

Criminal Revision No.329 of 2008

- Applicant**

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1. By this revision, the applicant has challenged legality and propriety of the judgment dated 03.5.2008 passed by Sessions Judge, Jashpur (CG) in Criminal Appeal No.04/2008, affirming the conviction and sentence under Section 354 IPC passed by the Judicial Magistrate First Class, Bagicha in Criminal Case No.237/2008 whereby the learned Judicial Magistrate First Class after holding the applicant guilty for the offence punishable under Sections 354 and 456 of the Indian Penal Code, sentenced him to undergo rigorous imprisonment for six months and to pay fine of Rs.250/-; RI for six months and to pay fine of Rs.250/- respectively with default stipulations. However, the appellate

Court while acquitting the accused for the offence under Section 456 IPC, he was convicted and sentenced under Sections 451 & 354 IPC and sentenced him to undergo rigorous imprisonment for six months and to pay fine of Rs.250/-; RI for six months and to pay fine of Rs.250/- respectively with default stipulations

2. As per the case of the prosecution, on 16.3.2005, complainant Ku. Manisha Minj (PW-1) was at her home, situated at Village Ghughari Bartoli and at around 9.0'clock in the night, the applicant came in her house, entered into the kitchen and after showing the knife to the complainant, he caught hold the hands of the complainant and dragged her to outside. On her shouting, her mother Ignashiya Minj (PW-2) and maternal uncle Vinay Kehss (PW-3) came there and on seeing them, the applicant fled away from the spot. The matter was reported by the complainant on 17.3.2005 at Police Station Kasabel and the matter was investigated. Finally charge sheet was filed. After affording opportunity of hearing to the parties, the learned Judicial Magistrate First Class, Bagicha Distt. Jaspur convicted and sentenced the applicant as aforementioned . The same was challenged before the appellate Court and vide judgment impugned the appellate Court has modified the conviction and sentences as aforementioned.

3. Learned counsel for the applicant submits that the complainant is a wholly unreliable witness because there was love affair between the applicant and the complainant but the

family members of the complainant were not happy with their relationship, therefore, the applicant has been falsely implicated in the case. She further submits that on minute scrutiny of the statement of the complainant, it appears that the prosecution story is fabricated as the incident is said to have taken place in the house of the prosecutrix where her family members are also residing along with her. She further submits that there is major contradictions and omissions in the statement of the prosecution witnesses.

4. Learned counsel for the State opposes the revision petition and submits that both the Courts below have not committed any error in passing the impugned orders, thus, the revision may be rejected.

5. I have heard learned counsel for both the parties, perused the judgment impugned, judgment of the trial Court and records of the Courts below.

6. The complainant (PW-1) has stated that at the time of the incident, the accused came to her house, caught hold her hands and dragged her to outside with an intention to outrage her modesty. She further stated that her mother Ignashiya (PW-2) and maternal Uncle Vinay Khess (PW-3) were present in the house at that time and on hearing her shouting, they came out and saved her from the accused. On the next day, she went to Police Station Kasabel with her mother and maternal uncle and filed FIR (Ex-P/1) against the accused.

7. Statement of the complainant was fully corroborated by the statements of her mother Ignashiya Minj (PW-2) and Vinay Khess (PW-3). Avinash Minj (PW-4) is her brother . Although he has stated different time and place about the incident, but on leading questions put forth by the Court, he has also stated that at the time of the incident, he was also present in the house and on hearing the hue and cry, he woke up and saw the applicant dragging his sister by holding her hands.

8. The above statements show that the statement of the complainant is fully corroborated by her mother and maternal uncle. The learned appellate court has after appreciating the evidence rightly held that their statements cannot be disbelieved only on the basis of their relation with the complainant.

9. In the cross-examination, the complainant has admitted that she is well known to the accused, both of them had taken photograph together and also she had gifted him handkerchief by writing his name and making flower on it. But only on the basis of this admission, it cannot be said that the applicant had gone to the house of the complainant on her calling or both of them were having love affair.

10. There is no material contradictions and omissions in the cross-examination of the witnesses nor there is any ground to disbelieve that the applicant has been falsely implicated in this case. Looking to the above, and keeping minute observation of the evidence available on record, I found that the learned

appellate Court has rightly convicted the applicant under Sections 451 and 354 of the IPC, therefore, I uphold the conviction recorded by the learned appellate Court.

11. Learned counsel for the appellant argued that the incident took place on 26.3.2005. The case is pending for more than 17 years and the applicant remained in custody for six days, therefore, instead of sending him back to jail, the fine amount may be enhanced and he may be sentenced for the period already undergone by him.

12. As regard the sentence part is concerned, the incident happened in the year 2005, at that time, the applicant was 25 years young man, he had been in jail for about 06 days, the complainant and the applicant are the residents of Jashpur district, therefore, looking to the totality of the case, I do not feel it appropriate to send the applicant back to jail. I am of the view that ends of justice would be met if, while upholding the conviction awarded to the applicant, the jail sentences awarded to him are restricted to the period already served by him besides imposing/enhancing the amount of fine.

13. In the result, the revision petition is partly allowed. The conviction awarded to the applicant under Sections 354 and 451 of the IPC is upheld. However, he is sentenced for the period already undergone by him. So far as the sentence of fine is concerned, the amount of fine is enhanced from Rs.250/- to Rs.1,000/- for the offence under Section 354 IPC and also the

amount of fine is enhanced from Rs.250/- to Rs.1,000/- for the offence under Section 451 IPC. The applicant is granted four months time to deposit the above amount of fine, failing which he shall be liable to undergo SI for one month for each count. If any amount has already been deposited by the applicant towards fine, the same shall be adjusted in the amount of fine imposed/enhanced by this Court today.

14. The applicant is reported to be on bail. He need not surrender. His bail bonds shall continue for a further period of six months as per requirement of Section 437-A CrPC.

Sd/-

(N.K. Chandravanshi)
JUDGE