P-2 was prepared and accused/appellant was arrested on 18.02.2002 vide Ex.P-7. Statements of witnesses were recorded by the Investigating Officer. After completion of investigation, charge sheet was filed against the appellant under Sections 341, 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 charge under Section 354 of Indian Penal Code and Section 3 (1) (xi) of the Act against the appellant which was denied by him and he prayed for trial.
5. So as to hold the accused/appellant guilty, the prosecution examined as many as 7 witnesses i.e. PW-1 Prosecutrix, PW-2 Malli Bai, PW-3 Rajendra Kumar, PW-4 Chandra Shekhar, PW-5 Shyam Bihari, PW-6 A. Minj and PW-7 Kunj Bihari Ram. 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. However, no witness was examined by him in his defence.

6. 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.
7. Learned counsel for the appellant submits that appellant has been falsely implicated in this case. He also submits that in this case prosecutrix has not mentioned the names of the eye-witnesses. 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. 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 18 years ago, the appellant was a young offender of 20 years at the relevant time and he has no criminal antecedent, he has already remained in jail for 1 month and 24 days, by granting the benefit of Probation of Offenders Act, the accused may be sentenced to the period already undergone by him.

8. 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.

9. Heard learned counsel for the parties and perused the material available on record.
10. PW-1 Prosecutrix specifically and categorically stated that on the date of incident i.e. 18.02.2002 at about 10:15 am, while she was going to school, accused/appellant along with other person on the way met her and called her but she moved away. Thereafter, the appellant with an intent to outrage the modesty of the prosecutrix and to humiliate her, caught hold of her hands and tried to kiss her, on which she raised hue and cry and somehow escaped from there and went towards Kesharpara where she narrated the said incident to other people and one old lady. Then, she went to the police station and lodged FIR Ex.P-1 against the accused/appellant on the same day. After the report, the police came to the spot and prepared the spot map vide Ex.P-2.
11. PW-2 Malli Bai has proved this fact that on the date of incident she heard the hue and cry of the girl after that she came out from her house and saw that the accused/appellant had caught hold of hands of the prosecutrix. She also stated that at that time prosecutrix was weeping and she requested the appellant to leave her.
12. PW-3 Rajendra Kumar, PW-4 Chandra Shekhar, PW-5 Shyam Bihari and PW-7 Kunj Bihari Ram have duly supported the statements of prosecutrix PW-1 and PW-2 Malli Bai.
13. PW-6 A. Minj, Deputy Superintendent of Police, prepared the Spot Map Ex.P-2, seized caste certificate of the prosecutrix vide Ex.P-4, arrested the accused Vide Ex.P-7, recorded the statement of the witnesses and duly proved the same.
14. On a minute examination of the above evidence, it is clear that on

the date of incident i.e. 18.02.2002, the appellant had caught the prosecutrix with an intent to outrage her modesty, caught her hands and also tried to kiss. The prosecutrix has remained firm during her cross-examination and her statement is also supported by PW-2 Malli Bai, PW-3 Rajendra Kumar, PW-4 Chandra Shekhar, PW-5 Shyam Bihari and PW-7 Kunj Bihari Ram. No any evidence has been adduced or reason shown by the appellant for his false implication in this crime.

15. Thus, considering the facts and circumstances of the case and the manner in which the offence took place as stated by the prosecutrix which is duly corroborated by the evidence of PW-2 Malli Bai, PW-3 Rajendra Kumar, PW-4 Chandra Shekhar, PW-5 Shyam Bihari and PW-7 Kunj Bihari Ram, this Court is of the opinion that the prosecution has successfully proved its case under Section 354 of IPC against the appellant.

16. 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 2002 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 18 years ago, that at the time of incident accused/appellant was a young offender of 20 years and at present

he must be 38 years of age, the fact that he has already remained in jail for 1 month 24 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 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 while maintaining the fine amount as awarded by the trial Court with default stipulation.

17. 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 imposed on him with default sentence by the trial Court shall remain intact.

18. 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