

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 180 of 2005**

- Panchu Ram Verma, aged about 23 years, S/o. Shri Sukhdeo Verma, agriculturist and resident of Village-Piplakachhar, P.S.Khairagarh, District – Rajnandgaon (C.G.)

---- Appellant/Accused**Versus**

- State of Chhattisgarh

---- Respondent

For Appellant : Mr. Shashibhushan, Advocate
For Respondent/State : Mr. Vimlesh Bajpai, Govt. Advocate.

For Complainant/Objector: Mr. Ravindra Agrawal, Advocate.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****29/09/2020**

1. Proceedings of the matter have been taken-up for hearing through Video Conferencing.
2. This appeal arises out of the judgment of conviction and order of sentence dated 15.2.2005 passed by Special Judge, Rajnandgaon in Special Case No. 93/2004, whereby the appellant/accused stands convicted & sentenced as under:

Conviction	Sentence
Under Section 456 of Indian Penal Code	Rigorous imprisonment for six months with fine of Rs. 300/-, in default of payment of fine, to further undergo rigorous imprisonment of two months.
Under Section 354 of Indian Penal Code	Rigorous imprisonment for six months.

Both the sentences were ordered to run concurrently.

3. Case of the prosecution, in brief, is that on 20.09.2003, at about 00.30 hours, FIR (Ex.P-3) was lodged by complainant– Manglin Bai, aged about 30 years alleging therein that on 19.09.2003, at about 09.30 pm at village – Piplakchhar, when she (complainant) was at her home, accused knocked the door of her house and when she opened the door, he (accused/appellant) entered her home and caught hold of her hand and tried to outrage her modesty. When she cried for help, the accused fled away from the spot. Thereafter, she narrated the entire incident to her mother-in-law and then she also narrated the entire incident to village Sarpanch. Thereafter, village panchayat called the appellant but he did not reach in the village panchayat and then FIR (Ex.P-3) was lodged by the complainant. She was medically examined by Dr. P. S. Parihar (PW-4) vide Ex. P- 2 and he opined that the injuries suffered by the complainant are simple in nature, which were caused by hard and blunt object. Spot map (Ex. P/4) was prepared by the Investigating Officer. From the place of

occurrence, broken bangles were seized vide Ex.P-5.

After completion of investigation, accused/appellant was arrested vide Ex. P-6. Charge sheet was filed against the appellant under Sections 354 & 456 of the Indian Penal Code and Section 3 (1) (xi) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989.

4. Thereafter, the trial Court framed charges under Sections 456 & 354 of the IPC read with Section 3 (1) (xi) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989 against the accused/appellant, which were denied by accused/appellant and he prayed for trial.

5. So as to hold accused/appellant guilty, prosecution examined as many as 8 witnesses namely Manglin Bai (PW-1), Ganga Bai (PW-2), Hiroudi Bai (PW-3), Dr. P.S. Parihar (PW-4), M.R. Ratre (PW-5), Khumandas (PW-6), Bhukhauram (PW-7) & Vivek Shukla (PW-8). Statement of the accused/appellant under Section 313 of Cr. P. C. has also been recorded in which he took a specific defence that the complainant belongs to the party of the Sarpanch and since there was a dispute between them as the complainant had stolen his cock, therefore, he has falsely been implicated in this case. However, two defence witnesses namely- Dashrath(DW-1) & Sadaram (DW-2) have been examined on behalf of the accused/appellant.

6. The Special Court, after hearing counsel for the respective

parties and considering the material available on record, has acquitted the accused person/appellant of the charge under Section 3 (1) (xi) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989 whereas has convicted and sentenced him as mentioned in paragraph two of the judgment.

