

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 2047 of 1999**

1. Tarachand, aged about 30 years, S/o Rathu Nishad (Kewat), R/o Kapalfodi, P.S. Magerlod, Distt. Dhamtari.

--- Appellant**Versus**

1. The State Of Madhya Pradesh (now State of Chhattisgarh)

--- Respondent

For Appellant – Ms. Seema Singh, Advocate.
For Respondent – Mr. Akhilesh Mishra, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****04/03/2015**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 24-7-1999 passed by the Special Judge under the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act, 1989') Raipur (M.P.)(now C.G.) in Special Sessions Case No.162/98 whereby and whereunder the learned Special Judge after holding the appellant guilty for committing house trespass to commit offence (other than theft) punishable with imprisonment and assault to complainant (PW-1) (name not mentioned) belonging to Scheduled Tribes with intent to outrage her modesty, convicted him under Section 451 of the Indian Penal Code (for short 'the IPC') and Section 3(i)(xi) of the Act, 1989 and sentenced him rigorous imprisonment for 6 months; and rigorous imprisonment for 6 months and to pay fine of Rs. 500/-, in default of payment of fine, additional rigorous imprisonment for 10 days, with a direction to run both the substantive jail sentences concurrently. The Learned Special Judge gave the appellant benefit of set off for the period the appellant remained in custody i.e. 25-12-1998 to 04-01-1999 (11 days) towards the substantive jail sentences awarded to him.

2. The conviction is impugned on the ground that without there being any iota of evidence the Court below has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. As per the case of prosecution, on 16-12-1998 when the complainant (PW-1) was in her house feeding her child about 5.00 to 6.00 p.m. the appellant came and inquired about her husband, when she informed that her husband is not present in the house then after noticing the complainant all alone in the house, the appellant caught hold her hands for the purpose of outrage her modesty. When she protested and called for help, then the appellant left her and ran away from the spot. After return of her husband, she intimated the whole incident to her husband. Next day, the husband met the appellant and quarreled with him. As her child was ailing, the complainant informed police and lodged the First Information Report through her husband on 22-12-1998 before Special Police Station Raipur. Police registered the crime No.31/98 under Section 354 of the IPC and Section 3(i)(xi) of the Act, 1989 against the appellant vide Ex.-P/2. Deputy Superintendent of Police during investigation prepared the spot map and recorded the statements of the witnesses under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code').

4. After completion of the investigation, the charge sheet was filed before the Special Judge, Raipur on 30-12-1998. The Special Judge during the trial framed the charges against the appellant for the offence under Section 451 of the IPC and Section 3(i)(xi) of the Act, 1989 read with Section 354 of the IPC and conducted the trial.

5. In order to prove the guilt of the appellant, the prosecution examined as many as 6 witnesses. The appellant was examined under Section 313 of the Code wherein he denied the circumstances appearing against him and pleaded innocence and false implication in crime in question.

6. After providing opportunity of hearing to the parties, the learned Special Judge convicted and sentenced the appellant as aforementioned.

7. I have heard learned counsel for the parties and perused the judgment impugned and the record of the Court below.

8. Learned counsel for the appellant submits that it is not proved that the complainant (PW-1) belongs to Scheduled Tribes as no necessary caste certificate is adduced or seized by the prosecution. Simply by oral submission that she belongs to Kanwar (Gond), it cannot be inferred that she belongs to Scheduled Tribe. On the other hand, if this is held to be correct, even then there is no intention to dishonour or outrage the modesty of a woman who belongs to Scheduled Tribes is appeared in the evidence of the witnesses. As per the statement of the complainant (PW-1), she met this incident as she was a woman not that she was a member of Scheduled Tribes. The element of intention is missing from the evidence, hence, the prosecution failed to prove its case against the appellant for the offence under Section 3(i)(xi) of the Act, 1989. Learned counsel would further submit that in the present case, the prosecutrix not stated anything that the incident happened inside the house; with this, no house trespass is proved against the appellant. Merely on the basis of showing by the complainant that at the time of incident she was in the house, it cannot be held that she was inside the house. The complainant duly proved map of the spot, but not indicated the place where she was at the time of incident. Though Dashrath Dekate (PW-6) also firmly proved the map (Ex.-P/1), but simply exhibition of such map does not indicate that the incident happened inside the house. Learned counsel would further submit that the house trespass is missing from the evidence collected during the trial. The appellant was falsely implicated. There was delay in lodging the FIR for 6 days, the delay is not properly explained. Hence, looking to the above facts and circumstances, the appeal may be allowed and the appellant may be

acquitted from the charges framed against him.

