

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS
BONGAIGAON**

PRESENT: SYEDA FARIDA AFZAL ZINNAT

G.R CASE NO: 133/2014

STATE OF ASSAM VERSUS SAITENDRA KUMAR PRASAD

U/S 354 IPC

**FOR THE PROSECUTION: MR. R.C.MAHATO, LEARNED
ASST. P.P**

**FOR THE DEFENCE: MR.S.N. BRAHMACHOUDHURY, MR. G.
BISWAS, LEARNED ADVOCATES**

EVIDENCE RECORDED ON: 8/4/2014, 10/6/2014, 26/8/2014

ARGUMENTS HEARD ON: 8/10/2014

JUDGMENT FIXED ON: 22/10/2014, 5/11/2014, 19/11/2014

JUDGMENT DELIVERED ON: 19/11/2014

JUDGMENT

1. The facts and circumstances leading to this case as stated by the Prosecution in brief is that on 24th February 2014, informant Smt. Shanti Ray lodged an FIR with North Bongaigaon P.P. to the effect that on the same day at about 1.45 pm she took her mother-in-law Smt. Kathali Ray to Swagat Hospital where doctor advised to get X-Ray done. When she took her mother-in-law to the X-Ray room the accused Saitendra Prasad while taking X-Ray image of her mother-in-law, touched the breasts of the informant and outraged her modesty. The FIR was entered into the General Diary vide North Bongaigaon P.P. G.D. Entry No. 641 dated 24/2/2014 and was forwarded to the O/C Bongaigaon P.S for registering a case where Bongaigaon P.S Case No. 89/14 U/S 354 I.P.C was registered and investigation was carried on. During investigation a prima facie case was found to be well established U/S 354 IPC against the accused person above named and accordingly Police submitted Charge Sheet U/S 354 IPC against the accused person above named.
2. Cognizance had been taken under section 354 IPC against the accused person.
3. Upon appearance copies of the relevant documents were supplied to the accused person in compliance with section 207 Cr.P.C.
4. After considering the relevant documents produced by the police I found prima facie material under section 354 IPC against the accused person. Accordingly particulars of the offences were explained to the accused person to which he pleaded not guilty and claimed to be tried.
5. During evidence Prosecution adduced the evidence of four witnesses. After closure of prosecution evidence the accused person was examined under section 313 Cr.P.C in which he denied all the allegations levelled against him and prayed to adduce any evidence. Defence adduced the evidence of one witness.

6. After considering the relevant documents and after hearing the defence and the prosecution I find that following are the points to be determined in this case:

1) Whether the accused persons on 24.2.2014 at about 1.45 pm at Swagat Hospital, Bongaigaon, touched the breasts of the informant, intending to outrage or knowing it to be likely that he will thereby outrage her modesty and thereby committed an offence punishable U/S 354 IPC?

7. I have heard the arguments put forwarded by the learned Assistant P.P Mr. R.C. Mahato and the learned defence counsel Mr. S.N. Brahmachoudhury and perused the materials on record meticulously.

DISCUSSION ON EVIDENCE, DECISION AND REASONS THEREOF:

8. PW1 Smt. Shanti Ray is the informant. She identified the accused and stated that about a month and half ago at about 2.30 p.m. she went to Swagat Hospital with her mother-in-law. There they consulted Dr. Kumud Deka and the doctor advised to take X-Ray image of her mother-in-law's chest. The accused asked her mother-in-law to stand straight in front of the X-Ray machine and told her to hold her mother-in-law and stand near her. Then, the accused, leaving aside her mother-in-law, touched her belly. At first she did not mind. Then again the accused touched her left breast and squeezed it. At this she resisted him but the accused inserted his

hand under her sweater and blouse and touched her breast. At this she became infuriated and resisted him and the accused left her. She and her mother-in-law came out of the room and she again went upstairs alone to confront the accused. The accused remained silent and so she complained a nurse. The nurse told her that there must have been a misunderstanding. Then, a boy asked her to show who misbehaved her and she showed the accused. When the boy asked him the accused remained silent. The accused admitted that he touched her when he was rebuked by the boy. Her mother-in-law also said that she had seen the incident. When her husband called her she told him about the incident and he advised her to lodge F.I.R and accordingly she lodged the F.I.R on the same day. She identified the F.I.R as Exhibit 1 and her signature as Exhibit 1(1).

9. During her cross examination PW1 stated that she is new in Bongaigaon and she denied that the accused does not know Assamese.
10. PW2 Kathali Ray is the mother-in-law of the informant. She also identified the accused and stated that the occurrence took place in the month of Falgun (February-March) this year. She stated that one day at about 2 p.m. she had been to Swagat Hospital with her daughter-in-law where the doctor advised her to get X-Ray done. She stated that the accused made her stand in the X-Ray room. Her daughter-in-law Shanti was with her. The accused started to touch her daughter-in-law's breast. Her daughter-in-law resisted the accused and took her out of the X-ray room. Then, her daughter-in-law left her in the ground floor and again went upstairs and told a nurse about the incident. When people came to learn about the incident there was a gathering and people lead them out of the hospital.

11. Learned defence counsel cross examined the PW2 extensively. She stated during her cross examination that she fell down in the field while feeding cows the day before Saraswati Puja and so she went to Swagat Hospital when she did not recover after taking treatment for about ten days at the village. She also confirmed that she stood in front of the machine as told by the accused. She also stated that the accused asked her daughter-in-law to hold her and asked her how she was injured. After the X-Ray was done the accused touched her daughter-law and they came out of the room. She confirmed during cross examination that she had witnessed the accused doing the indecent act. She also confirmed that her daughter-in-law resisted immediately. She denied the suggestion that the accused did not touch her daughter-in-law wilfully.
12. PW3 Dipamoni Sharma is an employee of Swagat Hospital and she knows the accused. She stated that she does not remember the date of occurrence but the time was 1.45 p.m. According to her she was administering medicine to patients in the first floor of the hospital when the informant went to her and told her that she has to say something. When she became free the informant told her that an employee of the X-Ray department had misbehaved with her. As there are two employees in the X-Ray Department, she asked which one had misbehaved. At this the informant told her that the thin boy has done it. Then, she went to the ground floor with the informant and asked the accused whether he has misbehaved with the informant. The accused admitted that he had touched the informant to remove her from the front of the X-Ray plate. Then a chaos ensued in the hospital and one Anil Paul, employee of the hospital told the accused to apologise to the informant and the accused said "Sorry".
13. During cross examination the PW3 stated that the informant told her that the accused behaved her badly but she did not describe

elaborately. She also stated that she did not understand what the mother-in-law of the informant said and that she did not give importance to her.

14. The Court made an observation at this stage and recorded a remark to the effect that the witness is making comments in favour of the accused by saying that till today she did not find anything objectionable against the accused.
15. PW4 Debojit Sharma is the Investigating Officer who investigated the case. He stated that on 24/2/2014 the informant Smt. Shanti Ray lodged an F.I.R at North Bongaigaon P.P and upon receiving the F.I.R he enquired the informant and went to Swagat Hospital with her. He drew the sketch map after visiting the P.O and recorded the statement of the witnesses and arrested the accused. He submitted the charge sheet against the accused U/S 354 IPC which he identified as Exhibit 2 and his signature as Exhibit 2(1).
16. Defence cross examined the IO extensively and during cross examination the IO stated that the informant had stated before him that her mother-in-law had consulted with one Dr. Pathak. He also stated that PW1 did not state before him that the accused inserted his hand inside her sweater and blouse but he confirmed that the informant had stated before him that the accused inserted his hand inside her blouse. He also stated that the informant omitted to state before him that her mother-in-law had witnessed the incident and that she again went upstairs to confront the accused. PW4 also confirmed the omissions of PW2 Kathali Ray and stated that she did not state before him that she had seen the indecent act.
17. The accused adduced the evidence of one Amit Paul as DW1. DW1 stated that he is working at Swagat Hospital since last nine years. He stated that the occurrence took place on 24/2/2014. That, on that day at about 1 p.m. he told the accused to take X-Ray and went to the CT Scan Room. After some time when he was going

