



The Court of JM 1st Class, Ramgarh

Present: Mrs. Smriti Tripathi

Judicial Magistrate

28th March, 2023

District: Ramgarh

G.R. Case No. 366/2018

CNR: JHRG03-0038152018

Gola PS Case No. 32/2018

| | |
|----------------|---|
| Informant | State (Through Suman Kumari) |
| Represented By | <i>Smt. Manju Kachchap, Id. APP</i> |
| Accused | 1. Ajay Choudhary s/o Jagdish Choudhary, male, aged about 30 years, r/o Ghaghra, PS Gola, District Ramgarh [A1] |
| Represented By | <i>Sri Deepak Kumar, Id. Advocate</i> |

| | |
|----------------------------------|------------|
| Date(s) of Offence | 31.03.2018 |
| Date of FIR | 02.04.2018 |
| Date of Chargesheet | 26.05.2018 |
| Date of framing of charge | 19.11.2018 |
| Date of Commencement of evidence | 05.01.2019 |
| Date when Judgment is reserved | 18.03.2023 |
| Date of Judgment | 28.03.2023 |
| Date of Sentencing Order, if any | 28.03.2023 |

| Rank of the Accused | Name of the Accused | Date of Arrest | Date of Release on Bail | Offences charged with | Whether acquitted or convicted | Sentence Imposed | Period of detention undergone during trial for purpose of s. 428, CrPC |
|---------------------|---------------------|----------------|-------------------------|-----------------------|--------------------------------|---|--|
| A1 | Ajay Choudhary | 02.04.2018 | 28.04.2018 | s. 354D, IPC | Convicted | 1year SI and ₹2000/- fine. 2months in default of payment of fine. | 26 days |
| | | | | s. 506 of IPC | Acquitted | None | N/A |

J U D G M E N T

1. The aforementioned accused person (hereinafter referred to as "A1") is facing trial for charges framed u/s. 354D and 506 of The Indian Penal Code, 1860 (Hereinafter referred to as the "IPC").

PROSECUTION CASE

2. The compendious **case of the prosecution** as sourced from the written report of Suman Kumar (hereinafter referred to as the "informant"), is that A1, who is from the same village is troubling her with bad intentions since the past three months. On 31.03.2018 at around 9:30 AM, he came to her house while she was alone there and tried to molest her, but she scolded him. She further states that he is continuously following her because of which, she is scared and he is very instinctive and can marry her forcefully anytime, and tells everyone in the village that he will marry her, and that he has engraved her name on his hand.

INVESTIGATION AND PROCEEDINGS BEFORE THE COURT

3. After investigation, the Investigating Officer submitted **charge-sheet** bearing no. 52/2018 on 26.05.2018 against A1 for the offence u/s. 354D and 506 of IPC and thereafter, **cognizance** was taken under the same sections by the then court on 13.06.2018.

4. After supplying police paper to A1, on 19.11.2018 **charges were framed** u/s. 354D and 506 of IPC against A1 and the content of the charge was read over and explained to him in simple Hindi to which he pleaded not guilty and claimed to be tried, and the record was advanced for **prosecution evidence** during which the prosecution adduced five witnesses.

5. After closing the **prosecution evidence** on 17.02.2022, the material against A1 was put to him and his **statement** was recorded u/s. 313 of CrPC on 15.06.2022 in which he denied the material available against him and claimed to be innocent. On 28.03.2023, his further statement was recorded u/s. 313(1)(a), CrPC r/w s. 165, of The Indian Evidence Act, 1872.

6. Thereafter, the defence was provided with an opportunity to adduce evidence on its behalf, if any but the Id. counsel for the defence submitted that he does not want to adduce any evidence. Upon his prayer, the **defence evidence** was closed and the matter was posted for arguments.

ARGUMENTS ADVANCED

7. The prosecution submitted that the guilt of A1 is well established in this case and the fact has also been supported by the eye witnesses in their deposition. It was argued that though he may not have created any trouble during her marriage but he did trouble her till the time leading uptill the registration of this case and the same has been corroborated by the prosecution witnesses and evidences. Basing on this, prayer was made to convict A1.

