

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1420 of 2000

Judgment Reserved on : 28.8.2017

Judgment Delivered on : 8.9.2017

Tribhuwan Kashyap, son of Ramadhar Kashyap, aged 20 years, resident of Village Khaira, Police Station Palari, District Raipur (M.P.) (now Chhattisgarh)

---- **Appellant**

versus

The State of Madhya Pradesh (now Chhattisgarh) through Police Station Palari, District Raipur

--- **Respondent**

For Appellant : Shri Vishnu Koshta, Advocate
For Respondent/State : Shri Rajendra Tripathi, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment of conviction and order of sentence dated 15.5.2000 passed in Special Sessions Trial No.126 of 1999 by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth 'the Act of 1989'), Raipur convicting the accused/Appellant under Section 3(1)(xi) of the Act of 1989 and sentencing him to undergo rigorous imprisonment for 6 months and to pay fine of Rs.500/- with default stipulation.
2. Case of the prosecution, in brief, is that on 4.10.1999, at about 8:00 - 8:30 p.m., the prosecutrix (PW-3) had gone to attend the call of nature near *Badi* (fence) of her house. When she was returning, on the way, the accused caught her and pressed her breast. On

her shouting, her husband Vishnuram (PW-4), running, came there and he also saw the accused. He caught *lungi* of the accused. The accused, leaving his *lungi* in the possession of Vishnuram (PW-4), fled from there. Thereafter, a panchayat meeting was called. On 7.10.1999, the prosecutrix lodged First Information Report (Ex.P-4). After investigation, a charge-sheet was filed against the accused under Section 354 of the Indian Penal Code read with Section 3(1)(xi) of the Act of 1989.

3. So as to hold the accused guilty, the prosecution examined 9 witnesses in support of its case. Statement of the accused was also recorded under Section 313 Cr.P.C. in which he denied the charges levelled against him and pleaded innocence and false implication in the case.
4. After trial, the Court below convicted and sentenced the accused/Appellant as mentioned in first paragraph of this judgment.
5. Learned Counsel appearing for the Appellant submitted that there is no evidence on record to show that the prosecutrix belongs to the Scheduled Caste or the Scheduled Tribe and the Appellant had not admitted the fact of the caste of the prosecutrix. In the First Information Report lodged by the prosecutrix, there is no mention by her about her caste. There is no evidence on record to show that the act alleged to have been done by the Appellant was done with an intention and knowledge that the prosecutrix belongs to the Scheduled Caste or the Scheduled Tribe. Therefore, he cannot be convicted under Section 3(1)(xi) of the Act of 1989.

6. On the other hand, Learned Counsel appearing for the State submitted that the impugned judgment is in accordance with law and there is no infirmity in the same.
7. I have heard Learned Counsel appearing for the parties and perused the material available on record including the impugned judgment minutely.
8. The prosecutrix (PW-3) deposed that at the time of incident, she had gone to attend the call of nature near the *Badi* (fence), which was situated adjacent to her house. When she was returning, the accused came there, pulled her *saree* and caught her hand. She further deposed that the accused pressed her breast with intent to outrage her modesty. She shouted. Having heard her shout, her husband Vishnuram (PW-4) came there and caught the accused, but the accused succeeded to flee. While his fleeing, her husband caught his *lungi* which he left in the possession of her husband and fled. She further deposed that a panchayat meeting was called by her husband. Thereafter, they went to police station and she lodged the FIR (Ex.P-4).
9. The above statement of the prosecutrix (PW-3) is duly corroborated by Vishnuram (PW-4). He deposed that when his wife shouted “दौड़ो दौड़ो”, he, running, reached there and saw that the accused had caught her wife. He further deposed that Ramadhar, father of the accused had called a panchayat meeting for a compromise. Munna (PW-6) and Kotwar Bahoran (PW-7), after declaring them hostile, have admitted that Ramadhar, father of the accused had called a panchayat meeting. They have also

admitted that Ramadhar, in that meeting, had stated that his son (the accused) had caught the hands of the wife (the prosecutrix) of Vishnuram (PW-4). In the said meeting, Ramadhar had also requested for forgiving his son (the accused) for that act.

10. Investigating Officer Assistant Sub-Inspector R.N. Shukla (PW-9) has supported the case of the prosecution.
11. A minute examination of the evidence of the witnesses makes it clear that the prosecution has proved beyond doubt that at the time of incident the accused with intent to outrage modesty of the prosecutrix caught her hands and pressed her breast.
12. So far as the caste of the prosecutrix is concerned, on examination of the material available on record, it is found that in the FIR (Ex.P-4) there is no mention about the caste of the prosecutrix. Although the prosecutrix (PW-3) and her husband Vishnuram (PW-4) have deposed that they are "Gond" by caste yet they have not stated that their caste "Gond" falls within the category of Scheduled Caste or Scheduled Tribe.
13. Fekuram (PW-8), who was the Sarpanch of the village, has issued a caste certificate (Ex.P-8) in favour of the prosecutrix and proved the same. He deposed that the prosecutrix is "Gond" by caste, but he also did not state that the caste "Gond" falls within the category of Scheduled Caste or Scheduled Tribe. He also admitted that before issuing the said caste certificate, he did not see any supportive document.
14. In order to constitute the alleged offence under the Act of 1989, it is

imperative on the part of the prosecution to prove that the victim is a member of the Scheduled Caste or the Scheduled Tribe, whereas the accused does not belong to any such category. The prosecution is also obliged to prove that the accused has committed the offence on the ground that the particular person is a member of the Scheduled Caste or the Scheduled Tribe or the property in question belongs to such member.

15. The prosecutrix (PW-3) has nowhere stated that she is a member of either the Scheduled Caste or the Scheduled Tribe. She has merely stated that she is "Gond" by caste. She has nowhere stated that a person belonging to the Caste "Gond" falls within the category of either Scheduled Caste or Scheduled Tribe nor has any admissible document been produced to indicate the same.
16. Considering the totality of the evidence on record, no case under Section 3(1)(xi) of the Act of 1989 is made out against the accused/Appellant. Instead, the offence committed by the accused/Appellant falls under Section 354 of the Indian Penal Code. Therefore, the conviction and sentence awarded to the accused/Appellant for the offence under Section 3(1)(xi) of the Act of 1989 deserves to be and is hereby set aside and instead, he is convicted for the offence under Section 354 of the Indian Penal Code.
17. So far as the sentence to be imposed upon the accused/Appellant for the conviction under Section 354 of the Indian Penal Code is concerned, he has already undergone a period of about 16 days. He is facing the *lis* from the year 1999, i.e., for the last 18 years. He has no criminal antecedent. Therefore, keeping in view the

facts and circumstances of the case, I am of the considered opinion that the interest of justice would be served if he is sentenced to the period already undergone by him and a fine of Rs.5,000/- is imposed upon him payable within 2 months from the date of receipt of a copy of this judgment. In default of payment of the amount of fine, he shall be liable to undergo rigorous imprisonment for 1 month. The amount of fine already deposited shall be adjustable in the amount of fine imposed today. He is sentenced accordingly.

18. Consequently, the appeal is allowed in part in the aforesaid terms.
19. It is reported that the Appellant is on bail. His bail bonds shall continue for a further period of six months from today in terms of Section 437A of the Code of Criminal Procedure.
20. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE