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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1320/1999

Ramlal son of Rameshwar by caste Dhobi, aged about 47 years, r/o. Village Kutrabod, PS Jaijaipur, Distt. Janjgir Champa (CG)

-V-

The state of Chhattisgarh through Police Station Jaijaipur, Distt. Janjgir Champa (CG)

For appellant : Mr. Vimlesh Bajpai, Adv.
For Respondent/State : Ms. Shobha Kashyap, Dy. GA.

JUDGMENT ON BOARD

5/1/2017

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 15-4-1999 passed by the Special Judge [Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), 1989 (in brevity 'SCST Act)], Bilaspur in Special Criminal Case No. 47/1998 whereby and whereunder learned trial Court after holding the appellant guilty for lurking house trespass by night and thereafter to use criminal force on P.W. 1 (name not mentioned) with intention to outrage her modesty, convicted the appellant under Sections 456 and 354 of the Indian Penal Code and sentenced to undergo RI for two years and to pay a fine of Rs. 500/-, in default of payment of fine to undergo additional RI for 2 months under Section 456, and RI for one year under Section 354, IPC with a further direction that both the substantive jail sentences shall run concurrently.
2. Conviction is impugned on the ground that without there being an iota of evidence, learned Court below has convicted and sentenced the appellant as aforementioned and thereby committed illegality



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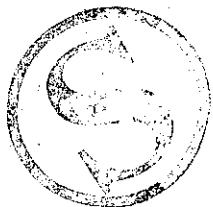
3. As per the case of the prosecution, in the intervening night of 23 and 24 of August, 1998 at about 1.00 a.m., prosecutrix P.W. 1 was sleeping in her house along with her 4 children. Door was closed. The accused/appellant committed house trespass by pushing the door and thereafter caught hold of her hand and offered her for bad act. The prosecutrix resisted the same and beat her and also shouted for help, as a result the accused appellant fled away from the spot. Neighbours came. The prosecutrix informed the neighbours about the incident and at about 3.30 pm on the same day, she lodged FIR before the Jaijaipur police. Police registered crime No. 137/98 under Sections 456 and 354 of the IPC and also under Section 3(1)(xi) of the SCST Act against the accused/appellant. The matter was investigated by a gazetted police officer as the prosecutrix belonged to scheduled caste category. After investigation charge sheet was filed before the Special Judge (Atrocity) who framed the charges for the offence under Sections 456 and 354, IPC and Section 3(1)(xi), SCST Act.
4. In order to prove guilt of the accused/appellant, prosecution examined 6 witnesses in all. Statement of the accused was also recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him, pleaded innocence and false implication in the crime in question.
5. After affording opportunity of hearing to the parties, learned trial Court acquitted the accused under Section 3(1)(xi) of the SCST Act and convicted and sentenced the appellant as aforementioned.
6. I have heard learned counsel for the parties and perused the



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record of the trial Court.

7. Learned counsel for the appellant vehemently argued that as instructed he is not assailing the instant criminal appeal for conviction part. The incident is about more than 18 years and 4 months old. The accused/appellant was first offender, has deposited fine amount, remained in jail for 2 days, after registration of the said offence he has not committed any other penal offence. He is living peacefully in the society. He may be given an opportunity to live in the society without committing any offence. The appellant was aged about 46 years at the time of incident, presently he is more than 64 years of age. He is a labour earning his bread anyhow and before the substitution by the Criminal Law (Amendment) Act, 2013, as per Section 6 for the provision under Section 354, IPC, Court may award punishment with imprisonment of either description for a term which may extend to two years or with fine or with both. Looking to the entire facts, his case may be assessed and he be sentenced accordingly.
8. Per contra, learned counsel for the State opposes the arguments advanced on behalf of the appellant, duly supported the judgment of conviction and sentence passed by the trial Court and submits that as the accused/appellant entered into the house of prosecutrix in the midnight the trial Court has properly convicted and sentenced the accused/appellant. Hence the appeal may be dismissed on all counts.
9. In order to appreciate the arguments advanced, I have perused the evidence adduced by the parties.
10. Learned counsel for the appellant is not arguing the appeal on



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the point of conviction of the appellant. Even otherwise, on perusal of FIR lodged by the prosecutrix without any delay, prosecution's story supported by other witnesses who reached to the spot and as there is no material to discredit the statement of the prosecutrix P.W. 1, this court is of the considered view that conviction awarded to the appellant by the Court below is justified and proper and it requires no interference and the same is hereby affirmed.

11. So far as quantum of sentence is concerned, the trial Court award substantive jail sentences of 2 years and 1 year with a direction to run both concurrently. The incident is about more than 18 year old, the appellant was the first offender, police during investigation has not collected any criminal antecedent and as submitted, after the incident also the accused/appellant has not committed any offence. Prior to substitution of Section 354 of IPC, before 3-2-2013, the Court has discretion to award imposition of jail sentence which may extend to two year or fine or with both. Looking to the old pendency of the appeal, age of the accused/appellant and also the fact that accused/appellant only caught hold of hand of the prosecutrix and when she shouted and beat him, he did not use any criminal force against her and fled away, upon entire consideration of the facts surfaced, this Court is of the view that the substantive jail sentence awarded to the accused/appellant requires interference.
12. Consequently, the appeal is partly allowed. Conviction of the appellant under Sections 456 and 354 is hereby affirmed. Fine sentence awarded under Section 456, IPC is also maintained. As regards substantive jail sentences, appellant is sentenced for the



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period already undergone by him. For offence under Section 354, IPC the accused appellant is also sentenced to pay a fine of Rs. 2,000/-, in default of payment of fine to further undergo additional RI for 15 days. The fine amount shall be deposited by the accused within a period of sixty days from today failing which he is directed to surrender before the concerned authority for undergoing the sentence mentioned above for default of payment of fine.

13. With these conditions, the appeal is partly allowed.
14. Registrar (Judicial) is directed to send a copy of this judgment to the trial Court for compliance.
15. Party may also file copy of the judgment before the trial Court.

Sd/-
Chandra Bhushan Bajpai
Judge

Pathak