



2025:CGHC:210

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on : 24-10-2024

Pronounced on : 02-01-2025

CRR No. 1108 of 2019

- Gullu Prasad s/o. Bihari Sahu, aged about 35 years, R/o. Village Chonga, Police Station Chandni, Tehsil Odagi, District Surajpur (C.G.)

---- Applicant

Versus

- State of Chhattisgarh, through P.S. Bilaigarh, Distt- Raipur (C.G.)

-----Respondent

For Applicant : Mr. Sushil Dubey, Advocate.

For State/ Respondent : Mrs. Priya Sharma, Panel Lawyer

Hon'ble Mr. Justice Narendra Kumar Vyas

CAV Order

1. This Criminal Revision is preferred under Section 397 of the Code of Criminal Procedure, 1973 against the impugned order dated 26-8-2019 passed by the learned First Additional Sessions Judge, Surajpur, District Surajpur in Criminal Appeal No. 3 of 2018 whereby the learned Sessions Court affirmed the findings of the trial Court in Criminal Case No. 54 of 2016 and upheld the conviction of the applicant for the offence punishable under Section 354 of IPC sentencing six months R.I. with fine of Rs.500/- and in default stipulation undergo additional R.I. for seven days.

2. Brief facts of the case as reflected from the record are that the victim (PW/1) lodged a report in Police Station Chandini, District Surajpur stating that on 8-8-2008 her husband went to village Vishalpur for taking bonus amount of Tendu leaves and she went to her corn farm for cutting grass and when she was returning at 5.00 pm., the accused Gullu Prasad Sahu came there by saying her "*Bura Kaam Karne Do*" caught hold of her hand and started teasing her. When she refused and started shouting then the accused fled away from the spot. On hearing the noise of the victim, her mother-in-law (PW/2) came there and saw the accused running away from the spot. When her husband came to the house at 7.00 pm on the date of incident, she narrated the incident to him. Thereafter a Panchayat meeting was convened in the village with regard to settlement of the dispute but it was failed and thereafter the victim along with her husband went to Police Station Chandni on 18.08.2008 for lodging report against the accused/applicant.
3. After completion of due and necessary investigation, the police filed the charge-sheet against the applicant for offence punishable under Section 354 of I.P.C before the Judicial Magistrate First Class. Learned trial Court framed the charges under Section 354 of IPC. The applicant pleads not guilty and prayed for trial.
4. In order to prove the guilt of the accused, the prosecution has examined four witnesses namely victim (PW/1), Lakhmati (PW/2) who is mother-in-law of the victim, Pramod (PW/3), who is husband of the victim and Devnath (PW/4) and exhibited documents ie., FIR (Ex.P/1), Map (Ex.P/2). The accused has not examined any defence witness. Statement of the accused/applicant was recorded under

Section 313 of Cr.P.C wherein he denied all the incriminating circumstances appearing against him in the prosecution case and pleaded innocence and false implication.

5. Learned trial Court on appreciation of oral and documentary evidence on record by the impugned judgment convicted and sentenced the applicant as mentioned in para 1 of this order.
6. Being aggrieved with the order of conviction, the applicant has preferred criminal appeal before the learned First Additional Sessions Judge, Surajpur registered as Criminal Appeal No. 03/2018 and the learned Additional Sessions Judge vide order dated 26.08.2019 has dismissed the appeal. Being aggrieved with this order, the applicant has preferred this criminal revision.
7. Learned counsel for the applicant would submit that learned trial Court has committed illegality in convicting the applicant as there was delay 10 days in lodging the FIR and when the matter was not settled in Panchayat meeting, then only victim lodged the report in Police Station. There was no evidence brought on record to show that the applicant committed the aforesaid offence. He would further submit that the learned trial Court has erred in relying on only interested witnesses. There are a lot of contradictions and omissions in the evidence led by the prosecution. Therefore, the judgment passed by the learned trial Court is liable to be set aside and the applicant deserves to be acquitted. Alternatively, he would submit that if this Court ultimately comes to the conclusion that the conviction of the applicant under Section 354 of IPC as imposed by the trial Court is just and proper and affirmed by the learned appellate Court, considering the fact that the incident took place in the year 2008 and

at the time of incident, the age of applicant is 35 years and now he is aged more than 51 years and he remained in jail for 17 days from the date of rejection of the appeal i.e., on 26-8-2019 till suspension of sentence is granted by this Court on 12-9-2029 and also the fact that after 16 years of incident, no useful purpose would be served in again sending him to jail, therefore, in the interest of justice, he would pray for reduction of sentence to the extent of sentence already undergone by him by enhancing the fine amount suitably. To substantiate his submission, he has referred to the judgment of this Court in CRA No 19 of 2004 in case of **Ashok Kumar s/o. Ghanshyam @ Koku vs. State of Chhattisgarh, decided on 1-7-2020** wherein this Court considering the conclusion of the trial and also considering the age of the accused on the date of incident has reduced the sentence imposed by the learned trial Court upon the applicant to the period already undergone him by enhancing the fine amount.

8. *Ex adverso*, learned counsel for the respondent/State supporting the impugned judgment would submit that the offence committed against the woman is against the society, learned trial Court after minute appreciation of the oral and documentary evidence has rightly convicted and sentenced the appellant under Section 354 of IPC. As such, order of conviction passed by the trial Court as affirmed by Appellate Court, is well merited and there is no scope for interference by this Court. As such, he would pray for dismissal of the revision petition.
9. I have heard earned the counsel for the parties and perused the material available on record.

