

(2018) 02 CHH CK 0250

Chhattisgarh High Court

Case No: Criminal Revision No.1055 Of 2017

Kunwar Sai

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision: Feb. 15, 2018

Acts Referred:

- Indian Penal Code, 1860 - Section 323, 354
- Code Of Criminal Procedure, 1973 - Section 313, 428

Hon'ble Judges: Arvind Singh Chandel, J

Bench: Single Bench

Advocate: V.K. Sahu, Sumit Jhanwar

Final Decision: Disposed Of

Judgement

Arvind Singh Chandel, J

1. The instant revision has been preferred against the judgment dated 20.4.2017 passed by the 2 nd Additional Sessions Judge, Ambikapur in Criminal

Appeal No.11 of 2017 affirming the judgment dated 20.1.2017 passed by the Chief Judicial Magistrate, Ambikapur in Criminal Case No.1154 of 2010

convicting and sentencing the Applicant as under:

Conviction Sentence Under Section 354 of the Rigorous Imprisonment for 1 Indian Penal Code year and fine of Rs.200/- with default stipulation

Under Section 323 of the Rigorous Imprisonment for 6 Indian Penal Code months and fine of Rs.200/- with default stipulation

2. Case of the prosecution, in brief, is that Complainant (PW1) lodged a First Information Report (Ex.P1) in Police Station Lakhanpur on 31.7.2010

alleging that on 30.7.2010 at about 7:00 p.m., when she was returning from the house of Nirmal, the Applicant/accused with an intent to insult her caught her hand and dragged her. When she called her children, the Applicant, asking her why did she call her children, assaulted her with a peedha (a very small tabouret made of wood for sitting). She sustained injury on the head. The matter was investigated by the police. On completion of the investigation, a charge-sheet was filed against the Applicant for offence punishable under Sections 354 and 323 of the Indian Penal Code. Charges were framed against him under Sections 354 and 323 of the Indian Penal Code.

3. In support of its case, the prosecution examined as many as 6 witnesses. Statement of the Applicant under Section 313 of the Code of Criminal Procedure was recorded in which he denied the guilt. No witness has been examined in his defence.

4. After trial, the Trial Court convicted and sentenced the Applicant and the Appellate Court affirmed the judgment of conviction and sentence as mentioned in the first paragraph of this order. Hence, this revision.

5. Learned Counsel appearing for the Applicant argued that both the Courts below failed to consider that there is no reliable evidence on record to convict the Applicant. The prosecution has failed to prove the guilt of the Applicant beyond reasonable doubt. The Court below has also failed to appreciate the contradictions and omissions occurred in the testimony of the Complainant (PW1). The Investigating Officer has also not been examined by the prosecution.

6. Per contra, Learned Counsel appearing for the State supported the impugned judgment.

7. I have heard Learned Counsel appearing for the parties and perused the record minutely.

8. The case of the prosecution is based on the statement of the Complainant (PW1) and her children Manoj (PW2) and Ashok (PW3).

9. The Complainant (PW1) has categorically stated that when she was returning from the house of Nirmal, on the way, the Applicant caught her hand and dragged her. When she shouted, he picked up a peedha and assaulted her on the head with the said peedha. On her crying, her children reached

there. Thereafter, she lodged the report. In cross-examination, she denied the suggestion that the Applicant is her brother in relation and he caught her hand as a brother. She remained firm in her cross-examination.

10. Manoj (PW2) and Ashok (PW3), sons of the Complainant have supported the statement of the Complainant and stated that the Applicant had caught the hand of the Complainant. Having heard shouts of the Complainant, they had reached the spot. At that time, the Applicant assaulted the Complainant with a peedha on the head and thereafter he ran away. Both these witnesses also remained firm during their cross-examination.

11. Dr. P.S. Kerketta (PW6) has stated that he examined the Complainant on 31.7.2010 and gave his report (Ex.P5) in which he found a lacerated wound of 3" x 1" on the left temporal region, which was a simple injury. From this also, it is corroborated that the Applicant had assaulted the Complainant on the head.

12. Both the Courts below have rightly arrived at a concurrent finding of conviction. The finding of conviction is based on the evidence available on record. The sentence awarded to the Applicant also does not warrant any interference.

13. In the premises of aforesaid, the revision is dismissed. The impugned judgment of conviction and sentence is affirmed.

14. As per the certificate under Section 428 of the Code of Criminal Procedure annexed with the judgment of the Trial Court, the Applicant has remained in custody during trial from 29.8.2016 to 26.11.2016. The judgment of the Appellate Court was delivered on 20.4.2017. Though the sentence of the Applicant was suspended on 14.12.2017 yet according to the P.U.D. (paper under disposal) of the Chief Judicial Magistrate, Ambikapur dated 18.1.2018, the Applicant has not been able to submit bail bonds. Thus, the Applicant is still in jail.

15. The Applicant appears to have completed the entire jail sentence imposed upon him. It is reported that he has also deposited the amount of fine imposed upon him by the Trial Court. Therefore, it is directed that if the Applicant has not been released, he may be released immediately if not required in any other case.