

GAHC010020372015



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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./320/2015

SATYENDRA KUMAR PRASAD
S/O KAPIL DEB PRASAD, R/O NEW BONGAIGAON, RLY. COLONY, QR.
NO.198A, P.S. and DIST- BONGAIGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR

2:SHANTI RAY
W/O SRI TILAK RAY
VILL. CHOKAPARA
MONAKUCHA
P.S. and DIST- BONGAIGAON
ASSA

Advocate for the Petitioner : MR.B BARMAN, MR. J H SAIKIA

Advocate for the Respondent : , PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

JUDGMENT & ORDER (CAV)

Date : 09-01-2026

1. Heard Mr. J.H. Saikia, the learned counsel for the petitioner. Also heard Mr. R.R.

Kaushik, the learned Additional Public Prosecutor appearing on behalf of the State respondent.

2. This is an appeal u/s 397 Cr.PC read with Sections 401 & 482 Cr.PC against the impugned judgment & order dated 02.05.2015 passed by learned Additional Sessions Judge (FTC) at Bongaigaon in Criminal Appeal No. 62(4)/2014 upholding the judgment & order dated 19.11.2014 passed by learned JMFC, Bongaigaon arising out of G.R. Case No. 133/2014 convicting the accused/petitioner to undergo Rigorous Imprisonment for 1 year for the offence committed u/s 354 IPC and also sentenced to pay a fine of Rs. 5,000/-in default Simple Imprisonment for another 3 months.

3. The brief facts of the case is that on 24.02.2014 an FIR was lodged by respondent no. 2 before the North Bongaigaon P.P. alleging *inter alia* that on 24.02.2014 at 1:45 PM she along with her mother-in-law Smt. Kathani Ray aged about 65 years went to Swagat Hospital for X-Ray as per suggestion of doctor. But, at the time of taking X-Ray of her mother-in-law, the accused touched her chest outraging her modesty. Accordingly, the case was registered under Bongaigaon P.S. Case No. 89/2014 u/s 354 IPC and started investigation. On completion of the investigation the police filed charge-sheet against the present accused/petitioner u/s 354 IPC before the learned CJM and the case was accordingly transferred to the Court of learned JMFC for disposal.

4. After appearance of the accused/petitioner he was explained with the offence to which the petitioner pleaded not guilty and claimed to be tried.

5. During trial the prosecution examined as many as four witnesses including the informant and one witness was examined by the defence. The defence took the plea of total denial at the time of his examination u/s 313 Cr.PC. After completion of the trial and hearing the argument put forward by learned counsel for both sides, judgment is accordingly passed by the learned Trial Court below convicting the accused/petitioner u/s 354 IPC and sentenced him as stated above.

6. Being highly aggrieved and dissatisfied with the judgment & order passed by the learned JMFC dated 19.11.2014 the present accused/petitioner preferred an appeal before the learned Additional Sessions Judge. But, the appeal is also accordingly dismissed upholding the order passed by the learned Trial Court below.

7. It is submitted by Mr. Saikia, the learned counsel for the petitioner that while filing the FIR, the only allegation brought against the accused/petitioner is that he touched her chest and thus outraged her modesty. But, she made much improvement at the time of her deposition and at the time of recording her statement u/s 164 Cr.PC wherein she brought the allegation that he touched her belly first and then he touched her left breast and squeezed. Then she resisted and thereafter the accused again inserted his hands under her blouse and sweater and touched her breast. She was angry and immediately came out of the X-Ray room with her mother-in-law and also asked the accused as to why he committed such offence. Further the PW-2 also corroborated the case of the informant. But, her evidence also was not scrutinised by the learned Court below at the time of passing the order. The Court did not consider the evidence of PW-3 who was an independent witness and who did not made elaborate statement as to how the accused/petitioner had misbehaved the victim and she deposed that the victim reported before her that she was misbehaved by the accused/petitioner. Further, he submitted that there is no medical document and the victim was never produced before any medical officer for examination. Thus without any corroborating piece of evidence the learned Trial Court below had passed the order only on the basis of the deposition made by PW-1 which is not believable and trustworthy.

8. Mr. Saikia further submitted that the accused/petitioner is a Technical Assistant who did the X-Ray of the mother-in-law of the victim and during that process he might have pushed her who was standing in front of the X-Ray machine. But, that apart he did not commit any offence to convict him u/s 354 IPC. The only independent witness i.e. PW-3 also did not corroborate the evidence of prosecutrix who brought the allegation of

outrage of modesty of the victim. Thus, the learned Trial Court below without appreciating the evidence on record in his proper perspective has passed the order of conviction, which is liable to be set aside and quashed.

