

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 48 of 2012**

- Bhanu Singh,

---- Applicant

Versus

- State Of Chhattisgarh, through District Magistrate, Raipur, District Raipur (CG)

---- Respondent

For Applicant : Shri Anil Gulati, Advocate.
For Respondent : Shri Ashish Tiwari, Govt. Advocate.

Hon'ble Shri Deepak Kumar Tiwari, J

Order On Board

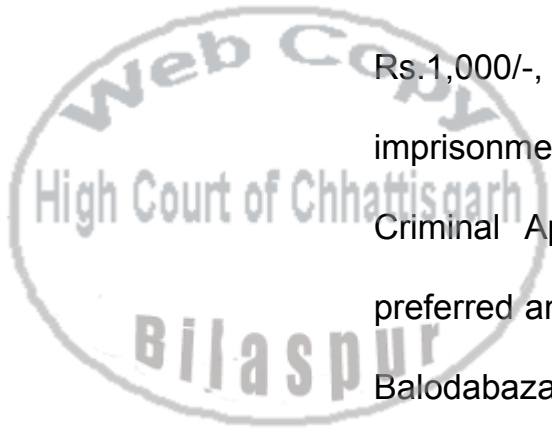
14/10/2022 :

1. The present Revision is directed against the judgment of conviction and sentence dated 2.1.2012 passed by the 2nd Additional Sessions Judge, Baloda Bazar, District Raipur in Criminal Appeal No.122/2011 whereby the learned Additional Sessions Judge has convicted the applicant for offence under Section 354 of the IPC and sentenced him to undergo RI for one year and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo RI for one month.
2. The prosecution case, in brief, is that on 21.10.2007, the prosecutrix was returning after celebrating Dussehra Festival along with her friends namely, Chutana Bai and Bugali. When she reached near the primary school, at that time the applicant came from behind and asked



for some snacks whereupon the prosecutrix provided some snack (Namkeen). At that point of time, the applicant caught hold of right hand of the prosecutrix with intent to outrage her modesty and when she offered resistance, the applicant ran away. After reaching home, the prosecutrix narrated the incident to her parents and lodged the FIR on the next day of the incident i.e. 22.10.2007.

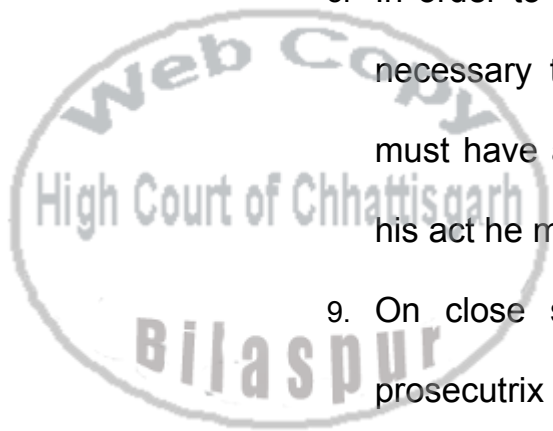
3. The prosecution filed the charge sheet for offence under Sections 354 of the IPC. On the basis of evidence available on record, the trial Judge had convicted the applicant under Sections 354 of the IPC and sentenced him to undergo SI for one year and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo imprisonment for one month vide judgment dated 11.5.2011 passed in Criminal Appeal No.878/2011. Against which the applicant had preferred an Appeal before the learned 2nd Additional Sessions Judge, Balodabazar, District Raipur, who, vide judgment dated 2.1.2012 affirmed the findings recorded by the learned trial Judge and maintained the conviction and sentence imposed upon the applicant.
4. Learned counsel for the applicant would submit that the judgment of conviction passed by the trial Court, which was affirmed by the learned 2nd Additional Sessions Judge, is bad in law and the facts available on record. Both the Court below failed to appreciate the fact that the applicant had no intention to outrage the modesty of the prosecutrix. There is old dispute between the parties because of which the applicant has been implicated in a false case, as the applicant had won the election of Sarpanch defeating one Bali Ram,





who was supported by the father of the prosecutrix. No independent witness has been examined by the prosecution to prove the guilt of the applicant.

