

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

**CRIMINAL APPEAL NO.148 OF 2011**

Keshav s/o Gopala Tijare,  
Aged about 63 years,  
Occupation-Agriculturist,  
R/o. Talodhi Khurd, Tah. Bramhapuri,  
District-Chandrapur. .. Appellant

.. Versus ..

State of Maharashtra,  
Through Police Station Officer,  
Police Station, Bramhapuri,  
District-Chandrapur. .. Respondent

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Shri V.N. Morande, Advocate for the Appellant,  
Shri A.M. Kadukar, APP for the Respondent-State.  
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**CORAM : SMT. M.S. JAWALKAR, J.**  
**DATED : 14.09.2022.**

**JUDGMENT**

1. The present appeal is filed by the appellant-accused challenging impugned judgment and order passed by the learned Extra Joint Adhoc Additional Sessions Judge,

Chandrapur in Sessions Case No.59/2009. By this judgment, the accused stands prosecuted for the offence punishable under Sections 376 r/w 511, 354 and 323 of the Indian Penal Code.

2. The case of the prosecution, in brief, is as under :

The complainant Sou. Geeta w/o Anil Meshram was residing at mouza Talodhi Khurd along with her husband, daughter, son, and in-laws. The accused was also residing near the house of the complainant at some distance along with the members of his family. The accused has a granddaughter namely Supri, aged about 2 years. The prosecutrix is aged about 6 years. It is alleged that on the day of the incident i.e. on 26.01.2009 at about 5.30 pm, Supri and the prosecutrix were playing near the house of the complainant and at about 6.00 pm, the prosecutrix reached Supri to her house. The complainant was fetching water and then was just present at the front of her house. She heard cries of the prosecutrix from the house of the accused and ran down to the house of the accused. She saw there in the house of the accused that the prosecutrix was made to lie on cot, her nicker was removed, accused had removed his Dhoti and was bent upon the body of

the prosecutrix. The complainant was stunned. She pushed the accused from the cot. Accused bite the right hand finger of the complainant Geeta. She screamed. On hearing it, her father-in-law Deorao Meshram came to the house of the accused. The complainant took her daughter and nicker out of the house of the accused. There was altercation between accused and Deorao Meshram. Accused caught hold of the shirt of Deorao and pushed him down. Deorao Meshram received injury on his knee. Anil Meshram, the husband of the prosecutrix, came there. He intervened. The complainant lodged report in Police Out-Post Mendki, vide Exh.17. Accordingly, F.I.R./Crime No.19/2009 for the offences punishable under Sections 354, 324 and 323 of the Indian Penal Code was registered, vide Exh.18. The prosecutrix, the complainant Geeta and Deorao Meshram were sent to Primary Health Centre for medical examination. The investigation was conducted and charge-sheet came to be filed and the case was committed to the Court of Sessions at Chandrapur and numbered as Sessions Case No.59/2009.

3. The appellant was charged for the offences punishable under Sections 376 r/w 511, 354 and 323 of the Indian Penal Code. The accused denied the charge and claimed to be tried. The accused further stated that he was falsely implicated in the crime.

4. The learned Sessions Judge, after recording the evidence, acquitted the appellant of the offence punishable under Section 376 r/w 511 of the Indian Penal Code, however, the accused was convicted for the offences punishable under Sections 354 and 323 of the Indian Penal Code. The accused was awarded punishment for six months and to pay a fine of Rs.3,000/- in-default to suffer simple imprisonment for two months for the offence punishable under Section 354 of the Indian Penal Code. The accused was further sentenced to suffer simple imprisonment for one month and to pay a fine of Rs.500/- in-default to suffer simple imprisonment for one month for the offence punishable under Section 323 of the Indian Penal Code. The appellant-accused was arrested on 28.01.2009. The prosecution has examined in all eight witnesses to prove the prosecution case, whereas accused has

examined two witnesses in his defence.

5. Learned counsel for the appellant-accused drawn my attention to the evidence of PW-1 Geeta w/o Anil Meshram. He submitted that the age of the prosecutrix was five years as stated by the complainant Geeta. There is nothing in the medical report of the victim or adverse in respect of Chemical Analyser report of clothes of victim and the accused. It was pointed out that PW-2 Payal d/o Anil Meshram, who is victim, in her cross-examination, admitted that when she was playing with Supriya, there was beating between both of them. Therefore, Supriya cried. She also admitted that due to that accused beat her. Accused is grandfather of Supriya. She also admitted that she went home weeping. She informed her mother that grandfather of Supriya beat her, so also admitted that she deposed falsely that accused laid her on the cot. She also admitted that she is deposing falsely that accused took bite of her mother. She also admitted that she is deposing falsely on the say of her mother. Her version if perused along with the evidence of PW-4 Balaji s/o Govinda Sagarkar and D.W. No.1 Sachin Prabhakar Gajpure, suggests that there was quarrel

between accused and Deorao Meshram. The complainant Geeta told to Balaji Sagarkar, who is prosecution witness, that accused took bite on her finger. He further deposed that she did not tell to witness Balaji as to why accused took bite of her finger. Balaji (PW-4) also panch witness of seizure panchanama.