9. Mr. Saikia further submitted that the essential ingredients to constitute an offence u/s 354 IPC is that there must be forcible deliberate act of the accused in committing the incident by which a modesty of a woman is outraged. But, in the present case from the evidence it is seen that there is no ingredient to fulfil the offence u/s 354 IPC to warrant conviction against the present petitioner.

10. Mr. Saikia further submitted that the learned Trial Court as well as the learned Appellate Court also did not consider the evidence of DW-1 Anil Paul who is a staff of the X-Ray Department of the hospital. He categorically deposed that on the day of incident he went out of the CT room leaving the accused to get the X-Ray and when he returned back PW-3 was enquired as to whether any patient faced any trouble in X-Ray room. When the informant pointed towards the accused, the accused told that he had asked the informant victim to hold her mother-in-law while doing X-Ray. But, as she came in front of the X-Ray machine he told that he simply pushed the victim as she was coming in front of the X-Ray machine. However, this witness also stated that he asked the accused/petitioner to beg apology from the informant/victim. But, later on he came to know that she lodged the FIR.

11. Accordingly, it is submitted by Mr. Saikia that the accused only pushed the victim aside when she came in front of the X-Ray machine and in doing so he simply hold her hands and pushed towards the other side. That apart there was no other incident took place as alleged in the FIR. Mr. Saikia accordingly submitted that accused-petitioner was doing his duty without any blemish for several years being a Technician in the X-Ray room. But, bringing some false and concocted allegation against him the FIR was lodged by the informant/victim and it was accordingly charge-sheeted as the victim is a wife of police officer. Mr. Saikia accordingly submitted that there is no evidence at all to

substantiate the plea of the prosecutrix and accordingly submitted that it is a fit case to dismiss the appeal and acquit the accused/petitioner.

12. Mr. Kaushik, the learned Additional Public Prosecutor submitted in this regard that the statement of PW-1/victim is consistent in every stage of the case, which is believable and trustworthy. Also the PW-2/the mother-in-law who accompanied the victim in the hospital for her X-Ray also corroborated the victim and she was also present in the X-Ray room when the incident had happened.

13. Mr. Kaushik further submitted that the PW-3/the staff/ nurse of the hospital also supported the case of the prosecution to the extent that the victim immediately lodged a complaint before her stating that she was misbehaved in the X-Ray room. Though it was not elaborately stated by the PW-3 as to how the accused outraged her modesty but from the circumstances it is seen that the incident had happened wherein the victim immediately came before her and lodged the complaint. Thus, there is nothing to disbelieve the PWs-1, 2 & 3 who gave corroborating evidence bringing the allegation against the present accused/petitioner of outraging modesty of the victim inside the X-Ray room. He further submitted that the statement made by the victim u/s 161 Cr.PC also found to be consistent and corroborates with her evidence. He further submitted that in the FIR there may not be any detail discussion as to how the accused/petitioner outraged her modesty but it is mentioned in the FIR that the accused touched her chest and outraged her modesty. He further submitted that the eye-witness of PW-2 who was also her mother-in-law was present at the time of incident and that apart the evidence of PW-1 was reliable and trustworthy. He further submitted that it is a settled law that the conviction can be based on the sole testimony of the prosecutrix if it inspires confidence.

14. Hearing the submissions made by learned counsel for both sides, this Court finds that before arriving at any decision, the evidence on record is to be scrutinised.

15. PW-1 is the victim of this case who stated that at the relevant day of incident she brought her mother-in-law to Swagat Hospital for treatment. Doctor advised to get X-

Ray of chest of her mother-in-law. The accused asked her to stand straight in front of the X-Ray machine and hold her mother-in-law. The accused touched her belly first leaving aside her mother-in-law. She did not respond first. Then he touched her left breast and squeezed. Then she obstructed. Then the accused inserted the hand inside her blouse and sweater and touched her breast. She became infuriated and resisted and along with her mother-in-law came out from the room. She then told PW-3/nurse about the incident. When her husband was called over phone she told the matter and he advised her to lodge FIR. Her statement is also recorded u/s 161 Cr.PC.

