

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No. 1225 of 2014**

Suresh Sinha S/o Shri Ramsundar Sinha aged about 40 years, R/o village Sihaba Chauk, Makeswar Ward Dhamtari Police Station Dhamtari, Civil & Revenue District Dhamtari, Chhattisgarh.

---- Appellant**Versus**

State of Chhattisgarh through police station Dhamtari, Civil & Revenue District Dhamtari, Chhattisgarh.

---- Respondent

For Appellant	:	Ms. Laxmin Tonde, Advocate.
For Respondent/ State	:	Ms. Pushpa Dwivedi, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Judgment on Board****12/08/2015**

(1) Challenge in this appeal is to the judgment of conviction and order of sentence dated 10.10.2014 passed by the Learned Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act') in Sessions Trial No. 06 of 2014 whereby and whereunder the learned trial Court after holding the Appellant guilty under Sections 354B and 323 of the Indian Penal Code, 1860 (for short 'the IPC') for using the criminal force to the woman with intent to disrobe and inflict simple injury over body, sentenced him to undergo rigorous imprisonment for 3 years and RI for one year, also to pay a fine of ₹10/- in default of payment of fine to further undergo simple imprisonment for one month with a direction that both the substantive jail sentences shall run concurrently.

(2) Conviction is impugned on the ground that without there being any iota of evidence, Learned Court below has convicted and sentenced the

Appellant as aforementioned and thereby committed illegality.

(3) As per case of the prosecution, on 29.03.2014 at about 10:00 pm when the prosecutrix (PW-6) was going towards her mother's house near Sihava Chowk, Dhamtari, the Appellant caught hold her hands and pressed her breast, when she shouted for help, the Appellant pushed her down and ran away from the spot. The matter was reported to the police station at Dhamtari at about 11:20 pm. The police registered Crime No.128 of 2014 under Section 354 of the IPC against the Appellant and started investigation. During investigation, the prosecutrix was sent for medical examination. The doctor noticed three abrasions and one injury. The injuries were simple in nature. Dr. D.S. Dev (PW-2) gave his report (Ex. P/1). During investigation, the prosecutrix produced her caste certificate that she belongs to scheduled caste. The caste certificate was seized vide seizure memorandum (Ex. P/2).

(4) Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). The Appellant was arrested vide memo of arrest (Ex. P/4). After completion of investigation, charge sheet was filed before the Learned Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 on 22.6.2014.

(5) During trial, the Court below framed charges under Sections 354B and 323 of IPC and Section 3(1)(xi) of the Act. The prosecution examined nine witnesses to prove the guilt of the Appellant. Statement of the Appellant was recorded under Section 313 of the Code wherein the Appellant denied the circumstances appearing against him and pleaded innocence and false implication in the crime in question.

(6) After providing opportunity of hearing to the parties, Learned trial Court acquitted the Appellant for the charges under Section 3(1)(xi) of the Act and convicted as aforementioned.

(7) I have heard Learned Counsel for the parties, perused the judgment impugned and record of the Court below.

(8) Learned Counsel appearing on behalf of the Appellant submitted that the Appellant is in jail since 5.4.2014 and thereby he has served sentence of one year 4 months and 7 days. The Appellant is the first offender earning his bread by doing labour work. He is not having any criminal antecedent. Learned Counsel further submitted that the Appellant will not commit any offence in future. He was not in a position to furnish bail bonds as per order dated 15.12.2014 and is still serving the sentence. The Appellant be given an opportunity to live peacefully in the village and society and the sentence may appropriately be reduced.

(9) On the other hand, Learned Counsel for the Respondent/State opposed the submissions advanced on behalf of the Appellant and submitted that looking to the facts of the case, it is apparent that when the Appellant saw the prosecutrix alone, he caught hold her and pushed her down. The trial Court has rightly sentenced the Appellant. Hence, there is no scope for interference in the sentence and the prayer made in this behalf may be rejected.

(10) In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.

(11) As per facts of the case, when the prosecutrix (PW-6) was going

alone at about 8:00-8:30 pm, the Appellant caught hold her hands and also pressed her breast. When she shouted, the Appellant ran away from the spot. The matter was immediately reported to the police and after registration of the crime, the police conducted investigation. The Appellant has not assailed the conviction imposed upon him and prays for consideration on quantum of the sentence.

(12) Even otherwise on perusal of the entire evidence, I do not see any illegality or impropriety committed by the trial Court in passing the judgment of conviction thereby the judgment and conviction warrants no interference. The trial Court also sentenced the Appellant with fine of ₹10/- only which is not on higher side. Hence, the fine sentence also does not warrant interference.

(13) So far as the quantum of sentence is concerned, the Appellant is convicted and sentenced under Section 354B of IPC to undergo rigorous imprisonment for three years and under Section 323 of IPC to undergo rigorous imprisonment for one year with a direction that both the substantive jail sentences shall run concurrently.

(14) The Appellant is in jail since one year 4 months and 7 days. He is the first offender with no criminal antecedent and doing a job of labour. He was not in a position to furnish bail bonds as per order dated 15.12.2014 and is still serving the sentence. Looking to the entire facts and circumstances of the case, there is no overt act or severity shown in the commission of act as no one appeared when the incident happened. People came to the spot only after the call for help was made by the prosecutrix.

(15) On due consideration, I am of the view that the period already

undergone by the Appellant would be sufficient to meet the ends of justice.

(16) Consequently, the appeal filed by the Appellant is allowed in part. The conviction awarded against the Appellant is hereby affirmed. Fine sentence awarded by the trial Court is also hereby affirmed. So far as substantive jail sentence is concerned, the sentence is modified and instead of RI for 3 years, the Appellant is sentenced to the period already undergone by him.

(17) The Appellant is directed to set at liberty forthwith, if not required in any other case.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE