

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 958 of 2002**

Konda @ Lalit S/o Cheturam aged about 21 years occupation business R/o Nira-Chindali P.S. Keshkal District Bastar Chhattisgarh

---- Appellant**Versus**

State of Chhattisgarh

---- Respondent

For Appellant : Shri H.S. Ahluwalia, Advocate.
For Respondent/State : Shri Ravindra Agrawal, Panel Lawyer.

Hon'ble Shri Deepak Gupta, Chief Justice**Judgment on Board****Per Deepak Gupta, Chief Justice****03/02/2017**

1. This appeal by the accused is directed against the judgment dated 23.8.2002 delivered by the Special Judge, S.C. S.T. Act, Bastar at Jagdalpur, in Sessions Trial No. 223 of 2002 whereby he convicted and sentenced the accused/Appellant as follows:-

<u>Conviction</u>	<u>Sentence</u>
Section 456 IPC	Rigorous Imprisonment for one year six months and fine of Rs.500/-, in default of payment of fine amount, rigorous imprisonment for three months.
Section 354 IPC	Rigorous Imprisonment for one year six months and fine of Rs.500/-, in

	default of payment of fine amount, rigorous imprisonment for three months.
Section 324 IPC	Rigorous Imprisonment for one year six months and fine of Rs.500/-, in default of payment of fine amount, rigorous imprisonment for three months.
Section 3(1)(11) of SC/ST Act	Rigorous Imprisonment for one year six months and fine of Rs.500/-, in default of payment of fine amount, rigorous imprisonment for three months.

2. The prosecution story is that on the night intervening 17.2.2002 and 18.2.2002 at about 2.00 am, the accused trespassed into the house of PW3 Dev Singh and his wife PW2 Smt. Jago Bai. According to the prosecution, the accused outraged the modesty of PW2 Smt. Jago Bai and also gave a blow of knife on the person of PW3 Dev Singh. On this basis, a complaint was filed. There is no dispute regarding the fact that a complaint was filed by PW3 Dev Singh with the police. The police recorded the FIR and investigated the case. After investigation, the accused was charge-sheeted for having committed the aforesaid offences. After trial, he has been convicted and sentenced as aforesaid. Hence, this appeal.

3. I have gone through the record. There are two eyewitnesses i.e. PW2 Smt. Jago Bai and PW3 Dev Singh. PW2 Jago Bai stated that at about 2.00 am, she saw in the light of night bulb, which was in the room that the accused entered into her house and caught hold of her leg and pulled her leg. She raised an alarm then her husband who was sleeping with her in the room, woke up. After the husband woke up, her husband tried to catch hold by the accused. Thereafter, the accused gave a blow with knife on the person of her husband and then ran away from the spot. She tried to catch the accused but he escaped. Thereafter, she reported the

matter to her brother-in-law, but the brother-in-law has not been examined. She also reported the matter to Sarpanch, PW4 Mankuram Markam and other persons in the village. She has been cross-examined at length. There are two aspects of the cross-examination. The first aspect of the cross-examination is that door of the room was bolted from inside and since the room was bolted from inside, none could enter into the room of the complainant. There was no evidence that the door of the room was broken. She has also been cross-examined with regard to the motive for filing a false case and in this regard, the defence story is that the accused was running a small daily need shop in the village. The complainant and his wife used to take goods from the accused without paying the amount assuring the accused that they would pay later but to avoid the payment, they lodged a false case. In cross-examination, she further states that she did not see the accused giving a blow of the knife to her husband but later saw signs of the injury.

4. The statement of PW3 Dev Singh is similar. He stated that when he woke up, his wife was shouting '*Chor Chor*' and then his wife told him that the accused tried to pull her leg. Thereafter, the accused gave him a blow with a knife.

5. There are three offences made out. One is of criminal trespass. As far as this offence is concerned, I am of the view that the oral evidence of two witnesses is sufficient to prove the fact beyond reasonable doubt that the accused had entered into the house of the complainant and his wife. This occurrence took place at 2.00 am and there is no reason to disbelieve the statement of these witnesses in this regard and therefore I hold that it has been proved that the accused entered into the house of the complainant after sunset and before sunrise without any reason. Therefore, he has committed criminal trespass. The accused may have entered into the house of complainant and that too with criminal intention but what is the crime he wanted to commit is not very clear. It may be possible that he may have entered into the house of complainant to steal

something or any other reason. Since there is no evidence in this regard, I cannot give any finding.

6. The issue is whether the accused had entered into the house of complainant with intention to outrage the modesty of PW2 Smt. Jago Bai or not. It is impossible to believe the story of the prosecution. No same person would enter the house of a couple where both husband and wife are sleeping together in one room with intention to outrage the modesty of the wife. He would only be inviting trouble for himself. I have held that the accused trespassed in the room. It may have happened that while entering the room, he accidentally brushed against the leg of PW2 Smt. Jago Bai and her leg was pulled but it cannot be said that this was done with the intention of outraging the modesty of PW2 Smt. Jago Bai. Therefore, I find that no offence under Section 354 IPC is made out.

7. Coming to the offence under Section 324, though the case of the prosecution is that the accused gave a blow with a knife to the complainant, the documentary evidence in this regard has not been produced. Neither the MLC has been proved nor the doctor has been examined to prove that the injury on the person of PW3 Dev Singh was caused with a knife. Coupled with the statement of PW2 Smt. Jago Bai who herself stated that she did not see the accused giving a blow of knife to her husband, I am afraid that this allegation has also not been proved beyond reasonable doubt.

8. As far as conviction for the offence under Section 3(1)(11) of SC/ST Act is concerned, that cannot be upheld. There is no allegation made even by PW2 Smt. Jago Bai and PW3 Dev Singh that the accused was trying to trouble them because of the caste to which they belong.

9. In view of the above discussion, I set aside the judgment of the Special Judge, S.C. S.T. Act, Bastar at Jagdalpur passed in Sessions Trial No. 223 of 2002 so far as it convicts the accused under Sections 354 IPC, 324 IPC and 3(1) (11) of SC/ST Act. I uphold the conviction under Section 456 IPC but reduce the sentence to the period of incarceration already undergone by the Appellant. The Appellant be set at liberty forthwith unless he is wanted in any other case. The fine deposited for the offence under Section 456 IPC shall not be refunded.

10. The appeal stands disposed of.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE