

Checked & Verified, 2013

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

Criminal Appeal No. 1306 /99

Appellant :- Babu Lal S/o Jagarnath Singh aged 23 years
agriculturist resident of Pachawal P.S.
Balrampur District Sarguja

e. 2. Banshidhar S/o Shivnarayan resident of
Village Pachawal aged 23 years agriculturist
P.S. Balrampur District Sarguja

Versus

Respondents :- State of M.P.

CRIMINAL APPEAL UNDER SECTION 374 Cr.P.C.

**HIGH COURT OF CHHATTISGARH, BILASPUR**

(54)

CRA No. 1306 of 1999

Babu Lal & Anr.

---- Appellants

Versus

State of M.P. (now C.G.)

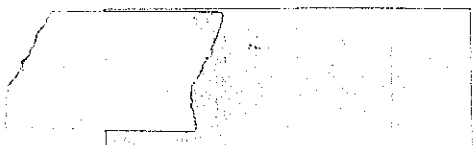
---- Respondent

For appellants - Shri A.K. Prasad, Advocate.

For Respondent/State - Shri Anupam Dubey, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri**Order****19/09/2017**

1. Instant appeal is against the order dated 9/03/99 passed by the Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Ambikapur, Sarguja in Special Criminal Case No.92/98 whereby the appellants were convicted under section 354 IPC, 354/34 IPC and under section 3 (1) (xi) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, u/s 3 (1) (xi)/34 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and have been sentenced to RI for 3 years and to pay fine of Rs.1000/- and in default of payment of fine, further 9 months SI was ordered for.
2. As per the memo received dated 18th October, 2014 which shows that one of the appellants namely Babu Lal S/o Jagsai has suffered his sentence and has been released on 7/01/2002.
3. Learned counsel for the appellants do not want to press this appeal on behalf of appellant No.1 Babu Lal on the ground that he has already suffered the sentence.

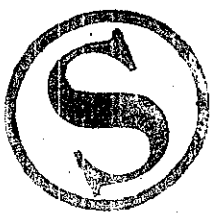


4. Accordingly, appeal is dismissed as not pressed in respect of appellant No.1 Babu Lal.

5. In respect of appellant No.2 Banshidhar learned counsel submits that he has suffered 1 year and 5 months i.e. about 17 months of imprisonment and therefore his jail sentence may be treated to be undergone.

6. As per the prosecution case, on 30/05/98 appellants alongwith others formed unlawful assembly at village Pachaval Karmadepa and being member of such unlawful assembly the appellants tried to outrage modesty of the victim, pressed her breast and pulled her by hand, thereby offence has been committed and further knowing fully well that victim belong to scheduled tribe has committed offence with intent to dishonour and outrage her modesty. During investigation, it revealed that the victim who was labour used to earn her livelihood by daily work and after prayer and some function when victim was coming back incident happened. It was alleged that Babu Lal and Banshidhar had caught hold of her and wanted to have sexual favour and when she raised alarm to save herself the other person came and then the appellants/accused and the others fled away. Report was lodged by FIR Ex.P-1 and the statement of witnesses were recorded. During the trial the appellants abjured their guilt and claimed to be tried. The trial court after evaluating the evidence convicted the accused/appellants as aforesaid. Hence this appeal.

7. Learned counsel for the appellants would submit that degree of offence has been exaggerated. Because of some internal dispute false allegations have been attributed which would be evident from the circumstances of this case and in any case the appellant No.2



Banshidhar who is prosecuting this appeal has suffered 17 months of jail sentence. Consequently, taking into nature of allegation, he has suffered more than the act committed and the incident is of 1998 his jail sentence may be treated as undergone.

8. Per contra, learned State counsel opposes the prayer and would submit that order passed by the court below is well merited which do not call for any interference.

9. Perusal of the statement of PW-1 would show that two incident had happened one relates to present case wherein victim PW-1 was subjected to outraging of her modesty whereas in other incident at the same time another victim was subjected to gang rape. As per PW-1 the date of incident was of 30th May, 1998. She had went to her friend for prayer wherein they stayed upto 8-9. Subsequently, she alongwith another victim P and other children were coming back to their home, while she reached her house and was to enter she was caught hold by Babu Lal and Banshidhar and dragged her into back side of the house. She stated that Babu Lal and Banshidhar thereafter touched her breast and other part of the body and she was thrown into the floor. Thereafter in order to save her she had given bite in the hand to Babu Lal and she cried for help. Thereafter, they fled away and the other victim P was subjected to rape. In the cross-examination of this witness nothing has come to rebut such incident and specific allegation is attributed to the present appellants Babu Lal and Banshidhar and others. In her statement nothing has come on record to disbelieve the same though certain suggestion were given that she could not recognize the person but the same were denied.

10. Aforesaid incident is also supported by PW-2 Sangeeta and

stated that Babu Lal and Banshidhar were dragging the victim PW-1 and when she cried for help her brother came, they left the victim and fled away. Brother of the victim PW-3 stated when he came out his sister complained that Babu Lal, Banshi, Dinesh were trying to catch hold of her and when they raised voice they fled away. The victim belong to scheduled tribe Oraon has been proved by their caste certificate Ex.P-5 by PW-5 who is Tehsildar. No cross- examination has been made in this regard. Therefore, the fact that she belongs to scheduled tribe and the appellants tried to outrage her modesty has been proved and no plausible explanation under Section 313 Cr.P.C. of the accused is on record and only it is stated that they have been falsely implicated.

11. Taking into such evidence of the victim, I am of the considered view that conviction imposed by the trial court is perfectly legal and justified. Now coming to the part of sentence, incident appears to be of 1998 and record would show that appellant No.1 Babulal has suffered his entire sentence whereas appellant No.2 Banshidhar has suffered jail sentence of approximately 17 months and since he was arrested on 6/06/98 and was in jail during trial and was released after jail sentence was suspended by the order of this high court and was released on 29/11/99, so about 17 months have suffered in the jail. The incident is of 1998. Therefore, taking into sentence which was to be awarded before 2013 and the sentence which could have been awarded under Section 354 IPC was with jail sentence which may extent to 2 years or with fine or with both and under section 3 (1) (xi) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act sentence is prescribed to be not to be less than 6 months but which may extent to 5

years and with fine. Considering the degree of allegation against the appellants, I am of the opinion that since appellant No.2 Banshidhar has already suffered jail sentence of 17 months it appears to be adequate to be held as undergone. Therefore, conviction is maintained. The jail sentence which has been imposed is modified to the above extent of undergone with respect to the appellant No.2 Banshidhar.

12. With such observation, appeal stands disposed of.

Sd/-
Goutam Bhaduri
Judge

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