

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 2476 of 1998**

Vijay Kumar Lal aged about 45 years S/o Shri Brij Kumar Lal, R/o Rasai Para, Bastar Road, Purva Madhyamik Shala, Bhatgaon, Dhamtari, District Raipur, Madhya Pradesh (Now Chhattisgarh).

---- Appellant

Versus

State of Madhya Pradesh (Now Chhattisgarh) Through Police Station Dhamtari, District Raipur, Madhya Pradesh (Now Chhattisgarh).

---- Respondent

Criminal Revision No. 1333 of 1998

Devki Kumhar W/o Girvarlal Kumhar, aged about 34 years, Resident of Middle School, Bhatgaon, Tahsil Dhamtari, District Dhamtari (Madhya Pradesh) (Now Chhattisgarh).

---- Applicant

Versus

1. Ramnath Sahu S/o Itwariram Sahu, aged 40 years, R/o Bhatgaon, Police Station Dhamtari, District Dhamtari, Madhya Pradesh (Now Chhattisgarh)
2. Ishwar Prasad Pandey S/o Shiv Dayal Pandey, aged 40 years R/o Bhatgaon, Police Station Dhamtari, District Dhamtari, Madhya Pradesh (Now Chhattisgarh)
3. Parasram S/o Nakchheda Sahu, aged 58 years, R/o Bhatgaon Police Station Dhamtari District Dhamtari, Madhya Pradesh (Now Chhattisgarh)
4. Hemanlal Sahu S/o Hiralal Sahu, aged 40 years, R/o Bhatgaon, Police Station Dhamtari, District Dhamtari, Madhya Pradesh (Now Chhattisgarh)
5. Jhadiram Sahu S/o Mandhir Sahu, aged 35 years, R/o Bhatgaon, Police Station Dhamtari, District Dhamtari, Madhya Pradesh (Now Chhattisgarh)

---- Respondents

For Appellant-Vijay Kumar Lal : Shri Ashok Das Vaishnav, Advocate.
 For Applicant-Devki Kumhar : None
 For Respondent/State : Smt. Smita Ghai, Panel Lawyer.

Hon'ble Shri Deepak Gupta, Chief Justice**Judgment on Board****09/09/2016**

1. Both Criminal Appeal and Criminal Revision are being disposed of by this common judgment.

2. Criminal Appeal No. 2476 of 1998 by Accused-Vijay Kumar Lal is directed against the judgment dated 05.10.1998 passed in Special Sessions Case No. 21 of 1997 by the Special Judge, Raipur whereby the Accused has been convicted for having committed offence punishable under Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter called 'the Act') and sentenced to undergo rigorous imprisonment for six months and to pay fine of Rs. 500/-. In default of payment of fine, he was required to undergo 10 days further imprisonment.

3. The prosecutrix and Accused-Vijay Kumar Lal both were working in Primary School, Bhatgaon. The prosecutrix was an Assistant Teacher. She alleged that that Accused Vijay Kumar Lal used to treat her immodestly on many occasions on one pretext or the other. He used to try to touch her and to make indecent contact with her. This continued from the year 1990 to 1996. According to the prosecutrix, she did not complain about this to any person for many years because she did not want to bring this matter out in open and the Accused always used to laugh on her allegation and also told that he would not repeat this again in future. However, about 4-5 years later, she complained to her husband-Girwar (PW-5), who in turn raised this issue before the villagers including Govind Ram (PW-3) and PW-4, Bodhan Singh Dhruv (PW-4). Further allegation of the Applicant-prosecutrix is that she first made oral complaint to the Head Master of the school and thereafter to the higher authorities but nothing was done. Thereafter, she made oral complaint to Sarpanch of the village who directed her to make a complaint. The she made a written complaint to the Panchayat on 29.11.1996. Even then the Sarpanch took no action on the same and she wrote some further letters to the higher authorities.

4. According to the prosecutrix, she also made complaints to the Superintendent of Police, Joint Director, Education, Deputy Director, Education, District Education Officer and Block Education Officer, etc. Further, her version is

