

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 139 of 2013**

- Ramnarayan, S/o Ghogharam Netam, aged about 35 Years, R/o Village Chinditola, Umargaon, Police Station Sihawa, District Dhamtari C.G. P.O. - Sihawa Nagri, Pin - 493778.

----Appellant

Versus

- State of Chhattisgarh, Through Police Station Sihawa, District Dhamtari C.G. P.O. - Sihawa Nagri Pin - 493778.

---- Respondent

For Appellant	Shri Rudranath Mukherjee, Advocate.
For Respondent/State	Shri Vimlesh Bajpai, Government Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment

17/07/2020

1. The matter is heard through Video Conferencing.
2. In this appeal filed under Section 374(2) Cr.P.C., the appellant has challenged the legality, validity and propriety of the judgment of conviction and order of sentence dated 31.12.2012, passed by the Sessions Judge, Dhamtari, C.G. in Sessions Trial No.44/2012, whereby and whereunder the appellant stands convicted and sentenced as under:-

Conviction	Sentence
Under Section 354 of Indian Penal Code	Rigorous imprisonment for one year and six months and fine of Rs.2,000/-, in default of payment of fine amount to undergo

	additional simple imprisonment for two months.
Under Section 323 of Indian Penal Code	Rigorous imprisonment for three months and fine of Rs.1,000/-, in default of payment of fine amount to undergo additional simple imprisonment for one month.

(All sentences were directed to run concurrently)

3. Case of the prosecution in brief is that on 03.07.2012 at about 7:30 pm, prosecutrix went to her maternal aunt's home. After some time, when her maternal aunt went to attend the call of nature, at that time accused/appellant came there with an intent to outrage the modesty of the prosecutrix and forced her for making physical relationship. When prosecutrix refused, accused/appellant caught hold of her hands and pushed her on the floor on which she raised hue and cry and somehow tried to escape from there then accused/appellant again pushed her on the heap of tiles. Hearing the cries of the prosecutrix, her maternal aunt came there to save her and called her husband Roopnath for help. Hearing her voice, her husband came there and intervened in the matter then accused/appellant also pushed him on the floor and fled away from the spot. Thereafter, Prosecutrix informed the said incident to her husband. On the next day, she went to the police station and lodged FIR Ex.P-1 against the accused/appellant which was registered in police station Sihawa, Dhamtari under Crime No.25/2012. Prosecutrix was

medically examined by PW-4 Dr. Ramesh Kumar Thakur vide Ex.P-4 wherein he noticed scratch mark present on the right side of chest of the prosecutrix size 1 x 1.5 cm, reddish and black in colour. In his opinion, injury was simple in nature which could have come from hard and rough object and duration was about 24 hours.

4. PW-5 Injured Roopnath was also medically examined by PW-4 Dr. Ramesh Kumar Thakur vide Ex.P-3 wherein he noticed lacerated wound on the front side of the head size 1 x 0.5 cm, red and black in colour with blood clot. According to him, injury was simple in nature which could have come from hard and rough and duration was about 24 hours. During investigation, spot map Ex.P-2 was prepared by PW-7 Assistant Sub-Inspector, IO and spot map Ex.P-5 was prepared by PW-6 Khova Ram Sahu, Patwari. Accused/appellant was arrested on 5.07.2012 vide Ex.P-6. After recording statements of the witnesses, charge sheet was filed against the accused/appellant under Sections 376, 511 and 323 of IPC.
5. The trial Court framed charges under Sections 376 read with Section 511 and 323 of IPC against the accused person which were denied by him and he prayed for trial. The prosecution examined 7 witnesses in support of its case i.e. PW-1 Pitamber, PW-2 Prosecutrix, PW-3 Jayanti Bai, PW-4 Dr. Ramesh Kumar Thakur, PW-5 Roop Nath, PW-6 Khova Ram

Sahu and PW-7 Lakhan Lal Suryavanshi. Statement of accused/appellant was recorded under Section 313 Cr.P.C. in which he denied the incriminating circumstances appearing against him in the prosecution case, pleaded innocence and false implication. However, no defence witness was examined by him.

