



(S9)

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 2058 of 1996**

- Bhushan Prasad S/o Mehtar Dubey (Brahmin), aged about 24 years, resident of Kasdol, Thana Kasdol, District Raipur (C.G.)

---- Appellant

Versus

- State of Madhya Pradesh (Now Chhattisgarh) Through Police Station, Kasdol, District Raipur

---- Respondent

For Appellant. - Shri S.K. Guha, Advocate.
For Respondent - Shri Avinash Singh, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker**Judgment On Board****05/08/2016**

This appeal arises out of the judgment of conviction and order of sentence dated 08.11.1996 passed by the Special Judge, Raipur in Special Criminal Case No.201/1996 convicting the accused/appellant under Section 3(1)(xi) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act and sentencing him to undergo R.I. for six months and to pay fine of Rs.500/-, in default of payment of fine to further undergo S.I. for three months.

02. The facts of the case in brief are that on 23.04.1995 at 7.30 am FIR (Ex.P/1) was lodged by Prosecutrix (PW/1) aged about 18 years alleging in it that on that day at about 6.00 am when she had gone to answer the call of nature outside the village, the accused/appellant reached there, caught hold of her hand and kissed her. When she protested the accused/appellant, threatened her and again kissed her

(66)

saying that she is at liberty to inform the incident to her brother. Based on this, FIR (Ex.P/1) for the offence punishable under Sections 354, 323, 506 Part-II IPC and Section 3(1)(xi) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act was registered against the accused/appellant. After investigation, challan was filed for the offence under Sections 354, 323, 506 Part-II IPC and Section 3(1)(xi) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act. However, charges were framed against the accused/appellant for the offence under Section 3(1)(xi) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act and under Section 506 Part-II of the Indian Penal Code.

03. So as to hold the accused/appellant guilty, prosecution examined as many as 6 witnesses in support of its case. Statement of the accused/appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. This apart, witnesses namely Radhey Shyam Choube (DW/1) and Rameshwar Prasad Kenwat (DW/2) have also been examined by the defence in support of its case.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment. Hence, this appeal.

05. Learned counsel for the appellant submits that:

- (i) prosecution has not proved the caste of the prosecutrix by filing valid document and once the caste has been denied by the appellant in

his statement recorded under Section 313 of Cr.P.C., the accused/appellant cannot be convicted under the provision of SC/ST Act;

(ii) the prosecutrix has falsely implicated the appellant in the crime in question.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the conviction of the appellant is strictly in accordance with law and there is no infirmity in the same. He further submits that even assuming the prosecution case as it is, though the appellant cannot be convicted under Section 3(1)(xi) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act but considering his act, he is liable to be convicted under Section 354 IPC.

07. I have heard learned counsel for the parties and perused the material available on record.

08. Prosecutrix (PW/1) has stated that on 23.04.1995 at about 6.00 am, she had gone to answer the call of nature outside village but before she could ease herself, accused/appellant reached there, caught hold of her hand and started pulling her to a nearby pit as a result of which her clothes got soiled with stool. She has also stated that thereafter accused/appellant started kissing her and threatened her of dire consequences. Accused/appellant also threatened her that if she discloses the incident to her brother, he will kill her. In para 3, prosecutrix has stated that accused/appellant had worn red colour shirt that she tore. In cross-examination, she remained very firm and reiterated as to the manner in which the crime was committed by appellant.

(2)

09. Bisram Kurre (PW/2) is the father of prosecutrix. He has stated that the accused/appellant is his student and on the date of incident, prosecutrix had gone to attend the nature's call and while^e he was returning after morning walk, he saw the accused/appellant fleeing from the spot and just after 10 minutes of that scene, prosecutrix reached to the house weeping and narrated the entire incident to him.

10. Smt. Parvati (PW/3) is the mother of prosecutrix. She has stated that her daughter had gone to attend the nature's call from where she came weeping and narrated the incident.

11. Farida Begam* (PW/4) has not stated anything about incident and turned hostile.

12. Bhupendra Kumar (PW/5) is a witness to seizure of clothes of prosecutrix.

13. Surendra Kumar (PW/6) is the villager. He has stated that when he reached to prosecutrix's house, he saw her weeping and her clothes were soiled with stool. On being asked, she narrated the incident that the accused/appellant had molested her.

14. Radhey Shyam Choube (DW/1) has stated that on the date of incident at about 7.00 am when he was coming from his house, he saw the accused/appellant returning from the place where villagers go to answer the call of nature. He noticed scratch mark on appellant's right hand and his shirt was torn. On being asked, he informed that he was abused by the prosecutrix and there was scuffle between them and it is the prosecutrix who tore his shirt.

15. Rameshwar Prasad Kurre (DW/2) has stated that prosecutrix informed him that there was scuffle between her and the accused.

16. Close scrutiny of the evidence makes it clear that the prosecution has not filed and proved any document to show the caste of the prosecutrix which is *sine qua non* for convicting any person in relation to the offence pertaining to the provision of Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act. In the instant case, there is no documentary evidence to show the caste of the prosecutrix. It is a settled legal position that the production and proving of relevant document regarding the caste of the prosecutrix is necessary to establish the offence under the provisions of Prevention of Atrocities Act. It is thus very clear that the conviction of the appellant under Section 3(1)(xi) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act is not in accordance with law, therefore, the same is set aside and the appellant is acquitted of the charge under Section 3(1)(xi) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act. So far as act of the appellant in relation to assault or criminal force to woman with intent to outrage her modesty is concerned, there is enough material on record to prove the same by the evidence of prosecutrix (PW/1) which stands corroborated by Bisram Kurre (PW/2), Smt. Parvati (PW/3) and Surendra Kumar (PW/6). Thus, in the facts and circumstances and the nature of evidence adduced, the appellant can safely be held guilty under Section 354 IPC.

17. Next question which arises for consideration of this Court is as to what would be the appropriate sentence to be imposed upon the appellant for committing the offence under Section 354 IPC?

18. The incident had taken place about 21 years back, by now the appellant may be an aged person, in the peculiar facts and circumstances of the case, no useful purpose would be served in

(64)

sending him back to jail. However, the appellant is directed to pay fine of Rs.5000/- before the trial Court within a period of six months from today. In the eventuality of depositing such fine amount by the appellant before the trial Court, the same be disbursed to the prosecutrix after due verification by it.

19. In the result, the appeal is partly allowed to the extent indicated above.

Sd/-
Pritinker Diwaker
Judge

Vijay