

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 62 of 2006

1. Mohd. Akram S/o Mohd, Safi, aged about 25 years, Occupation Driver, R/o Faridnagar, Near Haddi Godown, P.S. Supela, Distt. Durg (C.G.)

---- Appellant

Versus

1. State of Chhattisgarh Through P.S. Supela, District Durg (C.G.)

---- Respondent

For Appellant – Shri Rishi Mahobia, Advocate
For Respondent – Shri Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

25/01/2016

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 07-01-2006 passed by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'the Act, 1989') and Additional Sessions Judge, Durg, C.G. in Special Case No.3/2004 whereby and whereunder the Special Judge after acquitting the appellant from the offence under Section 323 of the IPC and under Section 3(1)(xi) of the Act, 1989 and holding him guilty for lurking house-trespass, assault or use of criminal force to the prosecutrix (PW-7) with intent to outrage her modesty convicted the appellant for the offence under Sections 457 and 354 of the Indian Penal Code (in short 'the IPC') and sentenced him to undergo rigorous imprisonment for one year and to pay fine of Rs.500/-, in default of payment of fine, to further undergo rigorous imprisonment for 3 months; and to undergo rigorous imprisonment for one year and to pay fine of Rs.500/-, in default of payment of fine, to further undergo

rigorous imprisonment for 3 months, with a direction to run both the substantive jail sentences concurrently. The appellant was also awarded benefit of set off for the period of judicial custody.

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

3. As per case of the prosecution, on 19-05-2003, at about 12.30 night when the prosecutrix (PW-7) was sleeping and her husband went outside for his livelihood, the present appellant and another entered inside the house and they were taking the prosecutrix (PW-7) along with them. At the time of incident, her husband and others were returning home and when the appellant and other co-accused saw them they left her and immediately fled away from the spot. The prosecutrix (PW-7) went to Police Station Supela and lodged the First Information Report against the present appellant and the other co-accused. She was sent for medical examination and after completion of the investigation, charge sheet was filed before the Additional Chief Judicial Magistrate, Durg, C.G., who, in turn, committed the case to the Court of Sessions, the learned Special Judge/Additional Sessions Judge, Durg received the case on transfer and conducted the trial. Co-accused Vijay Kumar remained absconded during the trial. Charges were framed against the present appellant for the offence under Sections 323, 354 and 457 of the IPC and Section 3(1)(xi) of the Act, 1989. The appellant denied for the charges and prayed for trial.

4. In order to prove guilt of the appellant, the prosecution examined as many as 8 witnesses. The accused was examined under Section 313 of the Code of Criminal Procedure, 1973 (in short 'the Code')

wherein he denied the circumstances appearing against him and pleaded innocence and false implication in crime in question.

5. After providing opportunity of hearing to the parties, the learned Special Judge acquitted the appellant from the charges under Section 323 of the IPC and Section 3(1)(xi) of the Act, 1989 and convicted and sentenced the appellant as mentioned in para 1 of this judgment.

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

7. It is submitted on behalf of the appellant that, as directed, he is not contesting the instant criminal appeal regarding the judgment of conviction passed against the appellant and he is confining his argument only to the quantum of sentence. As submitted, the appellant remained in jail for about 4 months. The incident is about 13 years old. The appellant is the first offender with no criminal past. He was aged about 25 years at the time of incident. He is not having criminal history of any offence before this incident; even after this incident, he had not involved himself in any other criminal offence. For last about 13 years he is contesting the criminal case and also taking part in hearing of the instant criminal appeal as the said is still pending thereby he has sufficiently tested the post effect of the act committed by him. Therefore, he may be given an opportunity to remain in society without further committing any other offence and he may be accordingly sentenced.

8. Per contra, learned counsel for the State duly supported the judgment of conviction and order of sentence passed by the Court below and submitted that the Court below after due appreciation convicted and sentenced the appellant which is well founded and

requires no interference looking to the evidence adduced by the prosecution in the matter.

9. After perusal of the evidence adduced, especially the statement of the prosecutrix (PW-7) and other witnesses, in the considered view of this Court, the Court below has not committed any illegality or impropriety in convicting the appellant for the offence under Sections 354 and 457 of the IPC. Hence, the conviction part of the judgment passed by the trial Court requires no interference and the same is hereby affirmed.

10. So far as the quantum of sentence is concerned, the appellant was sentenced rigorous imprisonment for one year, one year along with fine sentences with a direction to run both the substantive jail sentences concurrently. Fine sentences awarded to the appellant by the trial Court, in the considered view of this Court, are not excessive, therefore, they are also hereby affirmed. So far as substantive jail sentences, i.e., rigorous imprisonment of one year and one year are concerned, appellant is the first offender, he was aged about 25 years at the time of incident with no criminal past and also after the incident, no any criminal involvement was reported on behalf of the prosecution, the incident is about 13 years old and since then the appellant is facing trial and is also contesting the instant criminal appeal, there is no any minimum sentence prescribed for the offence proved against the appellant, looking to all these facts and the entire facts of the case, this Court is of the view that the period already undergone, i.e., about 4 months in all, by the appellant would serve the purpose.

11. Consequently, the instant appeal filed by the appellant is partly allowed. Conviction of the appellant under Sections 354 and 457 of the

IPC are hereby maintained. Fine sentences awarded to the appellant by the trial Court of Rs.500/- and Rs.500/- along with default sentences in case of default in depositing the fine, are also hereby affirmed. However, the jail sentences of rigorous imprisonment for one year and one year are hereby reduced and appellant is now sentenced for the period already undergone by him for both the offence as the jail sentences were directed to run concurrently. The appellant is reported to be on bail. His bail bond shall continue for a further period of 6 months as per requirement of Section 437-A of the Code. He be set at liberty forthwith. If the fine amount are not deposited, the Court below is directed to realize the fine or send the appellant for serving default jail sentence as per order of the Court below mentioned in para 20 of the judgment of the trial Court.

12. The appeal partly allowed.

Sd/-

(Chandra Bhushan Bajpai)
J U D G E