6. Evidence of D.W. No.1 Sachin Gajpure shows that his house is situated in Gandhi Chowk at Talodhi, where alleged incident took place. He also heard noise of quarrel from the side of house of accused, therefore, he went towards the house of the accused. At that time, he saw that Geeta Meshram was holding the hand of the accused, her husband caught hold collar of accused and her father-in-law was holding the waist of the accused, accused was shouting. Before 2-4 days of said incident, there was operation of testicles of the accused. He along with Purshottam Tijare and Raju Bandebuche intervened. At that time, Geeta and Deorao Meshram told whether it is proper on the part of the accused that he slapped small girl. It is admitted by witness that Anil Meshram, the husband of the complainant, came to him and asked him whether report should

be lodged. It is also admitted that the father-in-law of the complainant Geeta told him that he will not lodge report and he should give understanding to the accused. Before few days of the incident, there was quarrel between complainant and accused on the count of allegation that accused cut the hair for doing black magic.

7. *Per contra*, the learned APP appearing for the respondent-State supported the decision of the learned trial Court by contending that the learned trial Court has properly evaluated the evidence and has given cogent reasons while recording the conviction. The prosecution has proved the charge beyond reasonable doubt and therefore, the learned trial Court was justified in convicting the appellant.

8. Heard the learned Advocate for the appellant-accused and the learned APP for the respondent-State at length. I have perused the record, medical report of the complainant which shows that there is mark of bites on the finger of the complainant i.e. mother of victim.

9. From the evidence placed on record, it reveals that there was quarrel between complainant and accused and in the scuffle in which Deorao, father-in law of complainant, was also involved. There was bite to the complainant to her finger by the accused. As such, there was no intention to either outrage modesty of the victim or complainant. From the evidence of victim also, it is clear that the granddaughter of accused and daughter of victim were playing and in their quarrel, they beaten up to each other. It appears that accused slapped the victim and she went away weeping to her house. Thereafter, complainant came there and started quarreling with accused. Her father-in-law also came on the spot of incident and there was scuffle. The husband of the complainant though intervened and separated them, he was not examined by the complainant. The depositions of PW-4 and DW-1 support this probability of quarrel on the count of slapping the daughter of complainant. As such no offence under Section 354 of the Indian Penal Code is made out. However, it is duly established that accused had a bite of finger of complainant during the scuffle. In view thereof, offence under Section 323 of the

Indian Penal Code is definitely made out. Thus, there was no intention proved by the prosecution that act is committed to outrage modesty of the victim or the complainant. The possibility of false implication, cannot be ruled out. The fact that the accused undergone operation of his testicles few day before cannot be overlooked. In view of the evidence led by the prosecution witnesses, when there is possibility of false implication, the benefit of doubt is to be extended in favour of the accused. The accused was arrested on 28.01.2009 and he was in jail till 08.03.2009. As such he has already suffered imprisonment of one month and ten days which is more than the sentence awarded for having committed offence under Section 323 of the Indian Penal Code.

10. Considering the evidence of the prosecution, in my view, the prosecution has failed to establish that the accused has committed an offence under Section 354 of the Indian Penal Code. From the medical report, it is established that the accused had committed an offence under Section 323 of the Indian Penal Code, however, he has already suffer imprisonment for one month and ten days. The impugned

conviction under Section 354 of the Indian Penal Code is unsustainable and appeal deserves to be partly allowed. Hence, the following order :

O R D E R

- (i) Criminal Appeal is partly allowed.
- (ii) The conviction in Sessions Case No.59/2009 by Ad-hoc Additional Sessions Judge, Chandrapur sentencing the accused for having committed an offence under Section 354 of the Indian Penal Code is set aside.
- (iii) The accused is acquitted of the offence punishable under Section 354 of the Indian Penal Code.
- (iv) The order in respect of sentence for the offence under Section 323 of the Indian Penal Code is hereby maintained.
- (v) The appellant is already undergone the sentence for one month and ten days which is more than the sentence awarded. Hence, the bail bonds of the accused stand discharged.

(SMT. M.S. JAWALKAR, J.)