towards the X-Ray room Dipamoni Sharma, nurse told him that some patient is facing problem in the X-Ray room. A woman named Shanti Devi was with Dipamoni Sharma. When he enquired, Shanti Devi pointed towards the accused and said that he had misbehaved with her. On being asked the accused said that when he was taking X-ray image of the aged lady who came with Shanti Devi he asked Shanti Devi to hold the aged lady and when Shanti Devi came in front of the machine he pushed her. Then he told the accused to apologise and asked the informant to lodge a complaint at the hospital but she went away without complaining to the Hospital Authority and after some time police came to the hospital.

18. During cross examination DW1 stated that he was not present in the X-Ray room at the time of occurrence and that he did not see what had happened inside the room. He admitted that he deposed as told by the accused. He stated that a guardian or family member is allowed to enter the X-ray room with the patient and that the X-Ray technician has no right to touch the attendant of the patient. He also stated that the patient had consulted a doctor from Swagat Hospital.
19. Defence could not shake the credibility of PW1. She stated in clear terms that the accused asked her to stand near her mother-in-law and touched her left breast inserting his hand under her blouse and sweater and squeezed it. Defence did not put any question to the PW1 regarding the omissions in her statement before police but pointed out to her omissions during cross examination of PW4. Although she omitted to state before the police that the accused inserted his hand under her sweater and blouse but she stated before the police that the accused inserted his hand inside her blouse. PW1 may not have stated before the police that her mother-

in-law witnessed the act of the accused but this omission do not amount to contradiction.

20. The plea that PW1 had stated before the police that her mother-in-law took treatment from Dr. Pathak and in Court she stated that they consulted Dr. Kumud Deka, was raised by the learned defence counsel. During cross examination by the defence PW1 had clarified that she is new in Bongaigaon. Therefore, it is quite natural on her part to confuse the name of the consulting physician. Moreover, having regard to the state of mind of a victim immediately after she was molested, her inability to recollect the name of the doctor cannot be considered to be fatal to the prosecution case. Considering the sick behaviour of the accused, the name of a doctor is not important an aspect for the accused to benefit from the mistake of the victim.
21. PW2 corroborated the PW1 in toto. Read in conjunction, the evidence of the PW1 and PW2 leads to the outcome that on the fateful day the duo of mother-in-law and daughter-in-law had stepped inside the X-Ray room for getting the X-Ray image taken by the accused on the advice of a doctor of Swagat Hospital and the accused inserted his hand inside the blouse of the informant i.e. the daughter-in-law and squeezed her left breast not once but twice. Infuriated, the daughter-in-law went outside taking her mother-in-law with her and again went upstairs to confront the accused and complained about him to a nurse, who tried to pacify her and in a bid to cover the indecent act of the employee of the hospital, told him to apologise. But, as every self respecting woman would have felt at such an indecent incident, the daughter-in-law, feeling ashamed and disrespected, lodged the F.I.R. The husband of the informant happens to be a police Inspector. This is a plea taken by the defence that the investigation is biased because of the fact that the husband of the informant is a police officer. The

dignity and modesty of a woman cannot be undermined only because of the fact that her husband, father or brother serves the Police department. She still remains a woman with the same sense of dignity and modesty and outraging the same should be seen on the same footing as that of any other woman.