8. The defence on the other hand argued that a false case has been lodged and no offence as alleged is made out from the deposition of the witnesses. It was also submitted that the prosecution has failed to prove the guilt of A1 beyond reasonable doubt, and he thus, deserves to be acquitted from all charges.

POINTS OF CONSIDERATION

9. Now, the Court will consider as to whether the prosecution has been able to substantiate the charges levelled against A1 beyond reasonable doubt or not. On the bedrock of the charges framed, the prosecution case will be examined on the following touchstones for the sake of a more structured analysis:

9.1 Whether A1 used to follow the informant and contact, or attempt to contact her to foster personal interaction repeatedly despite a clear indication of disinterest by her?

9.2 Whether A1 criminally intimidated the informant?

EVIDENCES

10. Before the court dwells to consider the points of determination as stated above, it would be apt to enlist the evidences brought in this case by all sides for the sake of brevity and proper reference, which are enlisted below, only the relevant portions of which have been referred to in para 11 of this judgment although they have all been perused by this court:

List of Prosecution/Defence Witnesses

A. Prosecution:

| Rank | Name | Nature of Evidence |
|-------------|--------------------------|--|
| PW01 | Turwa Kewat @ Tutu Kewat | Related Witness [Grandfather] |
| PW02 | Jivadhan Kewat | Related Witness [Father] |
| PW03 | Tetri Devi | Related Witness [Mother] |
| PW04 | Suman Kumari | Interested Witness [Informant] |
| PW05 | Ashok Kumar Singh | Official Witness [Investigating Officer] |

B. Defence:

| Rank | Name | Nature of Evidence |
|-------------|-------------|---------------------------|
|-------------|-------------|---------------------------|

| |
|-------------|
| --- nil --- |
|-------------|

List of Prosecution/Defence/Material Exhibits

A. Prosecution:

| Sr. No. | Exhibit Number | Description |
|---------|----------------|--------------------|
| 1. | Ext.1 | Written report |
| 2. | Ext.1/1 | Endorsement on FIR |
| 3. | Ext. 2 | Formal FIR |
| 4. | Ext. 3 | Forwarding on FIR |
| 5. | Ext. 4 | Arrest Memo |

B. Defence:

| Sr. No. | Exhibit Number | Description |
|-------------|----------------|-------------|
| --- nil --- | | |

FINDINGS

11. *Whether A1 used to follow the informant and contact, or attempt to contact her to foster personal interaction repeatedly despite a clear indication of disinterest by her?*

11.1 Section 354D(1)(i), IPC states:

Any man who—follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; commits the offence of stalking.

The above is followed by exceptions namely that such behavior was for prevention of some crime, in compliance of law or not unreasonable as per the facts of that case.

11.2 PW01 has deposed that the alleged incident took place about 1.5 years ago in the month of March, at around 9:30AM, when A1 forcibly entered the house of the informant but was pushed out by her. A1 had told people in the village that he will marry the informant. PW01 further claimed to identify A1, had he been present in the court. In his cross-examination, he deposed that he is not an eye-witness to the alleged incident and reached the place of alleged incident after hearing commotion. He also deposed that he is the grandfather of the informant and lives. 4-5 houses away. He also deposed that A1 had said in front of him also that he will marry the informant.

11.3 PW02, the father of the informant/victim deposed that the alleged incident took place at his house in March, 2018, between 9:00AM to 9:30AM while his

daughter/informant was alone in the house. Meanwhile, A1 entered the house and tried to molest his daughter by grabbing her and upon protest, he fled away. After a few days, A1 was telling people of the village that he will marry the informant and then she lodged this case in Gola P.S. He claimed to identify the accused. In his cross-examination, he deposed that A1 did not enter his house in his presence as he had gone to his field at the time of the alleged incident and reached there at around 12:00 noon. He further deposed that did not see the alleged incident and rather, heard about the same. He finally deposed that prior to this, his daughter never made any complaint against A1 and that w.r.t the alleged incident, no *panchayati* was held in their village and that there is no land dispute between them.

11.4 PW03 also corroborated the date, time, place and details of the alleged incident. She has specifically deposed that when she returned she saw that A1 was at her house and said that he will marry the informant to which they didn't agree. Further that he used to tell in the village that he will marry the informant and used to trouble her daily. She claimed to identify A1. In her cross-examination, she deposed that A1 is her distant relative and '*gotiya*' but he didn't use to visit their house. She further deposed that she didn't see A1 enter her house and by the time she reached the place of alleged incident. A1 wasn't there. Apart from these, she didn't depose anything pertaining to the alleged incident and events prior to it.