6. The trial Court after hearing counsel for the parties and considering the material available on record, convicted and sentenced the accused/appellant as mentioned above.
7. Learned counsel for the appellant submits that due to previous enmity with the prosecutrix, the appellant has been falsely implicated in this case. Looking to the statement of PW-2 prosecutrix, the prosecution has failed to prove its case beyond all reasonable doubt. He also submits that no independent witness has supported the prosecution case. 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 aforesaid charges.
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-2 Prosecutrix specifically and categorically stated in her deposition that on the date of incident at about 6:00 pm, she went to her maternal aunt's home. After some time, when her maternal aunt went to attend the nature's call, at that time accused/appellant came there with an intention to outrage her modesty and forced her for making physical relationship. When she refused, accused/appellant caught hold of her hands and pushed her on the floor. On this, she raised hue and cry and somehow tried to escape from there then accused/appellant again pushed her on the heap of tiles. Hearing the cries of the prosecutrix, her maternal aunt came there to save her and called her husband Roopnath for help. Hearing her voice i.e. PW-3 Jyanti Bai, her husband came there and intervened in the matter then accused/appellant also pushed him on the floor and fled from the spot. Thereafter, Prosecutrix informed the said incident to her husband. Then on the next day, she went to the police station and lodged FIR against the accused/appellant.
11. PW-3 Jayanti Bai is the maternal aunt of the prosecutrix. She has fully supported the prosecution case and stated the same facts as stated by prosecutrix.
12. PW-5 Roopnath is the maternal uncle of the prosecutrix. He has also supported the prosecution case. He states that on the date of incident he saw that the accused/appellant had caught

hold of hands of the prosecutrix then he went there and intervened in the matter on which accused/appellant pushed him on the floor as a result of which he sustained injuries on his body and accused/appellant ran away from the spot.

13. PW-1 Pitamber is the husband of the prosecutrix. He has supported the statements of PW-2 Prosecutrix, PW-3 Jayanti Bai and PW-5 Roopnath.

14. PW-4 Dr. Ramesh Kumar Thakur medically examined the prosecutrix and PW-5 Roop Nath (injured witness) vide Exs. 3 & 4 respectively and gave his report as mentioned in the preceding paragraphs. He has duly proved the said reports.

15. PW-6 Khova Ram Sahu is the Patwari. He has prepared and proved the spot map Ex.P-5.

16. PW-7 Lakhan Lal Suryavanshi is the Assistant Sub-Inspector, Investigating Officer. He stated in his deposition that he lodged the FIR Ex.P-1 against the accused/appellant, sent the prosecutrix and injured person PW-5 Roopnath for medical examination vide Exs. P-3 and P-4, prepared and proved the spot map Ex.P-2, arrested the accused/appellant vide Ex.P-6 and informed the incident to village Kotwar vide Ex.P-7.

17. There is no reason to disbelieve the evidence of prosecutrix, injured witness PW-5 Roopnath and other supporting witnesses. They have specifically stated that the accused/appellant had caught the hands of the prosecutrix with

an intent to outrage her modesty and also assaulted upon PW-5 Roopnath, who tried to save the prosecutrix as a result of which he sustained injuries. The prosecutrix has remained firm during her cross-examination. The evidence of prosecutrix, injured witness PW-5 Roopnath and other supporting witnesses are fully supported by the medical evidence in the form of MLC of prosecutrix and injured witness and the evidence of PW-4 Dr. Ramesh Kumar Thakur, who has duly proved the said injuries found on the body of prosecutrix and injured witness PW-5 Roopnath.

18. Looking to the statement of the prosecutrix which is duly supported by the evidence of supporting witnesses i.e. PW-1 Pitamber, PW-3 Jyanti Bai & PW-5 Roop Nath and the medical evidence, the prompt FIR and further considering the fact that there is no major contradiction or omission in her statement and other supporting witnesses statements affecting the creditability of her version, no any evidence was adduced by the defence to substantiate the plea of previous enmity or for false implication of the appellant, this Court finds no reason to disbelieve prosecutrix's statement or to arrive at a conclusion that she has falsely implicated the appellant. Being so, the trial Court was fully justified in convicting and sentencing the appellant by the impugned judgment and as such no interference is called for by this Court.

19. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed. As per report dated 05.10.2016 submitted by Sessions Judge Dhamtari, District Dhamtari, C.G., the appellant having completed the jail sentence has been released from jail on 21.09.2016. Therefore, there is no requirement of passing any order in respect of arrest, surrender etc. of the appellant.

Sd/-
Gautam Chourdiya
Judge

Akhilesh