16. PW-2 deposed that on the relevant day of the incident she went to the doctor to get X-Ray as advised by the doctor. She was accompanied with her daughter-in-law i.e the victim. The accused touched the chest of the victim. The victim brought her out from the X-Ray room. The victim went to upstairs leaving her and told the nurse/PW-3 about the incident. When the incident was disclosed people gathered there. Then the victim lodged the FIR.

In her cross-examination she denied to the suggestion that the accused did not touch her daughter-in-law wilfully and deliberately.

17. PW-3 is the nurse of the hospital who deposed that on the day of the incident the victim wanted to say something to her. When she got free, then she told that a boy of the X-Ray department misbehaved her. As there are two boys in the X-Ray department she asked to identify who misbehaved her. She said the thin one. She came down along with her and asked the accused that whether he misbehaved with her. Then the accused stated that he only asked the victim not to touch from front of the X-Ray machine. Then a crowd arose. Anil Paul i.e. DW-1 came and asked the accused to seek excuse and the accused said sorry to the victim.

18. DW-1 Anil Paul who is a staff of the X-Ray Department of the hospital had deposed that on the day of incident he went out of the CT room leaving the accused to get the X-Ray and when he returned back PW-3 was enquired as to whether any patient faced any

trouble in X-Ray room, then the informant pointed towards the accused. However, this witness also stated that he asked the accused/petitioner to beg apology from the informant/victim.

19. Here in the instant case it is seen that there is no evidence that the PWs had any enmity with the accused/appellant to depose falsely against him and their deposition also corroborates the evidence of the prosecutrix who narrated the incident as to how she was misbehaved by the accused/petitioner by touching her breast and outraging her modesty. So there is no evidence that this witnesses will falsely depose against the accused/petitioner.

20. More so, the evidence of the prosecutrix is also found to be consistent in all stages and there is nothing to disbelieve her. The independent witnesses PW-3 also supported the case of this prosecution to the extent that the PW-1 immediately reported about this incident coming out from the X-Ray room. Further, the DW-1 also asked the accused/appellant to beg apology to the victim, which also supports the prosecution version.

21. The Hon'ble Apex Court in the case of ***Kartik Malhar Vs. State of Bihar*** reported in **(1996) 1 SCC 614** held that even a single witness is sufficient if found to be trustworthy. The relevant observations are extracted herein below:-

“14. We have already discussed above that it is open to the courts to record a conviction on the basis of the statement of a single witness provided the evidence of that witness is reliable, unshaken and consistent with the case of the prosecution. The case of the prosecution cannot be discarded merely on the ground that it was sought to be proved by only one eyewitness, nor can it be insisted that the corroboration of the statement of that witness was necessary by other eyewitnesses. ...”

22. The Hon'ble Apex Court in the case of **Moti Lal Vs. State of M.P.**, reported in **2008 0 AIR (SC) 882**, has held in paragraph Nos. 9 as under:

“9. A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge leveled by her. If the Court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix. There is no rule of law or practice incorporated in the Indian Evidence Act, 1872 (in short Evidence Act) similar to illustration (b) of Section 114 which requires it to look for corroboration. If for some reason the Court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the Court is entitled to base a conviction on her evidence unless the same is own to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case discloses that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence. This position was highlighted in State of Maharashtra v. Chandraprakash kewalchand Jain (1990 91) scc 550).”

23. In State of Himachal Pradesh v. Raghubir Singh, (1993) 2 SCC 622; 1993 SCC (Cri) 674, the Hon’ble Supreme Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. A similar view has been reiterated by the Hon’ble Supreme Court in **Wahid Khan v. State of Madhya Pradesh (2010) 2 SCC 9; AIR 2010 SC 1**, placing reliance an earlier judgment in **Rameshwar S/o Kalian Singh v. State of Rajasthan, AIR**

1952 Sc 54. Thus the law that emerges on the issue is to the effect that the statement of prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The Court may convict the accused on the sole testimony of the prosecutrix.

24. So from the discussion made above it is seen that the prosecution could establish a case against the present petitioner that he outraged modesty the victim and thus the charge leveled against him u/s 354 IPC is proved beyond all reasonable doubt and thus this Court is of opinion that the learned JMFC, Bongaigaon committed no error or mistake while convicting the accused/petitioner u/s 354 IPC and sentencing him accordingly. This Court also is of the opinion that no interference is required in the sentence imposed on the accused/appellant and accordingly the order of conviction and sentence passed by the learned JMFC, Bongaigaon is hereby upheld.

25. With the above observations, this criminal revision petition stands disposed of.

**Sharmila
Das Sarkar**

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JUDGE

Comparing Assistant