11.5 PW04, the informant-cum-victim also corroborated the date, time and place of the alleged incident. She stated that she was alone at her house when A1 suddenly entered the home, and tried to outrage her modesty. He started holding her hand and touching her body, and she started shouting. When her parents came there, then they went to the police station. She further deposed that A1 used to blackmail her, forcibly ask her to marry him, and he used to tell people in the village that he will marry her. She further deposed that A1 had engraved her name in his hand. She claimed to identify the accused. In her cross-examination, she deposed that she was acquainted with A1 before she started going to school, and he did not study in her school. In para 10 she deposed that A1 came to her house for the first time on 31st March, and that prior to the date of the alleged incident, she had never met him. In para 20 she deposed that the A1's house is about 1 KM away from her house. She further deposed that no *panchayati* was held in the village regarding this incident and that she never made any complaint against A1 at the police station. She specifically deposed that both, before and after the alleged incident, A1 used to say that he will marry her. She finally deposed that she and A1 didn't

use to speak on phone.

11.6 PW05, being the Investigating Officer deposed the formal details of the investigation carried out by him. He deposed that on 02.04.2018 he was posted at Gola PS as an ASI and he was handed over the charge of investigation by the then O/C Arjun Kumar Mishra. Then, after he recorded the statement of the informant, he inspected the place of the alleged incident and its surroundings and recorded the statements of witnesses Tetri Devi, Jivadhan Kewat, Churwa Kewat and Vidhadhar Choudhary, who all supported the alleged incident. He then recorded the statement of A1 and mentioned the same in his station-diary. He identified A1 present in the court that day. In his cross-examination, he deposed that he did not enquire about the case from the family members of A1 or nearby houses, rather the relative of informant and one independent witness and that he arrested A1 from his house, whose boundary/ surroundings he couldn't recall. Further, that he visited the place of the alleged incident 2-3 times but he couldn't recall the exact date and time.

11.7 Continuity of the offence: Looking at the prosecution evidence as a whole, it emerges that A1 had quite publically expressed his desire to marry the informant many times both, prior to and after the alleged incident of 31st March, 2018 and even got her name engraved on his hand. When the court asked him about such engraving, he stated that he has 'SUMAN' engraved on his left hand but that it related to some other 'bombay girl'. It must also be noted that he deposed that he lived in Ramgarh district and works there as an electrician. The informant has specifically deposed that A1 tried to ill-behave with her on the date of alleged incident although she was not in friendly or talking terms with him. PW01 has also deposed that he had also heard A1 saying that he will marry the informant. PW02 and PW03 have supported the same. It is true that PWs 01-04 are all related witnesses, being the grandfather, father and mother of the informant but this anomaly on part of the prosecution, of not examining independent witnesses from the village as well will not go on to disqualify the deposition of the witnesses who came before the court and supported the prosecution case.

11.8 Related Witnesses: Now, coming to the objection of the Id. defence counsel that none of the witnesses are an eye witness to the incident of 31st March, 2018, it is to be noted that it was the informant's case from the very beginning that when A1 entered the house, she was alone. Thus, there cannot be any eye witness to that particular alleged incident. However, after it, as per the prosecution case, when

her parents came, she told them about it. They have deposed the same and supported her version.

11.9 Delay in lodging FIR: it was urged by the Id. counsel for the defence that there was a delay of 2 days in lodging the FIR and the same has been unexplained and is unreasonable, therefore, putting the prosecution case under the garb of suspicion. On this, upon perusal of the testimony of PW04 it transpires that the Id. defence side had not put question to the informant to question the delay in lodging the FIR. Moreover, the nature of the alleged crime, being stalking a woman, is not of such a nature that every woman would be expected to rush to the Police station at the drop of a hat. It is also a crime which is continuous in nature and a delay of two days from the day the alleged stalker entered the house of a victim is reasonable especially concerning the age of the informant, her education level, as she has deposed and her society, where bad-mouthing of a girl in relation to such things is not an unusual thing.

