

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 125 of 2014

Gopal Prasad S/o. Hetram, aged about 22 years, R/o. Village Pirda, Police Station Malkharoda, District Janjgir-Champa, CG.

---- Applicant

Versus

State of Chhattisgarh, through District Magistrate, District Janjgir-Champa, CG.

---- Respondent

For Applicant : Shri Harishanker Patel, Advocate

For State/Respondent : Shri Anand Verma, Dy. GA

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment On Board

05/02/2021

On 23.05.2010 in the early morning at 6 am when the prosecutrix (PW-1) had gone to the village pit to dump the garbage, the accused/applicant who happened to be her neighbour, came from behind and with an intention to outrage her modesty caught hold of her arms. The accused/applicant kept on holding her in spite of the resistance made by her. However, after sometime on hearing the hue and cry raised by the prosecutrix, Shanti Bai (PW-2), Kirtan Bai (PW-3) and Surit Dadsena (PW-4) came out of the house and saw the accused/applicant catching hold of arms of the prosecutrix. It is relevant to mention here that PW-2 is the mother-in-law of the prosecutrix whereas Kiratan Bai (PW-3) is her neighbour and Surit (PW-4) is the guest of PW-3 and all three happened to be the eye witnesses to the incident. On the basis of FIR (Ex.P-1), an offence under Section 354 IPC was registered against the accused/applicant

and the investigation resulted in filing of the charge-sheet and framing of charge under the same Section.

2. Learned Magistrate by judgment dated 31.12.2011 passed in Criminal Case No. 65/2010 convicted the accused/applicant under Section 354 IPC and sentenced him to undergo RI for one year and pay fine of Rs. 500/-, plus default stipulation. The findings recorded by the learned Magistrate remained undislodged in appeal vide judgment dated 06.02.2014 passed in criminal appeal No. 20/2012, in its wholeness. Hence this revision.

3. Counsel for the accused/applicant first of all argued the case on merit and submitted that the material collected by the prosecution is not sufficient for convicting the accused/applicant under Section 354 IPC. However, as a last resort, he submitted that his argument may be confined to the reduction of sentence aspect of the matter only, in case he is not in a position to convince this Court on conviction aspect of the matter. State counsel however, supported the concurrent findings recorded by both the Courts below.

4. In view of the categorical statement of the prosecutrix (PW-1) where she has stated that on the date of incident at about 6 am when she had gone to the village pit to dump the garbage, the accused/applicant came from behind and caught hold of her hand with an intention to outrage her modesty. The evidence of the prosecutrix gets complete corroboration from the testimony of Shanti Bai (PW-2), Kirtan Bai (PW-3) and Surit (PW-4) who rushed to the spot immediately after hearing the noise raised by the prosecutrix and saw the accused/applicant keeping hold of the prosecutrix by catching her arms. All these three witnesses namely Shanti Bai

(PW-2), Kirtan Bai (PW-3) and Surit (PW-4) are the eye witnesses to the incident and therefore, there is no reason for this Court to disbelieve their testimony narrating the occurrence seen with their own eyes. PW-5 and PW-6 are the police witnesses who carried out the investigation and they have also supported the case of the prosecution. Thus the conviction of the accused/applicant recorded by both the Courts below under Section 354 IPC does not appear to suffer from any legal flaw warranting any interference in this revision. It is hereby affirmed accordingly.

5. As regards sentence, keeping in mind the fact that the incident had taken place about 10 years back and that the applicant and the prosecutrix are the neighbours and that he has already suffered a lot by facing a long drawn prosecution and remained in jail for about three weeks, the interest of justice would be served if the sentence imposed of the accused/applicant is reduced to the period already undergone. Order accordingly.

6. Revision is thus allowed in part to the extent indicated above.

Sd/-

(Vimla Singh Kapoor)

Judge