9. On the other hand, learned counsel appearing for the State opposing the argument advanced on behalf of the appellant submits that the judgment of conviction and order of sentence are well founded. There was reason for delay in lodging the FIR on account of ailment of children in the family. As per the evidence, the appellant reached in the house of the complainant (PW-1) and tried to outrage her modesty; the complainant belongs to Scheduled Tribes category; hence, there is no scope for any interference and the appeal may be dismissed as not maintainable.

10. In order to appreciate the argument advanced on behalf of the parties, I have perused the evidence adduced by the prosecution before the trial Court.

11. Undisputedly, the prosecution has not seized, collected or adduced caste certificate that the complainant (PW-1) belongs to Scheduled Tribes category. For this only oral evidence is there. Though it is not necessary to adduce caste certificate to prove the caste, but in the present case, the complainant (PW-1) told that she is of Kanwar/Gond caste. To meet the requirement of Section 2(c) of the Act, 1989 one has to prove that under which title and subtitle the complainant belongs as expected under clause (24) and clause (25) of Article 366 of the Constitution. Even otherwise, the complainant never said anything which goes to show that she was assaulted with intent to outrage her modesty as she belongs to be a member of Scheduled Tribes in her evidence, which simpliciter goes to show that the incident happened only because she was a woman, not because she was a woman of certain Scheduled Tribes category. Even the other witnesses including husband not stated anything regarding the intention for a specific Scheduled Tribes category which is foremost essential to prove the first limb of Section 3(i)(xi) of the Act, 1989, otherwise the act falls well within the category of Section 354 of the IPC. It is specific intention only which brings Section 354 IPC additionally in the

category of Section 3(i)(xi) of the Act, 1989. In the considered view of this Court, the prosecution failed to prove the essential ingredients of Section 3(i)(xi) of the Act, 1989, hence, the appellant may not be held guilty under Section 3(i)(xi) of the Act, 1989.

12. So far as allegation of house trespass is concerned, the complainant (PW-1) specifically not mentioned in his entire evidence before the Court that at the time of incident she was inside her house. To prove the house trespass it is essential that someone comes under the essential requirement provided in Section 442 of the IPC. By going through the entire evidence of the complainant (PW-1), it does not show that the appellant committed house trespass i.e. entered into the building or construction. Therefore, in absence of any house trespass, the appellant may not be convicted for the said offence.

13. So far as the alleged incident of outraging modesty of complainant is concerned, the complainant (PW-1) specifically deposed that for outraging modesty the appellant caught hold her hands and thereafter when she protested, the appellant ran away from the spot. This fact remained very firm even after detailed cross-examination of the complainant (PW-1), the complainant also remained very firm for this. There is no reason for false implication, nor there is element of previous enmity. So far as delay in lodging the FIR is concerned, the complainant (PW-1) and her husband Alakhu Kanwar (PW-2) both gave reason for lodging the FIR so lately as their children were ailing. After perusal of the FIR (Ex.-P/2), it goes to show that the place of incident is about 60 kms. from the Special Police Station, Raipur. The complainant (PW-1) and her husband are petty villagers, looking to the ailment of their children, their entire status, distance from the police station, it can very well be inferred that the delay is well explained. Hence, on the basis of the delay, the prosecution case may not be held suspicious.

14. In the present case, the prosecution proved this fact that the appellant

tried to outrage modesty of the complainant (PW-1) by holding her hands which was protested and thereafter a call for help was made by the complainant. This act of the appellant is an offence defined under Section 354 of the IPC for which the trial Court also framed charges for the same.

15. To part with, in view of this Court, the prosecution not proved its case against the appellant under Section 451 of the IPC and Section 3(i)(xi) of the Act, 1989, on the other hand, the prosecution proved its case under Section 354 of the IPC against the appellant.

16. So far as the quantum of sentence is concerned, the incident is about more than 16 years old, the appellant was reportedly the first offender with no previous criminal history, looking to these circumstances, the appellant requires just and proper punishment for his act.

17. Consequently, the appeal filed by the appellant is partly allowed. His conviction under Section 451 of the IPC and Section 3(i)(xi) of the Act, 1989 are hereby set aside and instead thereof the appellant is convicted under Section 354 of the IPC only, wherein he already remained in custody for 11 days during trial. After lapse of more than 16 years and looking to the other circumstances, this period of already undergone would be sufficient to meet the ends of justice, hence, for his conviction under Section 354 of the IPC, the appellant is sentenced for the period already undergone by him along with fine of Rs.500/- awarded by the trial Court. It is submitted that the appellant has deposited the entire fine amount. It is also stated that the appellant is on bail. His bail shall continue for a further period of 6 months as per requirement of Section 437-A of the Code.

Sd/-
Chandra Bhushan Bajpai
Judge