11.10 Marriage of the Informant: The Id. defence counsel then stated that now the informant is married to someone else, and as per her own deposition, he did not create any ruckus in her marriage either during, or after it. On this, it is to be noted that the instant case pertains to the incident dated 31st March, 2018 and prior to it, and A1 is being tried for that.

11.11 Thus, it appears that A1, who used to live near the informant contacted the informant by entering her house uninvited, without her invitation or consent, in order to foster a relationship and despite her clear indication of disinterest and even after the incident of 31st March, 2018 he would tell people that he will marry her.

11.12 Thus, the prosecution has successfully raised the presumption that A1 used to attempt to contact the informant despite the expression of her clear disinterest. The defence has not adduced any evidence to rebut this presumption.

11.13 Therefore, A1 is found **guilty of the offence u/s. 354D, IPC.**

12. *Whether A1 criminally intimidated the informant?*

12.1 Section 506, IPC prescribes punishment for the offence of criminal intimidation. In the instant case, looking at the evidences referred to in paragraph no. 11 of this judgment, it has nowhere been alleged that A1 criminally intimidated the informant. The length of the prosecution case is that A1 used to follow the

informant and tell everyone that he will marry her and went inside her house and tried to misbehave with her but that he criminally intimidated her has not been proved. There is a fine line between following someone and expressing the desire to marry them or even misbehaving with them and criminally intimidating them.

12.2 Therefore, A1 is hereby **acquitted of the charge u/s. 506, IPC.**

DECISION

13. Upon a careful scrutiny of the material adduced by the prosecution it emerges that the time and place of occurrence of the alleged incident is well supported. PW01, PW02 and PW03 have seen *res gestae* facts. PW04 being the victim herself has supported her case. The prosecution has thus, proved its case beyond reasonable doubt under section 354D, IPC and the defence could not rebut the presumption raised by the prosecution.

ORDER

14. Thus, in the light of discussion made above and considering the entire facts and circumstances of the case and materials available on record, the court finds and holds that the prosecution has successfully proved the charges u/s. 354D, IPC beyond reasonable doubt against A1. Hence, the **A1 is held guilty for the offence u/s. 354D, IPC and convicted.** Put up for hearing on the point of sentence.

Pronounced by me in open court.

(Dictated and corrected)

Sd/-

Sd/-

(Smriti Tripathi)
JO Code: JH02021
JM 1st Class, Ramgarh
Ramgarh, dated the 28th March, 2023

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**Later on,
28.03.2023**

HEARING ON THE POINT OF SENTENCE

15. Learned counsel of the convict person submitted that he is a first-time offender and there is no evidence brought on record from the side of prosecution about the fact that the convict person was previously convicted and also there is no evidence about any criminal antecedent of the convict and thus, prayed to release the convict on due admonition instead of passing of sentence.

16. Learned Id. Assistant Public Prosecutor submitted that after due discussion, this Court has rightly come to a firm conclusion that the convict person had committed the offence **u/s. 354D of IPC** and he must be convicted with the maximum punishment.

17. After hearing both the sides, perusing the case record and considering the nature of the offence, I am of view that in this case convict person is not entitled to get benefit according to the provision of Probation of Offenders Act. No probation report is available on record. this is an offence against a woman. The guilt of the convict is quite clear in the crime he is convicted for. Hence, convict person namely **A1 Ajay Choudhary** is hereby sentenced as under:

| Rank of the Convict | Name of the Convict | Sections under which convicted | Sentence of imprisonment | Fine | Sentence in default of fine |
|---------------------|---------------------|--------------------------------|--------------------------|---------|-----------------------------|
| A1 | Ajay Choudhary | u/s. 354D, IPC | 1 year SI | ₹2000/- | 2 months SI |

19. The Court is of the opinion that the aforesaid punishment is sufficient for the ends of justice.

20. The period of detention in the custody, if any, during trial, be adjusted towards the substantive sentence as per provisions of section 428 of The Code of Criminal Procedure, 1973.

21. Let the copy of the judgment be provided to the convict free of cost.

Pronounced by me in open court.

(Dictated and corrected)

Sd/-

(Smriti Tripathi)
JO Code: JH02021
JM 1st Class, Ramgarh
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