7. Learned counsel for the appellant would submit that the trial Court has erred in convicting the accused/appellant for the offence punishable under Sections 456 & 354 of the IPC merely on the basis of statement of prosecutrix/complainant and their family members as they are interested witnesses to the incident. He further submits that injuries, which were suffered by the complainant, are simple in nature and due to previous enmity between the appellant and the complainant as the complainant had stolen the appellant's cock, the appellant has been falsely implicated in this case. He further submits that offence under Section 456 of IPC is not made out against the appellant as appellant has not committed any lurking house-trespass or house-breaking by night. He submits that if the accused entered the house of the complainant in order to commit the said offence, at best offence under Section 451 of the IPC is made out against the appellant instead of offence under Section 456 of the IPC. Lastly he submits that complainant – Mangleen Bai has filed an application (**IA No. 1/2020**) under Section 320(2) of the Code of Criminal Procedure for permission for compounding the offence

on the ground that during the pendency of appeal, a compromise has been arrived at between the parties and they have good relations with each other and she filed the aforesaid application without fear & pressure or allurement. Appellant as well as the complainant have also filed a joint application being **IA No. 2/2020** for compounding the offence at appellate stage and both the aforesaid applications are duly supported by affidavits of the parties and they have also filed their Adhar Cards and, therefore, since the offence under sections 354 & 451 of the Indian Penal Code for which the appellant is liable for conviction or compoundable with the leave of the Court, both the applications deserve to be allowed.

8. On the other hand, learned counsel for the State has supported the impugned judgment of the trial Court. However, the State counsel and the counsel for the complainant have no objection if the applications (I.A. Nos. 1 & 2) are allowed.

9. I have heard learned counsel appearing for the parties and perused the impugned judgment.

10. Prosecutrix (PW-1) has stated in her deposition in paragraph 1 to 3 when she was sleeping in her home, at about 09.00 pm accused/appellant knocked at the door of her home and when she asked about the identity of the neighbour, he was identified as Panchuram (accused/appellant), she then opened

the door and after opening the door, accused entered her home caught hold of her hand and tried to outrage her modesty, thereafter, she cried for help, due to which the accused fled from the place of occurrence. Just after the incident her mother-in-law- Hiroundi Bai (PW03) and Ganga Bai (PW02) reached there and she narrated the entire incident to them and thereafter FIR (Ex.P-3) was lodged. Her bangle was broken and seized from the place of occurrence vide Ex.P-5. Thus, there are no contradictions & omissions in her statement. Ganga Bai (PW-2) & Hiroundi Bai (PW-3) both have supported the statement of the prosecutrix.

11. The prosecutrix/complainant was medically examined by Dr. P. S. Parihar (PW-4) vide Ex. P- 2 and he opined that the injuries suffered by her are simple in nature, which were probably caused by hard and blunt object. Dr. P. S. Parihar (PW-4) has also stated that when he examined the prosecutrix/complainant, she was complaining pain on her chest.

12. The prosecutrix/complainant (PW01) and M. R. Ratre (PW-5) have proved the FIR(Ex.P-3).

13. Khumandas (PW-6) has also stated in his evidence that on 19.9.2003 at about 09.00 pm the prosecutrix/complainant informed him that accused entered her house and caught hold of her hand and tried to outrage her modesty.

14. Bhukhauram (PW07) has duly signed spot map (Ex.P-4)

and seizure memo (Ex.P-5).

15. Looking to the entire statements of the prosecution witnesses, medical report, prompt FIR Ex.P/3, it is apparent that the accused entered the house of the prosecutrix/complainant in order to commit the offence and assaulted her and also tried to outrage her modesty. However, the ingredients of the offence under Section 456 IPC are not attracted in the instant case as the appellant did not enter the house by lurking house-trespass or house breaking by night. According to the statement of the prosecutrix/complainant, the appellant came to her home, knocked at the door and after coming to know about his identity when she opened the door he entered her home. Therefore, in the given facts & circumstances of the case and the evidence on record, offence under Section 456 of IPC is not made out against the appellant and instead thereof offence under Section 451 is made out against the appellant.

16. In view of the aforesaid discussion, it is apparent that offence under Sections 354 & 451 are made out against the appellant.

17. Complainant/prosecutrix and the appellant have been duly identified by their respective counsel in the compromise applications. The applications are supported by the affidavits of prosecutrix/complainant and the appellant. They have also filed

copy of their Adhar-cards. Considering the reasons assigned in the applications and the nature of offence under Section 354 & 451 of IPC found to be proved against the appellant which are compoundable with the permission of the Court, both the applications are allowed.

18. With the aforesaid observations the appeal stands disposed of. Compounding of the offences under Sections 354 & 451 of IPC shall have the effect of acquittal of the accused of the said offences.

Sd/-

(Gautam Chourdiya)
Judge

Amita