

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1295 of 1998

Judgment reserved on: 04.10.2016

Judgment delivered on: 07 .10.2016

Bodhi Ram Son of Karmu Ram, Aged about 30 years, Resident of
Prem Nagar, P.S. Prem Nagar, District Sarguja (M.P.)

---- Appellant

Versus

State of Madhya Pradesh Through Police Station Ambikapur,
District Sarguja (M.P.) now State of C.G.

---- Respondent

For Appellant :- Mr. Rishi Mahobia, Advocate

For Respondent :- Ms. Shobha Kashyap, Dy. Govt. Advocate

SB: Hon'ble Shri Justice Anil Kumar Shukla

C A V Judgment

(Delivered on 7th October, 2016)

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 19.05.1998 passed by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act, 1989'), Ambikapur District Sarguja in Special Criminal case No. 34 of 1997 whereby learned Special Judge after holding the appellant guilty for commission of offence punishable under Sections 3 (1) (xi) of the Act, 1989, sentenced him to undergo rigorous imprisonment for 1 year and fine of Rs. 1,000/-. In default of payment of fine, the Appellant was required to undergo simple imprisonment for 3 months.

2. Conviction is impugned on the ground that without there being an iota of evidence the learned trial Court has convicted and sentenced the appellant as aforementioned and thereby committed an illegality.
3. Case of the prosecution, in brief, is that the Prosecutrix Khilmatbai (PW-1) is Gond by caste and belongs to Scheduled Tribe Community. She was living with her husband. On 23.03.1997, at about 6.00 am, when the prosecutrix was going to fetch water from handpump, at that time, the accused/appellant came there, caught her hands and dragged her towards his house with an intention to outrage her modesty. When she was trying to get herself free from the Accused/Appellant, her husband came there. Thereafter, the appellant assaulted him with a stick and fled away from the spot. The entire incident was seen by Tulsai (PW/7), Dular Sai and Jhingo Bai (PW/3). The prosecutrix reported about the incident at Police Station vide Ex.P-3 against the appellant where a crime under Sections 354 and 323 of the IPC and Section 3(1)(xi) of the Act, 1989 was registered.
4. After completion of the investigation, charge sheet was filed against the appellant in the Court of Special Judge under the Act, 1989, who conducted the trial and convicted and sentenced the appellant as mentioned above.
5. Mr. Rishi Mahobia, learned counsel for the appellant submits that the appellant has been falsely implicated in the crime in

question due to previous enmity with the husband of the prosecutrix. He further submits that there is no evidence on record to show that the Prosecutrix-Khilmatabai (PW-1) belongs to Scheduled Tribe community. There is absolutely no evidence on record to show that the alleged act was done by the appellant simply because the Prosecutrix-Khilmatabai (PW-1) belongs to Scheduled Tribe community. He further submits that during the pendency of the criminal case, the complainant and her husband moved an application for compounding the case against the appellant on which learned trial Judge had passed an order for compounding the case against the appellant had passed an order for compounding the offence u/s 323 and 354 IPC but had not permitted to compound the case under section 3(1)(xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. He further argued that the appellant has been falsely implicated in the case, therefore, the appellant deserves to be acquitted.

6. Ms. Shobha Kashyap, Dy. Govt. Advocate for the State/respondent, supporting the impugned judgment submitted that the conviction and sentence awarded by learned Special Judge does not warrant any interference by this Court.
7. I have heard learned counsel for the parties at length and have also perused the record of special criminal case No. 34/1997.
8. The charge sheet was filed against the appellant under Section 3 (i) (xi) of the Act, 1989. Learned Special Judge convicted the

appellant under Section 3 (i) (xi) of Act, 1989 and sentenced as
aforementioned.

9. To hold the appellant guilty, the prosecution examined Khilmatbai (PW-1), Dashrath (PW-2), Jhingobai (PW-3), SDOP Telasfar Ekka (PW-4), DSP H.N. Shukla, (PW-5), Head constable-Jigma Ram Bhagat (PW-6), Tulsai (PW-7). Shiv Prasad (PW-8). The appellant did not examine any witness in his defence.
10. Prosecutrix-Khilmatbai (PW-1) deposed in her statement that when she was going to the handpump for fetching water at about 6.00 AM, appellant Bodhanram came there and caught hold of her hands and dragged her towards his house. When she was trying to get herself free, at that time her husband came there and warned him to leave the hands of his wife then the accused/ appellant assaulted him with a stick and fled away from the spot. The prosecutrix in her deposition has stated that she knows the accused very well and the accused belongs to Gond caste but afterwards she stated that the accused belongs to Lohar caste. It is pertinent to mention this fact here that the prosecutrix in her entire deposition before the Court has nowhere stated that the Accused/Appellant had committed the offence only because she belongs to Scheduled Tribe category. She has stated in para 15 of her deposition that there has been a compromise with the Accused/Appellant and she does not want any action to be taken against the Accused/Appellant.

11. Dashrath (PW-2) husband of the prosecutrix has also stated that he belongs to Gond community. He had seen the Appellant catching hold of the hand of the prosecutrix and dragging her. When he objected to do so the accused/ appellant assaulted him with a stick. He deposed in his deposition, in para 15 of his deposition has clearly stated that the quarrel took place between them was not because of the reason that they belonged to Scheduled Tribe but it was an ordinary quarrel. He has further stated that when the prosecutrix tried to intervene in the quarrel between him and the Appellant/Accused, the Appellant/Accused did not caught hold the hand of prosecutrix with any malafide intention but only said that being a woman, why she was intervening in a fight between two males.
12. Jhingobai (PW-3) has stated in her statement that the accused/ appellant caught hold the hands of the prosecutrix and dragged her. However, Tulsai (PW-7) and Shiv prasad (PW-8) have not supported the case of the prosecution.
14. The prosecution did not produce any caste certificate of the complainant/prosecutrix. The prosecution has also not proved that the appellant was aware of the fact that the complainant belongs to scheduled tribe community. The evidence of the complainant is full of contradictions and not supported by independent witnesses.
15. In the instant case, there is no evidence on record to show that the alleged act was done by the appellant only for the reason

that the prosecutrix Khilmatbai (PW-1) belongs to Scheduled Tribe Community. Even in her statement, the prosecutrix Khilmatbai (PW-1) has not made any such allegations against the appellant.

16. In view of the above facts and circumstances, the appellant cannot be convicted and sentenced for an offence punishable under Section 3(1)(xi) of the Act, 1989.

14. So far conviction under Section 3(1)(xi) of the Act, 1989 is concerned, the prosecution has utterly failed to prove commission of any offence under Sections 3(1)(xi) of the Act, 1989. Therefore, the appellant is entitled to be acquitted for the offence punishable under Section 3(1)(xi) of the Act, 1989.

15. Accordingly, the present criminal appeal is allowed. The impugned judgment dated 19.05.1998 is hereby set aside and the appellant is acquitted of the charges levelled against him under section 3 (1) (xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The appellant is on bail. His bail bonds are not discharged at this stage and shall remain operative for a period of six months from today in terms of Section 437-A of Cr.P.C

Sd/-
(Anil Kumar Shukla)
Judge