

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.709 of 2001**

Chamra alias Lakhiram S/o. Neelkanth, age 24 years, R/o. Village
Khamargaon Police Station Nagarnar District Bastar (CG)

---- Appellant

Versus

The State of Chhattisgarh

---Respondent

For Appellants	: Shri RN Jha, Advocate
For respondent/State	: Shri Ankit Singhal, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****02.11.2017**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 09.9.2001 passed by Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act'), Bastar at Jagdalpur in Session Case No.278/2000 wherein the trial Court convicted the appellant under Section 3(1)(xi) of the Act and sentenced him to undergo Rigorous imprisonment for two years and to pay fine of Rs.1500/- and for offence under Section 354 IPC sentenced him to undergo RI for two years and to pay fine of Rs.1500/- and under Section 323 IPC sentenced him to undergo RI for six months with default stipulations.

2. As per the prosecution case, prosecutrix is Bhatra by caste and is a member of Scheduled Tribe while accused is not a member of Scheduled Caste or Scheduled Tribe and he is Mahra

by caste. Prosecutrix had gone to the house of her brother on the date of incident, i.e. 22.9.99 and when she was returning around 6.30 pm with one Sukhmati, accused/appellant met her on road, caught hold her and when she resisted, the accused/appellant assaulted her by stick.

3. The matter was reported to Tribal Welfare Department, Police Station Jagdalpur and the same was registered as Ex-P/1. The injured was sent to medical examination, certain articles were seized, statement of the witnesses under Section 161 of the CrPC and recorded and charge sheet was filed against the appellant. The trial Court framed charges under Sections as mentioned above in which the appellant plead innocent thereafter the trial was conducted, after examination of the prosecution witnesses statement of the accused/appellant under Section 313 of the CrPC was recorded. After hearing the parties, the trial Court convicted and sentenced the appellant as aforementioned.

4. Learned counsel for the appellants submits as under :-

- 1) that there is no certificate regarding caste of the prosecutrix and therefore, case under Special Act is not made out.
- 2) Statements of the prosecution witnesses are contradictory and the same is not sufficient to establish the guilt against the appellant.
- 3) that the accused/appellant was in custody during trial from 18.11.99 to 03.12.99 and again from 04.5.2001 to 08.5.2001. He

has already paid the fine imposed by the trial Court and therefore, he may be sentenced for the period already undergone by him.

5. On the other hand, learned counsel for the State submits that the judgment of the trial Court is strictly in accordance with law and the same is not liable to be interfered with invoking the jurisdiction of the appeal.

6. Heard learned counsel for the parties and perused the material on record.

7. Prosecutrix (PW-1) has deposed that on the date of incident she had gone to the house of her brother and when she was returning at about 6.30 pm, the accused/appellant met her on the way, caught hold her hands and when she resisted, the accused assaulted her by stick. Version of this witness is supported by Sukmati (PW-2) and Balram (PW-3) and again it is supported by the evidence of Dr. Vijay Thakur (PW-4) who noticed the injury on the head of the prosecutrix on her examination and the same was caused by hard and blunt object.

8. The accused/appellant has not explained as to why he caught hold the hands of the prosecutrix who is a lady, hence, it can be inferred that such criminal force was used with intention to outrage her modesty or knowing it to be likely that he will thereby outrage her modesty. The act of the accused appellant is a criminal act punishable under Section 354 of the IPC . Again he has assaulted the prosecutrix and she sustained simple injury for which injury, case of the appellant does not fall under any of the

exception of the IPC and he caused the same with a knowledge that thereby the prosecutrix will suffer pain. The act of the accused appellant is voluntary in nature and he is guilty for causing voluntary simple injury to the prosecutrix and the act of the accused falls under section 323 of the IPC for which the trial Court convicted him under Sections 354 and 323 IPC and the same is not liable to be interfered with and the same is hereby affirmed.

9. So far as the offence under Section 3(1)(xi) of the Act is concerned, there is nothing on record that the prosecutrix belongs to Scheduled Tribe. No one was examined before the trial court to prove her caste. The incident happened only because she was a woman and not because she was a woman of certain special category as mentioned in the Special category. From the evidence, charge under Section 3(1)(xi) of the Act is not substantiated and conviction of the appellant for the said offence is not sustainable, hence, he is acquitted of the charges under Section 3(1)(xi) of the Act.

10. The accused appellant remained in custody for 21 days during trial and the incident is of the year of 1999. After the lapse of more than 18 years and considering other circumstances, the period already undergone would be sufficient for the offence committed by the appellant. The appellant is sentenced for the period already undergone by him, while the fine imposed by the

trial Court will remain intact. With this modification of the sentence, the appeal stand dismissed.

Sd/-

(Ram Prasanna Sharma)

JUDGE

Bini