

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
(APPELLATE SIDE)**

Present:

The Hon'ble Justice Rai Chattopadhyay

C.R.A No. 53 of 2010

**Santosh Konai @ Gedu
Vs.
The State of West Bengal**

Amicus curiae

: Mr. Mit Guha Roy.

For the State

: Mr. Bidyut Kumar Roy,
: Ms. Rita Dutta.

Hearing concluded on: 24/02/2023

Judgment on: 24/07/2023

Rai Chattopadhyay, J.

1. The judgment dated November 23, 2009, of the Additional Sessions Judge, Fast Track, 3rd Court at Lalbagh, Murshidabad in Sessions Trial No. 17 of July, 2008 is under challenge in this appeal.
2. Appellant has been convicted therein, for an offence under Section 354 IPC. The Court sentenced him to suffer imprisonment for one year.
3. Appellant's case precisely is that the impugned judgment suffers from firstly, non-application of mind by the trial Court, secondly non-consideration of the evidence on record and thirdly, erroneous application of law to the fact situation of the case. The appellant has

prayed for setting aside the said judgment and order of sentence, as impugned.

4. Since, in this old appeal pending since 2010, no one has represented the appellant, the Court appointed Mr. Mit Guha Roy, amicus curiae to assist in disposing of this appeal. The sincere and able assistance of the amicus curiae is acknowledged. State is represented. It has been submitted that previously appellant's bail prayer was rejected and the appellant had preferred this appeal from correctional home.
5. The criminal case was mooted against the appellant by filing of the FIR on July 5, 2006, by the victim. Victim, in the FIR has alleged an incident of the previous day, i.e, July 4, 2006. She says that at about 7:00 p.m. when she was alone in the home, her husband being out of the home for the purpose of his avocation and while she was working at the cow-shed, the appellant appeared there and caught hold of her. By forcefully removing her wearing apparel, allegedly, the appellant attempted to commit upon the victim. As the victim raised alarm, the appellant allegedly fled away but threatened her with dire consequences.
6. On this FIR, investigation proceeded and ultimately, was culminated into filing of charge sheet by police against the present appellant under Section 376/511 IPC. When trial commenced, similar charges were framed, i.e, under Section 376/511 IPC.
7. Prosecution has cited as many as nine witnesses. However, some of the witnesses are hostile and some are formal witnesses who have indentified the seized articles and seizure list etc. From amongst the prosecution

witnesses P.W 3 and the victim herself, i.e, P.W 4 have supported the FIR case. Other important witness is the doctor, i.e, P.W 6.

8. P.W 3 and P.W 4, i.e, the husband of the victim and the victim herself respectively, have stated in unison about the appellant being involved in the alleged incident on the particular date, time and place. They have withstood the cross-examination and their evidence is consistent and truthful.
9. It is the settled position of law that in a criminal trial, not the number of the witnesses but the quality of evidence would be the principle consideration for a Court of law, to find if the same could prove prosecution's case beyond scope of all reasonable doubts. Doctor (P.W 6) has affirmed that the appellant is a person capable of sexual intercourse. The wearing apparel of the victim which were allegedly removed by the appellant forcefully, are exhibited in this trial and duly indentified.
10. All, as above, unambiguously point out to the fact that there would not be any scope of doubt as regards sufficiency of evidence which the prosecution has brought on record to substantiate culpable act of the appellant, though not grave enough to attract provision under Section 376 or 376/511, but sufficient to prove charges under Section 354 IPC.
11. Ld. Amicus Curiae has referred to a judgment of the Hon'ble Apex Court reported in *AIR 1967 SC 63 (State of Punjab vs. Major Singh)*, which may be profitable relied on to fortify the settled principles of law that for an offender to be punished under Section 354 IPC, his use of criminal force to the victim with the intent to outrage her modesty would be sufficient. The culpable intention of accused is the crux of the matter, when the

Hon'ble Court has held that immediate violent reaction from the concerned victim may not be a mandatory decisive factor to aid to the finding of guilt of the accused person. The ratio of this judgment squarely applies in this case where on the basis of otherwise consistence evidence of the victim, the basic ingredient of offence under Section 354 IPC, as discussed above, can be held to have been proved beyond scope of all reasonable doubts.

- 12.** On the discussion as above this Court does not find any infirmity as to the decision of the trial Court in the impugned judgment dated November 23, 2009, regarding the guilt of the appellant and his conviction. The judgment as impugned, is upheld to the extent of finding the appellant guilty of an offence under Section 354 IPC and his conviction for the same.
- 13.** However, the impugned judgment dated November 23, 2009 is hereby modified regarding the sentencing part thereof to the extent that the appellant would be sentenced for the period he has already undergone incarcerated.
- 14.** This appeal being C.R.A 53 of 2010 is partly allowed with the directions as above and hereby disposed of.
- 15.** Before parting, the Court appreciates the able assistance put in by the Ld. Amicus Curie in this case. Let the High Court Legal Services Committee take necessary steps to pay fees to the learned Amicus Curiae in accordance with the scale applicable to "Category-A" lawyer in its panel. The same may be paid within a period of one month from the date.

A copy of this order be immediately forwarded to the Secretary, High Court Legal Services Committee, for doing the needful.

- 16.** Urgent photostat certified copy of this judgment, if applied for, be given to the parties, upon compliance of requisite formalities.

(Rai Chattopadhyay,J.)