

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRR No. 385 of 2016**

Ravi Patro S/o Late Kalu Patro Aged About 42 Years R/o Bramhpuriya Mohalla, Damp Chowk, Storepara Purena, Thana Bhilai 3, Civil And Revenue District Durg Chhattisgarh.

**---- Applicant**

**Versus**

State Of Chhattisgarh Through Police Station G. R. P. Bhial, As Per trial Court Order, District Magistrate As Per Appellate Order Civil And Revenue District Durg Chhattisgarh.

**---- Respondent**

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For Applicant	: Shri Punit Ruparel, Advocate
For Respondent/State	: Shri Sudhir Sahu, P.L.

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**Hon'ble Shri Justice Rakesh Mohan Pandey**

**Order on Board**

**31-01-2023**

1. This revision petition is filed under Section 397 read with Section 401 of the Code of Criminal Procedure challenging therein the judgment passed by the learned Third Additional Sessions Judge, Durg, District Durg, Chhattisgarh in Criminal Appeal No. 202 of 2014, dated 28.03.2016, affirming the judgment of conviction and order of sentence recorded by the Judicial Magistrate First Class, Durg in Criminal Case No. 149 of 2012, dated 26.06.2014 whereby the applicant has been convicted and sentenced as under:-

Conviction		Sentence
Under Section 354 of the Indian Penal Code.		6 months S.I. and Rs.100/- fine and in default of payment of fine, additional S.I. for 7 days.
Under Section 294 of the IPC		1 month S.I.
Under Section 323 of the IPC		3 months S.I.
With a direction to run all the sentences concurrently.		

2. The case of the prosecution, in brief, is that on 28.10.2010, when the victim was in front of her house alongwith children, at about 7:00 PM,

the present applicant with ill intention came there and caught hold her hand and also used filthy language, upon which, the victim slapped him and entered into her house. Thereafter, the applicant continued to use abusive language, and on the same day i.e. 28.10.2010 at about 7:00 PM, FIR was lodged by the victim (PW-4) vide Ex.P/1. Site plan was prepared by the police vide Ex.P/2. The victim was medically examined by Dr. S.D. Bhupendra (PW-5) vide Ex. P/4, who found two contusions and one linear abrasion over hand and shoulder of the victim.

3. After completion of the investigation police filed the charge-sheet. Learned trial Court framed charges against the present applicant. The applicant abjured the charges, pleaded not guilty and entered into defence. The prosecution examined as many as 5 witnesses and exhibited 4 documents to prove the guilt of the applicant. No defence witness was examined by the applicant. Learned trial Court after appreciation of oral and documentary evidence, convicted and sentenced the applicant as mentioned in the opening paragraph. The applicant preferred the appeal before the learned Sessions Court and that has been dismissed vide judgment dated 26.6.2014 affirming the judgment of conviction and order of sentence recorded by the learned trial Court, against which this criminal revision has been preferred.
4. Learned counsel for the applicant would submit that the ingredients of Section 354 of the IPC are missing and there are improvements, contradictions and omissions in the statement recorded under Section 161 of the Cr.P.C., FIR and the Court statement of the victim. The independent witnesses have not supported the case, even the mother-in-law of the victim has been declared hostile. He would further submit that the applicant has suffered 36 days of jail sentence in the alternative, he would pray for reduction of sentence from 6 months to the period already undergone by the applicant.

5. On the other hand, learned State counsel would oppose the submissions made by learned counsel for the applicant. He would further submit that there is concurrent finding recorded by the learned Courts below. He would also submit that the prosecution has proved the case against the present applicant beyond reasonable doubt. He also submits that the criminal revision deserves to be dismissed.
6. I have heard learned counsel for both the parties and perused the record with utmost circumspection.
7. It appears from the record that the FIR was lodged immediately after the incident on 28.10.2010 where the victim had made allegation to the effect that the applicant is her neighbour and after consuming liquor, he came in front of her house, caught hold of her hand in presence of many persons and also abused her. Thereafter, she entered into her house even though the applicant continued to use filthy language. The incident had taken place at about 7:00 pm whereas, the FIR was lodged at about 8:00 pm. The prosecutrix was medically examined by Dr. S.D. Bhupendra (PW-5) vide Ex.P/4, who found 3 injuries; two contusions and one linear abrasion over hand and shoulder.
8. Gulabi Devi (PW-1), who is mother-in-law of the victim has not supported the case of the prosecution. She has stated that there was some quarrel between her daughter-in-law and the present applicant, but she has not stated about the allegation of outraging modesty of the victim.
9. Munni (PW-2) is neighbour of the applicant but she has clearly stated that she does not know anything about the incident. The investigation was conducted by Premraj Chand (PW-3). (PW-4) is the victim and she has categorically proved the contents of FIR and she remained firm in cross-examination. Dr. S.D. Bhupendra (PW-5) has proved the injuries sustained by the victim. The evidence of the victim is sufficient to record

conviction, particularly in the case of Section 354 of the IPC. In the case of **Raju Pandurang Mahale vs State Of Maharashtra And Anr**, reported in **AIR 2004 SC 1677**, the Hon'ble Supreme Court has held that what constitutes an outrage to female modesty is nowhere defined. The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty in this Section is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex. The act of pulling a women, removing her saree, coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of a woman; and knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence without any deliberate intention having such outrage alone for its object.

10. Considering the facts of the present case and the judgment passed by the Hon'ble Supreme Court, there is no iota of doubt that the learned Courts below have rightly convicted the present applicant for the offence punishable under Section 354 of the IPC. Now, considering the next submission of learned counsel for the applicant regarding reduction of sentence from 6 months to 36 days, which the applicant has already suffered. It is to be seen that prior to amendment, the punishment for the offence punishable under Section 354 of the IPC was "the accused shall be punishable with imprisonment of either description for a term which may extend to two years or with fine or with both". Now considering the fact that as there was no minimum punishment provided under Section 354 of the IPC, earlier, prior to amendment and also considering the fact that the applicant has already suffered 36 days of jail sentence and the incident had taken place in the year 2010 and thereafter, as per counsel for the applicant and State, the applicant has not involved himself in any other criminal case, therefore, the period of

sentence recorded under Section 354 and 323 of the IPC is reduced to the period already undergone by the applicant. The judgment of conviction and order of sentence under Section 294 of the IPC is maintained.

11. With the aforesaid observations, this criminal revision is disposed of.

Sd/-

**(Rakesh Mohan Pandey)**  
Judge

Nimmi