

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No.02 of 2005**

Maatal Ram, S/o. Jhong Ram Bhooiher, aged about 60 years, Occupation Agriculture, R/o. Village Banderchuwa, Distt. Jashpur (CG)

**---- Appellant****Versus**

State Of Chhattisgarh Through Police Station Kansabel, Distt. Jashpur (CG)

**---- Respondent**

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 For the Appellant : Shri Shivanshu Pandey, Advocate  
 For the Respondent/State : Shri Aman Kehsarwani, Panel Lawyer  
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**Hon'ble Shri Justice Ram Prasanna Sharma****Judgment On Board****03.02.2020**

1. The appeal is preferred against judgment dated 23.12.2004 passed by Additional Sessions Judge, Jashpur Distt. Jashpur (CG) in Session Trial No.112/2004 wherein the said Court convicted the appellant for the commission of offence under Section 354 of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for 02 years and to pay fine of Rs.500/- with default stipulation.

2. In the present case, prosecutrix is PW-1. As per the version of the prosecution, on the date of incident, i.e. 10.9.2004, the appellant asked the prosecutrix to catch some vegetable and in the meantime, the appellant tried to outrage the modesty of the prosecutrix and attempted to commit sexual intercourse with her.

The matter was reported, investigated and the appellant was charge sheeted and convicted as mentioned above.

**3.** Learned counsel for the appellant submits as under:

(i) From the evidence of Dr. YK Toppo (PW-3), it is established that the appellant was not capable to perform sexual intercourse, therefore, the trial Court recorded finding that the case falls within mischief under Section 354 IPC, but taking into consideration the contradictory statement of the prosecution witnesses the story put forth by the prosecution is totally false.

(ii) The trial Court has not evaluated the material contradiction and omissions in the statement of the prosecution witnesses.

(iii) The trial Court has not evaluated the evidence properly, therefore, finding of the trial Court is liable to be set aside.

**4.** On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered with while invoking the jurisdiction of the appeal.

**5.** I have heard learned counsel for the parties and perused the judgment impugned.

**6.** From the statement of the prosecutrix (PW-1) and Rajesh (PW-5), it is established that the appellant put some cloth in the mouth of the prosecutrix and made her to lie down and thereafter

tried to commit intercourse with her. The medical expert Dr. YK Toppo (PW-3) opined that the appellant is not capable to perform sexual intercourse. After evaluating the entire evidence, the trial Court recorded finding that it is a case of outraging the modesty of the prosecutrix, therefore, he has been convicted for the said offence.

7. After reassessing the entire evidence, this Court has no reason to record a contrary view. In view of the above, the arguments advanced on behalf of the appellant is not sustainable and his conviction for the offence under Section 354 IPC is hereby affirmed. The appellant has suffered jail sentence from 24.9.2004 to 23.12.2004 thereby he has suffered the jail term of 03 months. On the date of incident jail sentence was not compulsory for the offence under Section 354 IPC. In view of this fact, this Court is of the view that ends of justice would be met if the jail sentence awarded to the appellant for the commission of offence under Section 354 IPC is reduced to the period already undergone by him and it is reduced accordingly. However, fine sentence awarded by the trial Court shall remain intact.

8. With these modifications, the appeal is allowed in part.

**Sd/-  
(Ram Prasanna Sharma)  
JUDGE**