

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 688 of 2013

Mohan Yadav S/o. Fekan Yadav, aged about 34 years, R/o. Village Singhansara, Police Station & Tahsil Sakti, District Janjgir-Champa, Civil & Revenue District Janjgir-Champa, CG.

---- Applicant

Versus

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

---- Respondent

For Applicant : Mr. Deepak Kumar Singh, Advocate

For State/Respondent : Mr. Sameer Singh, Dy. GA

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

07.04.2021

Case of the prosecution in brief is that on 19.09.2008 at about 11 PM she was sleeping in her house alone and her husband (PW-2) had gone to attended some meeting after locking the door from outside. At that time the accused/applicant through a newly constructed house of one Iswar Rathore gained the entry to the house of the victim and when she came into the contact of his hand, she woke up and asked as to who he was, the accused/applicant disclosed his name and pressed her neck. When she somehow managed to come out of the clutches of the accused, he fell at her feet and pleaded pardon and ran away. On hearing the cries raised by the victim, PW-3, PW-4 and PW-5 rushed to the spot and saw the accused/applicant fleeing away. After her husband came back, the victim narrated the entire incident to him and on the next day the FIR (Ex.P-1) came to be lodged. After completion of investigation charge-sheet was filed for the offences under Sections 457 and 323 IPC.

2. Learned Magistrate vide judgment dated 26.02.2013 found the accused/applicant guilty under Section 457 and 323 IPC and sentence him to undergo RI for one year with fine of Rs. 500/- u/s 457, and the fine of Rs. 500/- u/s 323 IPC. In appeal also the findings of learned Magistrate have been approved in its entirety by judgment impugned dated 10.10.2013. Hence this revision.

3. Having heard counsel for the parties and gone through the material available on record, it is crystal clear that on the date of incident the accused/applicant had committed a lurking house trespass in night hour to commit an offence punishable with imprisonment. Not only this, when the victim woke up, the accused/applicant also tried to press her neck as a result of which she had pain on her neck, chest and waist. The evidence of the doctor (PW-7) also makes it clear that the victim had complained the pain on her neck, chest and waist though no external injury was noticed by him. The evidence of PW-1 has also been supported by her husband (PW-2). Nothing has been stated by the accused/applicant in defence to falsify the statement of the victim and her husband (PW-2).

4. This Court, on the basis of material available on record, does not find any reason to take a different view to that of the one taken by learned Magistrate and the lower appellate Court as far as conviction is concerned. Accordingly, the findings recorded by both the Courts below regarding conviction of the accused/applicant are hereby maintained.

5. As regards sentence, keeping in mind the facts and circumstances of the case and that the accused/applicant has remained behind the bars from about a fortnight, and that the incident had occurred in the year 2008, no useful purpose would be served in again dispatching him to jail. Thus the interest of justice would be served if the sentence imposed of him is reduced to the period already undergone. Order accordingly.

6. Revision is thus allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi/Pawan