22. It is seen that out of the four witnesses examined by the prosecution PW3 Dipamoni Sharma is an employee of the same hospital where the accused is also an employee. The PW3 stated that the informant did not elaborate the incident to her and the PW4 i.e. the IO also confirmed her statement. PW3 and the accused are colleagues. It is natural for a colleague to safeguard her co-worker. It is also to be noted that the Court made an observation regarding the comment passed by the PW3 in favour of the accused. Even then, PW3 stated in her evidence in chief that the accused admitted to have touched the informant when she confronted him.
23. Amit Paul, the DW1 did not witness the incident. He was not even present in the X-Ray room. He came to the scene only after the matter heated up and there was chaos in the hospital. He is not a competent witness to depose regarding the facts and circumstances of the case.
24. The testimony of PW1 and PW2 could not be assailed by the defence from any angle. I find no reason not to believe the PW1 and PW2 who are the prime witness in this case.
25. After a thorough appreciation of the evidence on record I find that the evidence of PW1 and PW2 are cogent and trustworthy. Defence could not shake their credibility during cross examination.
26. In **Veer Singh v. State of U.P. reported in (2014) 2 SCC 455** the Hon'ble Supreme Court has held- "Legal system has laid emphasis on value, weight and quality of evidence rather than on quantity,

multiplicity or plurality of witnesses. It is not the number of witnesses, but quality of their evidence, which is important, as there is no requirement under law of evidence, that any particular number of witnesses is to be examined to prove/disprove a fact. Evidence must be weighed and not counted. It is quality and not quantity which determines adequacy of evidence. As a general rule, court can and may act on testimony of a single witness, provided he is wholly reliable.”

27. In **AIR2010SC3638 Bipin Kumar Mondal versus State of W.B** it was held by the Hon’ble Supreme Court- “as per section 134 of the Evidence Act, 1872, there is no legal impediment in convicting a person on the sole testimony of a single witness provided he is wholly reliable - It is not the number, the quantity, but the quality of witness that is material - Evidence has to be weighed and not counted - Test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise.
28. In the present case, after going through the testimonies of the witnesses it is found that the accused is guilty of the offence U/S 354 IPC. Thus I convict him under section 354 IPC.
29. I have considered the provisions of Probation of Offenders’ Act, 1958. It is needless to point out here about the scenario of crime against women in our country. In my considered opinion, such offenders should not be dealt with leniently. Hence I decline to extend the provision of this beneficial legislation to the accused.
30. Heard the accused on the point of sentence. He pleaded for leniency on the ground that he has a family dependent on him.
31. Section 354 IPC, after the recent amendment, provides for punishment with imprisonment of either description for a term which shall not be less than one year but which may extend to five

years, and also fine. This is a mandatory provision. Therefore, the sentence passed cannot be less than one year.

32. Considering all aspects the accused Saitendra Kumar Prasad is convicted of the offences under section 354 IPC and sentenced to undergo rigorous imprisonment for a period of one year and is also sentenced to pay fine of Rs. 5000/-. In default of payment of fine, the accused shall undergo imprisonment for a further period of three months. The period of imprisonment shall be set aside against any period already undergone by the accused. Bail Bond stands cancelled.

Order

The accused Saitendra Kumar Prasad is convicted of the offences under section 354 IPC and sentenced to undergo rigorous imprisonment for a period of one year and is also sentenced to pay fine of Rs. 5000/-. In default of payment of fine, the accused shall undergo imprisonment for a further period of three months. The period of imprisonment shall be set aside against any period already undergone by the accused. Bail Bond stands cancelled. Given under the hand and seal of this court on this the 19th day November, 2014.

Syeda Farida Afzal Zinnat,
AJSJ.M (1st CLASS) BONGAIGAON

APPENDIX:

Following are the lists of exhibits which were exhibited during the trial:

- 1) Exhibit 1: Ejahar
- 2) Exhibit 1(1): Signature of PW1
- 3) Exhibit 2: Charge Sheet

4) Exhibit 2(1): Signature of S.I. D. Sharma

LIST OF WITNESSES FOR THE PROSECUTION:

1. PW1: Shanti Ray
2. PW2: Kathali Ray
3. PW3: Dipamoni Sharma
4. PW4: S.I. D. Sharma, I/O

LIST OF WITNESSES FOR THE DEFENCE:

1. DW1: Amit Paul