5. On the other hand, learned State counsel would support the impugned judgment.
6. To bring home the charges, the prosecution examined 7 witnesses before the trial Court.
7. I have heard learned counsel for the parties at length and perused the record.
8. In order to constitute the offence under Section 354 of the IPC, it is necessary that the accused must have used criminal force and he must have an intention to outrage the modesty or knowledge that by his act he may outrage the modesty of the prosecutrix.
9. On close scrutiny of the evidence adduced, it reveals that the prosecutrix (PW-1) has not stated that the applicant caught hold of her hands with bad intention. (PW-6) niece of the victim, would depose in her cross-examination, at para-3 that she is not aware as to for what reasons the applicant has caught hold of hands of the prosecutrix. (PW-3) friend of the prosecutrix, has also not stated that the applicant caught hold of hands of the prosecutrix with such intention. On the contrary, the prosecutrix (PW-1), (PW-3) and (PW-6) would clearly depose that on the date of the incident, they were celebrating Dussehra festival. They also admit in their cross-examination that as per the village custom, normally young people go to the elderly people to seek their blessings.





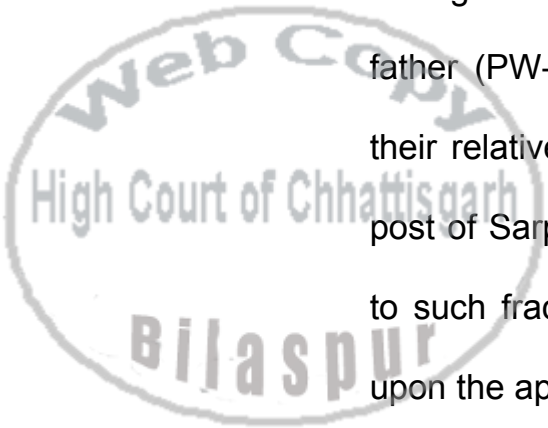
On the date of the incident, the applicant was Sarpanch and an elderly person in the village, therefore, the prosecutrix along with PW-2 and PW-3 went to meet the applicant, whereupon the applicant demanded snacks from the prosecutrix and also caught her hands.

10. Considering such facts, it cannot be safely held that the applicant caught hold of hands of the prosecutrix with any bad intention.

11. PW-1 has also admitted in cross-examination that the applicant is not in talking terms with her father. (PW-3) has stated that she is not aware that father of the prosecutrix and the applicant were not talking to each other prior to the incident. The prosecutrix and her father (PW-2) would deny in their cross-examination that as one of their relative has contested the election against the applicant for the post of Sarpanch and he was defeated in the election, therefore, due to such fraction and to take revenge, a false case has been foisted upon the applicant.

12. (DW-1) would depose that | a close relative of father of the prosecutrix, has also contested the election against the applicant and the election was won by the applicant. Hence father of the prosecutrix started nurturing enmity and for such reason, the applicant has been falsely implicated in the present case. This fact was not rebutted in cross-examination of the defence witness.

13. In view of the aforesaid discussion, it appears that there is some political rivalry and no clear fact is emanating from the record that the applicant with bad intention has caught hold of hands of the prosecutrix. Therefore, it is held that the prosecution has failed to





prove the charge under Section 354 of the IPC against the applicant.

14. Accordingly, the Revision deserves to be and is hereby allowed.

Conviction and sentence imposed upon the applicant under Section 354 of the IPC are set aside and he is acquitted of the said charge.

The applicant is on bail. The bail bond shall remain in operation for a period of 6 months from today as required under Section 437-A of the CrPC. The applicant shall appear before the higher Court as and when directed.

Sd/-
(Deepak Kumar Tiwari)
Judge

