

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.309 of 2016**

Satan Prasad Kenwat S/o Shri Lohar Ram, aged about 47 years R/o Village Unchadih, Police Station, Batauli, District Surguja (CG).

---- Appellant

Versus

State of Chhattisgarh Through the Station In-charge, Police Station, Batauli, District Surguja (CG).

---- Respondent

For Appellant	:	Shri Rishi Rahul Soni, Advocate.
For respondent/State	:	Shri Rajendra Tripathi, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

20/09/2016

1. The present appeal has been preferred under Section 374(2) of CrPC by the appellant challenging the judgment of conviction and sentence dated 11.12.2015 passed by the Sessions Judge (Atrocities), Surguja in Special Sessions Case No. 119/2009. Vide the said judgment, the appellant was found guilty of having committed the offence under Sections 457 and 354 IPC. Upon being convicted, the appellant was ordered to undergo RI for six months for the offence under Section 457 IPC and RI for six months for the offence under Section 354 IPC with fine of Rs. 500/- each with a further direction of both the sentences to run concurrently.
2. The case of the prosecution in brief is that, in the intervening night of 13-14th July, 2009, it is stated that while the complainant was asleep in

her house along with her sister Rambai, in the odd hours of night, the appellant is stated to have intruded into their house and is said to have caught hold of the hand of the complainant with an intention of outraging the modesty. Immediately, on raising alarm, the sister of the complainant i.e. Rambai woke up which made the appellant flee away from the house.

3. Later, an FIR was lodged on 14.07.2009 at around 2:15 pm at Police Station Batoli, District Surguja and a case under Sections 354 and 457 IPC was registered against the appellant. Offence under Section 3(1)(x) and 3(1)(xi) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act was registered and the matter was put to trial.
4. The prosecution examined as many as eight witnesses.
5. The court below after conclusion of trial, found that offence under Sections 3(1)(x) and 3(1)(xi) is not made out and accordingly acquitted the appellant from the said charge. Similarly, for the offence under Section 323 IPC also the appellant was acquitted granting benefit of doubt. However, the court below found the appellant guilty for the offence under Sections 457 and 354 IPC and ordered imposition of six months RI with fine of Rs.500/- each for both the offences.
6. Learned counsel appearing for the appellant assailing the said judgment of conviction submitted that the judgment of conviction passed by the court below is bad in law inasmuch as the court below has not properly appreciated the evidence. According to appellant, the court below failed to take note of the fact that there were many contradictions and omissions in the statement of prosecution witnesses leading to doubt

the case of prosecution itself. Counsel for the appellant further submits that from the deposition of the prosecution witnesses, the possibility of the appellant being falsely implicated in the case cannot be ruled out on account of fact of their being a land dispute between the appellant and the family of the complainant. Thus, prayed for setting aside of the judgment impugned and to acquit the appellant.

7. Learned counsel for the State however opposes the appeal and submits that there is no reason whatsoever to disbelieve the statement of the complainant who has categorically stated before the court below and also elaborately cross examined and by way of cross examination also the defence has not been able to create any dent in the mind of the court to doubt the deposition of the complainant victim. It was next submitted that the statement of the victim also has been supported by PW-4, Rambai, the sister of the victim who was present at the place and time of the incident. She has stated to have seen the appellant running away from the place of incident upon the complainant-victim raising an alarm. Thus, the state counsel prays for rejection of the appeal.
8. Having considered the rival contentions put forth by the either side and on perusal of record, what clearly reflects is the fact that PW-3, Sitabai has in her FIR as well in her statement recorded after the incident has not deviated from her stand. Even after five years while her evidence was being recorded before the court below, the accused has not been able to bring out anything from her cross examination by which one could doubt the deposition so made. Further, there are other witnesses also examined on behalf of the prosecution before the court below and

these witnesses particularly PW-4, Rambai who was present at the place and time of incident had also seen the appellant running away from the scene upon the victim raising an alarm. Thus, from the evidence which have come on record, this court is of the opinion that the court below has not committed any illegality in the course of finding the appellant guilty of having committed offence under Sections 457 and 354 IPC and the judgment of conviction therefore stands confirmed.

9. The date of incident in the present case is 14.07.2009 and as such at the relevant point of time it was the un-amended provisions of Section 354 IPC which was in force and where there was no minimum sentence prescribed. The said Section has only been amended in the year, 2013 with a minimum sentence prescribed. The date of incident in the present case being of the period prior to amendment, the court below has granted sentence of six months. Taking into consideration the entire facts and circumstances of the case, particularly the nature of allegations and also keeping in mind the fact that there was a property dispute between the appellant and the father of victim-complainant, this court is of the opinion that end of justice would be sub served if the sentence part is modified to the period already undergone.
10. Accordingly, the present appeal is partly allowed to the extent that the conviction of appellant stands affirmed, however, sentence part is modified to the period already undergone by the appellant.

Sd/-
(P. Sam Koshy)
Judge