that an enquiry was started by the higher authorities but in the meantime on 06.01.1997, a meeting of Village Development Committee and the School Development Committee was called by the Head Master in the school building at Bhatgaon. The Accused-Ishwar Prasad Pandey presided over the said meeting and the Prosecutrix was also called in the meeting. According to the Prosecutrix, since school was working on that day, she had gone to the school to attend her work. The version of the Prosecutrix is that in the meeting, she was told by Accused-Ishwar Prasad Pandey that since the meeting had been called at her instance, she will have to abide by the decision taken in the meeting. Her version is that she told Accused-Ishwar Prasad Pandey that she had made a complaint to the higher authorities and therefore wait for the result of the enquiry. She was then threatened and told that if she did not agree to the suggestion of the persons holding the meeting then the school will be closed and questions will be raised in the Vidhan Sabha and Lok Sabha. According to the Prosecutrix, she then got scared and agreed that she would abide by the decision taken in the meeting. The version of the Prosecutrix is that thereafter she and her husband were forced to sign an agreement whereby she was fined Rs. 1151/- and a fine of Rs. 500/- was imposed on Accused-Vijay Kumar Lal. According to the Prosecutrix, though the meeting commenced on 06.01.1997 but it went upto 2 am of 07.01.1997. Thereafter, on 08.01.1997, she was made to sign the agreement. Since she had been forced to sign the agreement by all the Accused namely Ishwar Prasad Pandey, Ram Nath Sahu, Parasram and Hemlal Sahu at the instance of Accused-Vijay Kumar Lal, she filed a complaint to this effect before the Police on 09.01.1997. On the basis of this complaint (Exhibit P-1) first information report (Exhibit (P-2) was lodged. Investigation as conducted and after investigation, only Vijay Kumar Lal was convicted and sentenced as aforesaid. However, the other five Accused were acquitted of all the charges framed against them.

5. Aggrieved by the aforesaid judgment, Accused-Vijay Kumar Lal has filed Criminal Appeal No. 2476 of 1998. The Prosecutrix has filed Criminal Revision No. 1333 of 1998 against acquittal of other five Accused persons.

6. It would be pertinent to mention that this case was initially filed in the Jabalpur Bench of Madhya Pradesh High Court. After transfer of the case, information was sent to the Prosecutrix about transfer of her case, but she has not put in appearance either personally or through her counsel.

7. I have carefully gone through the records and I find that the Prosecutrix neither in the complaint nor in her statement made in the Court has made any allegations against the Accused-Vijay Kumar Lal that he outraged her modesty because she belonged to a Scheduled Tribe. Not a word has been stated in this regard. It is true that she alleged that the Accused-Vijay Kumar Lal used to tease her and used to touch her inappropriately but she has given virtually no plausible explanation why she kept quiet for more than five years i.e. from 1990 to 1996. For the first time, she reported the matter in the year 1996.

8. In Court, the Prosecutrix was examined as PW-1 and obviously, she has repeated what was stated in the complaint but as pointed out above, even in the statement made in the Court, she has made no specific allegation whatsoever that the Accused-Vijay Kumar Lal teased her because she belonged to a particular caste or tribe. In fact, even in the complaint filed, this is not the main allegation. This is the background of the complaint. The main allegation is that the Accused persons had forced her and her husband to sign the so-called agreement forcibly and they were pressurized to do so. The complaint was directed more against other Accused and they have been acquitted. No appeal has been preferred by the State against their acquittal. This Court in exercise of its revisional jurisdiction cannot convert an acquittal into a conviction. This is not permissible under Section 401 CrPC.

9. Even otherwise, on going through the evidence on record, I find that Bahura Bai (PW-2) who is the Kotwar of the village has not supported the prosecution story. She only states that in the meeting, the committee imposed fine of Rs. 500/- on the Accused-Vijay Kumar Lal. In her cross-examination she infact states that the Accused-Vijay Kumar Lal in the meeting had stated that the Prosecutrix was like his sister and therefore, he had never teased or touched her inappropriately.

10. Govind Ram (PW-3) has also not fully supported the prosecution version. According to him, the meeting started in the afternoon of 06.01.1997 and continued till 02:00 am of 07.01.1997. He states that the Prosecutrix was harassed alleging that she is making false allegations against the Accused persons, however, no compromise could be arrived at. On 08.01.1997, again a meeting was called at 10:00 am. This witness now says that though he was initially taking part in the meeting but since he did not agree with the proposal of others that the decision of this body would be binding upon the parties, he withdrew from the meeting. He further states that in the meeting, a fine of Rs. 1151/- was imposed upon the Prosecutrix and Rs. 500/- was imposed upon the Accused-Vijay Kumar Lal. Bodhan Singh Dhruv (PW-4) gives a similar version. Both these witnesses have also not stated anything with regard to allegation of caste or tribe. The evidence on record is not sufficient to hold the Accused-Vijay Kumar Lal of having committed the offence in question.

11. There are other contradictions which have not been explained. No material has been placed on record to show what were the complaints made to the higher authorities. There is nothing on record to show that any enquiry was being conducted by the higher authorities. Other than saying that the Prosecutrix and her husband were pressurized, there is no material to show that why they would have signed an agreement if they were not agreeable to the same.

12. In view of the above discussion, Criminal Appeal No. 2476 of 1998 filed by the Accused-Vijay Kumar Lal is allowed and the judgment dated 05.10.1998 passed in Special Sessions Case No. 21 of 1997 by the Special Judge, Raipur is set aside. He is acquitted of the charge framed against him.

13. As far as Criminal Revision No. 1333 of 1998 is concerned, for the same reasons, I find no merit in the same and is accordingly dismissed.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE