

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 2724 of 1996**

- Ram Narayan Yadav @ Bhedia Yadav S/o Jokhan Yadav, aged 30 years, Occupation Agriculturist, resident of village Dhashne Kheradiha, P.S. Shankargarh, District Sarguja (C.G.)

---- Appellant**Versus**

- State of Madhya Pradesh (Now Chhattisgarh) Through Police Station, Azak Ambikapur (C.G.)

---- Respondent

For Appellant.	-	Shri A.K. Yadav, Advocate.
For Respondent	-	Shri Ravindra Agrawal, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker**Judgment On Board****17/01/2018**

This appeal arises out of the judgment of conviction and order of sentence dated 30.09.1999 passed by the Special Judge (constituted under Prevention of Atrocities), Sarguja, Ambikapur in Special Criminal Case No.47/98 convicting the accused/appellant under Section 3(1)(xi) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short 'the Act') and sentencing him to undergo R.I. for six months.

02. As per the prosecution case, on 19.02.1998 FIR (Ex.P/1) was lodged by the prosecutrix (PW/1), aged about 17 years, alleging in it that on 14.02.1998 at about 7.00 pm, when she was in her house along with her younger brother, aged about 10 years, upon hearing barking

sound of the dog, she came out of her house and all of a sudden the accused/appellant gained entry in the house, caught hold of her hand with an intention to outrage her modesty. It has been further alleged that when she decided to lodge a report against the accused/appellant, she was offered Rs.1,000/-, however, when the matter could not be resolved in the panchayat meeting, she lodged the report. Based on this FIR, offence under Sections 354 of IPC and 3(1)(xi) of the Act was registered against the accused/appellant. After filing of the charge sheet, the trial Court framed charge under Sections 354 IPC and Section 3(1)(xi) of the Act against the accused/appellant.

03. So as to hold the accused/appellant guilty, prosecution examined as many as 10 witnesses in support of its case. Statement of the accused/appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment. Hence, this appeal.

05. Learned counsel for the appellant submits :

- (i) That the basic ingredients of Section 3(1)(xi) of the Act have not been proved by the prosecution.
- (ii) That there is no evidence on record that the accused/appellant caught hold of hand of the prosecutrix because she belongs to member of Scheduled Tribe. It has been argued that proving this fact was

necessary on the part of the prosecution.

(iii) That in 313 Cr.P.C. statement of the appellant, no question was put to the accused regarding caste of the prosecutrix.

(iv) That the caste certificate of the prosecutrix has not been proved by the prosecution as per requirement of the law.

(v) That during pendency of the trial, an application was filed by the appellant and the prosecutrix for compromising the matter and considering all the facts and circumstances of the case, offence under Section 354 of IPC was compromised and the appellant has been acquitted of the said charge. It has been argued that once the appellant has been acquitted of the charge under Section 354 IPC, though offence under Section 3(1)(xi) of the Act is not compoundable but the effect of compromise can be considered by this Court.

(vi) That appellant has already remained in jail for about nine days.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the conviction of the appellant is strictly in accordance with law and there is no infirmity in the same.

07. I have heard learned counsel for the parties and perused the material available on record.

08. Prosecutrix (PW/1) has stated that she belongs Uraon caste (Scheduled Tribe). On the date of incident i.e. 14.02.1998 at about 7.00 pm, when she was cooking food in her house along with his younger brother, upon hearing barking sound of dog she peeped from the window, at the same time accused/appellant gained entry in her house, caught hold of her hand with an intention to outrage her modesty. She

has further stated that at that time her younger brother came there and after seeing him, the accused/appellant fled away from the spot. She has also stated that she did not lodge prompt report and after about 2-3 days of the incident, family members of the accused/appellant came to her house and offered Rs.1000/- for compromising the matter. She has also stated that when nothing could be finalized in the village panchayat, a report was lodged by her on 19.02.1998.

09. Ganesh (PW/2), younger brother of the prosecutrix, has supported the prosecution case.

10. Hans Kumar (PW/3) is brother of the deceased, who came to know about the incident subsequently.

11. Madan Mohan Mishra (PW/4) - S.D.O.P., did investigation.

12. Rafiq Mohammad (PW/6) - Head Constable, assisted in the investigation.

13. Bramhanand Singh (PW/7) - Retd. Tahsildar, has proved the caste certificate (Ex.P/2).

14. Jayanti (PW/8), mother of the prosecutrix, has turned hostile.

15. On 24.03.1999 statement of the prosecutrix was again recorded wherein she has stated that she has compromised the matter with the appellant.

16. Close scrutiny of the evidence makes it clear that though the prosecutrix has stated that on 14.02.1998 the accused/appellant caught hold of her hand but there is absolutely no evidence on record that the accused/appellant did the said act with an intention to outrage her modesty just because she belongs to member of Schedule Tribe.

Careful reading of the evidence of Prosecutrix (PW/1) goes to show that the accused/appellant did not utter even a single word regarding caste of the prosecution. Furthermore, the caste certificate of the prosecutrix has not been proved by the prosecution as per the requirement of law which is *sine qua non* for convicting any person in relation to the offence pertaining to the provision of Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act and no question was put to the accused/appellant in his 313 Cr.P.C. statement regarding caste of the prosecutrix. Yet another important aspect of the case is that there is inordinate delay of about five days in lodging the FIR (Ex.P/1) and the said delay has not been explained by the prosecution as per requirement of law. Even otherwise, the offence under Section 354 of IPC has already been compromised by the prosecutrix and considering the cumulative effect of all the above things, I am of the opinion that the accused/appellant is very much entitled to receive benefit of doubt.

17. Accordingly, the appeal is allowed, judgment impugned convicting the accused/appellant under Section 3(1)(xi) of the Act is hereby set aside and the accused/appellant stands acquitted of the said charge. The appellant is reported to be on bail. His bail bonds stand discharged.

18. In the result, the appeal is partly allowed to the extent indicated above.

Sd/-

(Pritinker Diwaker)
JUDGE

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 482 of 2020**

- Ram Narayan Yadav @ Bhedia Yadav S/o Jokhan Yadav Aged About 30 Years Occupation Agriculturist, Resident Of Village Dhashne Kheradiha Police Station Shankargarh District Surguja Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh

----- Applicant

Versus

- State of Madhya Pradesh (Now Chhattisgarh) Through Police Station AJK, Ambikapur Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh.

----- Respondent

 Office Reference

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board By

20/02/2020

1. Heard.

2. By judgment dated 17.01.2018 Criminal Appeal No.2724 of 1999 was finally decided but on account of typographical mistake in judgment, heading of the case number has

been mentioned as Criminal Appeal No.2724 of 1996, whereas it should read as Criminal Appeal No.2724 of 1999; same be read as **Criminal Appeal No.2724 of 1999.**

3. Accordingly, CRMP stands disposed of.

Sd/-
(Sanjay K. Agrawal)
Judge

Ankit