

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 409 of 2005**

1. Basant Kumar Rathore S/o Bharat Lal, aged about 50 years, R/o Saragaon, Police Station Saragaon, District Janjgir-Champa (C.G.).

---- Appellant**Versus**

1. State of Chhattisgarh, Through S.H.O. Saragaon, District Janjgir-Champa (C.G.).

---- Respondent

For Appellant	:	Shri Ravindra Sharma, Advocate.
For Respondent/State	:	Shri Vimlesh Bajpai, Govt Advocate.

Hon'ble Justice Shri Gautam Chourdiya**Judgment****21/09/2020**

- 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 29/04/2005 passed by 3rd Additional Sessions Judge (F.T.C.), Janjgir-Champa (C.G.) in Sessions Trial No. 10/2005; 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 and fine of Rs. 2,000/-, in default of fine additional R.I. for 3 months

- 3) Case of the prosecution in brief is that on 22/09/2004 at about 04:00 PM at village Saragaon when the prosecutrix, aged about 40 years went to her agricultural field, the accused appellant accused caught hold of her hand, took her near bund forcibly and on the threat of life, removed her cloths and shot her photograph as also committed forcible sexual intercourse with

her. The appellant threatened that if she disclosed the incident to anyone, he would get the poster of photograph of her private part printed and fix in the village and kill her. FIR Ex. P-1 was lodged by the prosecutrix at 07:10 PM on the same day of incident i.e on 22/09/2004 between against accused appellant. Spot maps were prepared vide Ex. P-3 and Ex. P-4. During investigation vide seizure memo Ex. P-5 one Petticoat was seized from the prosecutrix. Prosecutrix was examined by Doctor PW-02 Anita Shrivastava who did not find any physical injury on the body of the prosecutrix or her private part as per MLC report Ex. P-6. Slide prepared from prosecutrix was seized vide Ex. P-9. Accused was also examined by Doctor PW-09 Manish Shrivastava and he found him capable to perform intercourse as per Ex. P-19. After completion of usual investigation, charge-sheet was filed against the accused appellant for the offence punishable under Sections 376 and 506 of IPC.

- 4) The Trial Court framed charges under Sections 376 and 506(B) 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 10 witnesses namely PW-01 Prosecutrix, PW-02 Dr. Anita Shrivastava (Medical Officer), PW-03 Bholaram, PW-04 Ravichandra Rathore (Home Guard/Constable), PW-05 Raghunath Prasad Karsh, PW-06 R. Sewaturam Nikunj (Constable), PW-07 Ramcharan Maina (Senior Constable), PW-08 Gayatri Sharma (S.I.), PW-09 Dr. Manish Shrivastava (Medical Officer) and PW-10 Nawal Tiwari (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. No witness was 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 offence under Section 354 of IPC was proved by the prosecution and nor any ingredients was proved. No independent witness has supported the prosecution case nor any injury was found on the body of the prosecutrix. Therefore, the prosecution has utterly failed to prove its case under Section 354 of IPC.
- 8) He submits that the appellant has been falsely implicated in this case and learned Trial Court has wrongly convicted and sentenced the appellant under Section 354 of IPC by the impugned judgment 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 in 2004 around 16 years back, the appellant is the first offender having no criminal antecedents, his age at the time of incident i.e. 50 year and he spent in jail about 230 days, he be sentenced to the period already undergone by him.
- 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 watching her field at about 03:00 PM, the accused asked for Basket (Balti) and thereafter accused was standing near the

prosecutrix. At that time, the accused caught hold of her hand and started pulling her towards the boundary of the tank and forcibly slammed her down at the bund. On the threat of life, the appellant shot photograph of her private part and committed rape with her. Prosecutrix lodged FIR Ex. P-1. She was examined after taking her consent by the Doctor vide Ex. P-2. Spots map was prepared vide Ex. P-3 & Ex. P-4 by Police and Patwari respectively. One Petticoat was seized from prosecutrix vide Ex. P-5. In her deposition prosecutrix also stated that accused was pulling her and removed her clothes.

- 13) PW-02 Dr. Anita Shrivastava examined prosecutrix on the same day of the incident but she did not find any physical injury on her private part or any part of the body.
- 14) PW-03 Bholaram turned hostile and he only supported seizure memo Ex. P-5 by which one Petticoat was seized from the prosecutrix and denied his case diary statement vide Ex. P-8. PW-04 Ravichandra Rathore (Home Guard/Constable) and PW-06 R. Sewaturam Nikunj (Constable) both have proved vide Ex. P-9 whereby one sealed packet was seized in their presence. PW-05 Raghunath Prasad Karsh, husband of the prosecutrix, only stated that his wife informed him that when she was at field, the accused forcibly caught her near Tank (Talab) and slammed her down at the bund, committed sexual intercourse with her and also shot photograph of her private parts. But PW-05 Raghunath Prasad Karsh was not the eye witness of the case.
- 15) PW-08 Gayatri Sharma (I.O.) has lodged FIR Ex. P-1 against the appellant as per report of prosecutrix on 22/09/2004 and sent her to doctor of Primary Health Centre Saragaon/Bhamnindih for MLC report and prepared seizure memo Ex. P-9. She also seized one underware of accused vide Ex. P-15. She has duly proved the above documents.
- 16) PW-09 Dr. Manish Shrivastava on examination found accused

/appellant capable of performing intercourse vide Ex. P-19. PW-10 Nawal Tiwari (Constable) has proved seizure of one slide vide Ex. P-9 and seizure of underwear of appellant vide Ex. P-15.

- 17) The prosecutrix has categorically stated in her deposition that on the date of incident when she went to her field, the accused appellant caught hold of her hand, forcible took her near the bund, slammed her down there and on the threat of life shot photographs of her private parts. Seen after the incident, she lodged the FIR Ex. P-1 which has been duly proved by the prosecutrix as well as PW-08 Gayatri Sharma (I.O.). Though she also alleged that she was subjected to forcible sexual intercourse by the appellant but as per medical evidence no any sign of injury on her body or private part suggesting that she was subjected to forcible sexual intercourse was found by the Doctor. The Trial Court has elaborately discussed the entire evidence and recorded detailed findings from paras 15 to 22 and arrived at the conclusion that the prosecution has successfully proved offence under Section 354 of IPC against the appellant. The accused appellant has failed to prove by adducing any evidence that he has been falsely implicated in this case. Considering the nature and quality of evidence available on record this Court finds no illegality in the finding recorded by the Trial Court holding the appellant guilty under Section 354 of IPC accordingly the conviction of the appellant under Section 354 of IPC is hereby affirmed.

- 18) As regards the sentence, admittedly, in this case the incident took place on 22/09/2004 i.e. prior to coming into force of Criminal Law (Amendment) Act 2013 came into force w.e.f. 03/02/2013. At the relevant time, Section 354 of IPC reads as under:-

“354. Assault or criminal force to woman with intent to outrage her modesty.—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."

- 19) Considering the facts and circumstances of the case, the fact that the incident took place 16 years back, the age of the appellant at the time of incident i.e. 50 years, as it reflected from the FIR and charge sheet, the appellant has no any criminal antecedents, he is on bail since May 2005, he has remained in jail for about 230 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 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 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 the period already undergone by him while keeping the fine sentence with default stipulation as imposed by the Trial Court under Section 354 of IPC intact.
- 20) In the result the appeal is allowed in part. Conviction of the appellant under Section 354 of IPC is hereby affirmed and the jail sentence imposed thereunder by the Trial Court is reduced to the period already undergone by him. However, the fine sentence with default stipulation as imposed by the Trial Court under Section 354 of IPC shall remain intact. 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