10. So far as submission of learned counsel for the applicant that there is inordinate delay in lodging the FIR in Police Station by the complainant is concerned, the victim has given proper explanation for lodging the delayed FIR as there was an attempt made by the parties to settle the dispute with the intervention of the Panchayat meeting and when it could not succeed then the report was lodged by the complainant, as such there was sufficient reason for not lodging the report in Police Station immediately and even otherwise, offence pertains to woman and it is common phenomenon that the woman intends to avoid lodging of the report looking to the local surroundings likely to be faced by her.
11. It is clear from record of learned trial Court that the prosecution has examined four witnesses to support its case against the accused person. The complainant/victim (PW-01) categorically stated in her evidence against the accused person as how he committed the offence against her. Lakhmati (PW-02) who is mother-in-law of the victim has supported the statement of the complainant and stated that on hearing the noise of the victim she rushed to the spot and at that time she saw the accused running away from the spot. Pramod (PW-03) who is husband of the victim has stated that when he came to the house on the date of incident at 7.00 pm his wife narrated the incident to him and Devnath (PW-04) has also supported the prosecution story.
12. The further submission of the counsel for the applicant that there are contradictions and omissions in the evidence adduced by the prosecution, as such the impugned order deserves to be rejected as the evidence of the victim finds corroboration from the evidence of

other witnesses. In these circumstances, this Court is of the opinion that the prosecution has successfully proved its case under Section 354 of IPC against the applicant and there is no illegality or infirmity in the finding recorded by the learned trial Court holding the applicant guilty under Section 354 of IPC. On the basis of the statements of the prosecution witnesses, learned trial Court convicted the applicant under Section 354 of IPC which is based on the evidence and material placed before it, as such it cannot be said that the finding recorded by the trial court and affirmed by the learned appellate Court is perverse and contrary to law. As such the conviction of the applicant under Section 354 of IPC is affirmed.

13. Section 354 of IPC provides punishment for assault of criminal force to woman with intent to outrage her modesty which reads after amendment on 3-2-2013 that minimum sentence of one year. Section 354 of IPC reads as under:-

“Section 354 of IPC for assault of criminal force to woman with intent to outrage her modesty. “Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will there by outrage her modesty, [shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine”.

14. In the present case, incident took place in the year 2008 and prior to amendment on the date of incident, Section 354 of IPC was as under:-

“Whoever assaults or uses criminal force to any woman, intending to outrage her or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, with a fine, or with both”.

15. As regards sentence, under Section 354 of IPC, as per Criminal Law (Amendment) Act, 2013 which came into force with effect from 3-2-2013, the minimum sentence prescribed under Section 354 of IPC is one year which may extend to 5 years with fine as well. However, in the present case, the incident took place in the year 2008 ie., prior to the amendment and at that time the aforesaid offence was punishable with imprisonment of either description for a term which may extend to two years or with fine or with both. In the present case, the criminal case is pending since 2008 and by now more than 16 years have lapse and at the time of incident the age of the applicant is 35 years and now he must be more than 51 years and he remained in jail for 17 days, therefore taking into consideration the facts and circumstances of the case, this Court is of the opinion that the ends of justice would be served if the sentence awarded to the applicant by the trial Court is reduced to the period already undergone by him by enhancing the fine amount from Rs. 500/- imposed by the trial Court under Section 354 of IPC to Rs.7000/- in view of the judgment of Hon'ble Supreme Court in the matter of **George Pon Paul vs. Kanagalet and Others, (2009) 13 SCC 478** wherein considering the fact that the fine amount has been deposited and paid to the victim as also the long passage of time, the accused was sentenced to the period already undergone, this Court is of the opinion that no useful purpose would be served in sending the accused/appellant back to jail at this stage and the ends of justice would be served, if he is sentenced to the period already undergone by him and the fine of Rs.500/- imposed by the trial Court is enhanced to Rs.7,000/- and out of Rs. 7000/- fine amount, the victim

be paid compensation amount of Rs.5,000/-. If the amount is fine not deposited by the accused/appellant within two months from the date of receipt of copy of this order, he shall have to suffer additional rigorous imprisonment for 3 months.

16. Accordingly, the criminal revision is allowed in part, while maintaining conviction of the applicant under Section 354 of IPC, he is sentenced to the period already undergone by him which is 15 days. However, the fine amount of Rs.500/- imposed by the learned trial Court is enhanced to Rs.7000/-. The applicant is directed to deposit the aforesaid fine amount within a period of **two months** from the date of receipt of copy of this judgment with the trial Court and out of which, Rs. 5000/- will be paid to the victim as compensation by the trial Court after due verification. If the aforesaid fine amount is not deposited by the applicant within the stipulated time period, the accused/appellant shall have to suffer additional R.I. for three months. The impugned judgment stands modified to the above extent.
17. The applicant is reported to be on bail, therefore, his bail bond shall remain in operation for a period of six months from today in view of provision of Section 437-A of CrPC.
18. The trial Court record along with a copy of this judgment be sent back immediately to the trial Court concerned for compliance and necessary action.

RAVVA
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Date: 2025.01.02
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Sd/;-
(Narendra Kumar Vyas)
Judge

Raju