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HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 2756 of 1999

1. Firoz Ansari S/o Lal Mohammad Ansari, aged about 22 years, Caste Musalman, PS - Ambikapur, Distt. - Surguja, M.P.

---- Appellant

Versus

1. The State of M.P. through PS AJK, Ambikapur Distt. - Surguja, M.P.

---- Respondent

For Appellant – Mr. Nishi Kant Sinha, Advocate.

For Respondent – Ms. Shobha Kashyap, Deputy Govt. Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai
Judgment on Board

31-01-2017

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 24-09-1999 passed by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'the Act, 1989'), Surguja at Ambikapur in Special Criminal Case No. 34/99 whereby and whereunder the learned Special Judge under the Act, 1989 after holding the appellant guilty for using force to prosecutrix (PW-1) (name not mentioned) belonging to Scheduled Tribes category with intention to dishonour or to outrage her modesty, convicted him under Section 3(1)(xi) of the Act, 1989 and sentenced the appellant to undergo rigorous imprisonment for one year with a direction that the period of detention during the trial be set off under Section 428 of the Code of Criminal Procedure, 1973 (in short 'the Code').

2. Conviction is impugned on the ground that without there being any iota of evidence the Court below convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. As per the case of the prosecution, on 17-02-1999 at about 4.30 p.m. the prosecutrix (PW-1) was returning for her home, near Mudapara sugarcane

field the accused/appellant came and hold her neck with his hands and asked her to follow. When she made shout one Jannat Ansari came to rescue. With this, the accused/appellant fled from the spot. On the same day, the prosecutrix gave written complaint to the SHO of Police STation अजाक Ambikapur. The concerned police investigated the matter and registered the crime No.26/99 under Section 354 of the Indian Penal Code, 1860 (in short 'the IPC') and Section 3(1)(xi) of the Act, 1989 against the accused/appellant vide FIR, Ex.-P/5. Spot map was also prepared. The statements of the witnesses under Section 161 of the Code were recorded. The accused/appellant was arrested on 04-03-1999. The caste certificate was also collected.

4. After completion of the investigation, charge sheet was filed before the Special Judge, Ambikapur for trial. The Special Judge framed the charges under Section 3(1)(xi) of the Act, 1989.

5. In order to prove guilt of the accused/appellant, the prosecution examined 5 witnesses. The statement of the accused/appellant was recorded under Section 313 of the Code wherein he denied the circumstances appearing against him, pleaded innocence and false implication in crime in question.

6. After affording opportunity of hearing to the parties, the learned Special Judge convicted and sentenced the appellant as aforementioned.

7. I have heard learned counsel for the parties and perused the judgment impugned and record of the Court below.

8. Learned counsel for the appellant would submit that Ex.-P/1 is first information to police regarding alleged crime and in the said written report it is not mentioned by the prosecutrix that as she belongs to Scheduled Tribes category, the accused/appellant intentionally used force with purpose to outrage her modesty. The fact that the prosecutrix belongs to Scheduled Tribes category only surfaced at the time of her statement under Section 161 of the Code. It goes to show that the said fact is improvement viz-a-viz to written complaint Ex.-

P/1. With this, as the prosecutrix improved her version, she may not be believed as her statement is full of suspicion. It is further submitted that also on the examination of said prosecutrix (PW-1) before the Court during trial she had not mentioned this fact as on account of her caste she was intentionally subjected for use of criminal force to outrage her modesty. With this, as the prosecution failed to prove its case under Section 3(1)(xi) of the Act, 1989 and also as Jannat Ansari (PW-3) turned hostile, not supported the story of the prosecution who allegedly reached to the spot after hearing the call of the prosecutrix, this also goes to show that the prosecution's story is doubtful. Hence, as the prosecution failed to prove the ingredients without any reasonable or probable doubt, the accused/appellant may be given benefit of doubt and he may acquitted from the charge.

9. Per contra, learned counsel for the respondent/State duly supported the judgment of conviction and sentence passed by the trial Court and would submit that for the incident nothing could be elicited during cross-examination so as to discredit the fact for use of force with intent to outrage the modesty of the prosecutrix and as the prosecutrix belongs to Scheduled Tribes category, the trial Court rightly convicted and sentenced the appellant. Hence, the appeal may be dismissed on both counts.

10. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution during the trial.

11. On minute examination, it appears that as Jannat Ansari (PW-3) has become hostile and not supported the prosecution's story, the statement of the prosecutrix (PW-1) has to be examined minutely. The prosecutrix (PW-1) duly supported the allegations as made in Ex.-P/1. The written complaint was given to police without any delay and on perusal of the entire statement, in the considered view of this Court, the prosecution had proved this fact that on 17-02-1999 the accused/appellant used force on the prosecutrix with intent to

outrage her modesty. The prosecutrix reported the matter immediately to her father and family members. Trustworthiness of statement of the prosecutrix (PW-1) and that of statement of her father Mannohan (PW-2) is not shaky. Hence, they are credible and non-support of Jannat Ansari (PW-3) for the incident hardly makes any difference and no suspicion can be attached to the incident as narrated by the prosecutrix.

12. So far commission of crime with intent to outrage modesty of a woman belongs to Scheduled Tribes category is concerned, there is no any substance in Ex-P/1, the written report and also in the statement of the prosecutrix before the trial Court, it goes to show that this is not the matter where she was subjected to use of criminal force only as she belonged to Scheduled Tribes category, on the other hand, the incident goes to show that as she was a woman, she was subjected for use of criminal force about outrage her modesty. To prove the ingredients of Section 3(1)(xi) of the Act, 1989, the prosecution is required to prove that the prosecutrix was subjected for the incident only because she belongs to the Scheduled Tribes category. In the present matter nothing proved by the prosecution for the core feature required to convict the accused/appellant under Section 3(1)(xi) of the Act, 1989. Though the ingredients of Section 354 of the IPC is fully included in addition to the ingredient that woman belonged to a certain reserved category in Section 3(1)(xi) of the Act, 1989, in the present case when the prosecution failed to prove the core issue which enable no one to be convicted under Section 3(1)(xi) of the Act, 1989, with this, the other ingredients may lead the accused/appellant for his conviction under Section 354 of the IPC.

13. Consequently, in the considered view of this Court, the prosecution failed to prove the ingredients of Section 3(1)(xi) of the Act, 1989, but proved in successfully the ingredients of Section 354 of the IPC which is included in Section 3(1)(xi) of the Act, 1989 and as Section 354 of the IPC is a separate

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section for offence, and if proved, the accused/appellant may be convicted only for the offence under Section 354 of the IPC in the matter. Consequently, the appeal filed by the accused/appellant is allowed in part. His conviction under Section 3(1)(xi) of the Act, 1989 is hereby quashed. However, he is convicted under Section 354 of the IPC.

14. So far as quantum of sentence is concerned, it is submitted on behalf of the accused/appellant that the incident is more than 17 years old, the accused was the first offender aged about 22 years, he had not involved himself in any other similar offence, living in the village peacefully. He remained in jail for two days from 04-03-1999 to 05-03-1999 and as per provision of Section 354 of the IPC prior to the amendment w.e.f. 03-02-2013, the accused/appellant may be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. With this, the statute gave discretion to the Court to punish the accused/appellant appropriately. Looking to the entire facts and circumstances, the period already undergone by the accused/appellant may serve the purpose, the accused/appellant shall not commit any offence in future, the case of the appellant may be considered sympathetically.

15. On due consideration, looking to pendency of this criminal appeal as this is a criminal appeal of the year 1999, the accused was aged about 22 years at the time of incident, first offender and as per the facts though had opportunity to use more force or assault but as the prosecutrix shouted for help immediately the accused/appellant ran away from the spot, with this, the period already undergone shall serve the purpose for the act committed by the accused/appellant.

16. Consequently, the accused/appellant is convicted under Section 354 of the IPC and sentenced to the period already undergone by him. The accused/appellant is on bail. He be set at liberty forthwith. His bail bond shall

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continue for a further period of 6 months as required under Section 437-A of the Code.

17. Appeal allowed in part.

Sd/-
C.B. Bajpai
Judge

Aadil