

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 131 of 2002

Panchuram, aged about 25 years, son of Shri Gokul Nishad (Kenwat), Agricultural Labour, R/o Village Bhothali, Police Station & Tahsil - Dongargarh, District Rajnandgaon, CG

---- Appellant

Versus

State of Chhattisgarh

---- Respondent

For Appellant.	-	Shri PKC Tiwari Sr. counsel with Shri Ashutosh Trivedi, Advocate.
For Respondent.	-	Shri Anil Pillai, Dy. AG

Hon'ble Shri Justice Pritinker Diwaker

Judgment on Board

17/01/2018

This appeal is directed against the judgment and order dated 09.01.2002 passed by Special Judge (Atrocities), Rajnandgaon in Special Case No. 22/2001 convicting the accused/appellant under Sections 294, 323 and 354 IPC as well as sections 3 (1) (x) and 3 (1) (xi) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act (for short the "Special Act") and sentencing him to undergo RI for on month each u/s 294 and 323, RI for six months u/s 354 IPC and RI for six months with fine of Rs. 1000/- under the special Act, plus default stipulations.

2. As per the case of prosecution, on 03.10.1998 FIR (Ex.P-1) was lodged by prosecutrix (PW-2) aged about 23 years alleging that on that day at about 2 PM near a banyan tree the accused/appellant was abusing one Nandu Agrawal and when she

asked as to why he was un-necessary hurling abuses, he started abusing her filthily and called her “Mahrin – Chamrin”. He is also alleged to have beaten her with hands and fists and also thrown her on the ground saying that he would outrage her modesty as she was un-necessarily interfering in the matter. On account of beating the prosecutrix is stated to have suffered injuries on her right hand and back. FIR further says that when Kaushaliya Bai (PW-6) intervened in the matter, accused/appellant threw her also on the ground. Prosecutrix has further alleged that had the people not come for her safety, accused/appellant might have outraged her modesty. Based on this FIR, offence under Sections 294, 323, 354 IPC and 3 (1) (x) and 3 (1) (xi) of the Special Act was registered against the accused/appellant. After completion of investigation, charge sheet was filed by the police followed by framing of charge by the Court below for the offences mentioned in FIR (Ex. P-1).

3. So as to hold the accused/appellant guilty, prosecution has examined 07 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 charge levelled against him and pleaded his innocence and false implication in the case. Two witnesses have also been examined by the defence in support of its case.

4. After hearing the parties, the trial Court has convicted and sentenced the accused/appellant as mentioned above in paragraph No.1 of this judgment.

5. Counsel for the accused/appellant submits as under:

(i) That the accused/appellant has been falsely implicated in the case and no such incident as alleged has ever taken place.

(ii) That the independent witnesses have not supported the case of the prosecution.

(iii) That after consuming liquor when the accused/appellant was riding his bicycle, all of a sudden he fell on the prosecutrix and that he never caught hold of her blouse as alleged.

(iv) That no offence under Section 323 IPC is made out as the prosecution has failed to prove any injury on the prosecutrix. Likewise, the ingredients of the offence under Section 354 IPC are also not attracted to the case in hand.

(v) That in relation to the offences punishable under the Special Act it is argued that as the prosecution has failed to file and prove the caste certificate of the prosecutrix which is a *sine qua non* to hold one guilty under the Special Act, his conviction thereunder is not sustainable in the eye of law.

(vi) That the prosecution has not even put any question to the accused/appellant at the time of recording of his statement under Section 313 of the Code of Criminal procedure regarding the caste of the prosecutrix.

(vii) That in case the Court comes to the conclusion that apart from Special Act the accused/appellant is to be convicted under some sections of IPC, his sentence may be reduced to the period already undergone which comes to two days keeping in view the fact that the incident took place in the year 1998 i.e. 20 years

back and also by imposing some reasonable fine looking to his poor financial condition.

6. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellant as shown above, are strictly in accordance with law and there is no infirmity in the same. He however admits that caste of the prosecutrix has not been proved by the prosecution by filing documents to that effect or by putting relevant question to the accused/appellant at the time of recording his statement under Section 313 of the Code of Criminal Procedure as to her caste.

7. Heard counsel for the parties and perused the evidence on record.

8. Prosecutrix (PW-2) has stated that on the date of incident at about 2 PM when the accused/appellant was beating one Panchu, she did not say anything to him directly but just made an utterance as to why he was beating. On this, the accused came to her and slapped by calling her Mahrin - Chamrin. According to this witness, accused/appellant tore off her blouse and threatened of outraging her modesty. Apart from Kaushaliya Bai (PW-6) who rescued her, 4-5 other persons were also there whereas her husband reached after a while. According to this witness, when PW-6 tried to intervene, accused/appellant beat her also. On being confronted with the FIR, number of contradictions and omissions come to the fore in the FIR and her court statement. In the FIR she has stated that on seeing the accused abusing Nandu she asked

him as to why he was doing like that, whereas in the Court statement she has stated that the accused was beating Nandu and she was just talking to someone else and not to him as to how he was beating. In the Court statement she has stated that when the accused was quarreling with Nandu, he (accused) was under the influence of liquor and had come to beat her after alighting from the bicycle of one Manthir, whereas just after that, she has stated that on account of being inebriated the accused/appellant had fallen down from the bicycle of Mathir. Thus looking to the variations at different stages in the version of the prosecutrix, she does not appear to be a reliable witness. Bholarm (PW-1) - the husband of the prosecutrix has stated that at the time of incident he was sleeping in his house and that first he was informed of the same by PW-6 and then by his wife as well. He is stated to have seen the blouse of his wife torn and the bangles broken. According to him, on being contacted when the accused/appellant did not show any remorse to his act, the report was lodged. Nand Kishore (PW-3) - the witness with whom the accused/appellant was quarreling near the banyan tree, has stated that while being beaten by the accused, PW-2 stood by him and for that she was also beaten by the accused and her sari was uplifted also. Meghu alias Meghnath Sahu (PW-4) and Sukwaro Bai (PW-5) have not supported the case of the prosecution and have been declared hostile. Kaushaliya Bai (PW-6) has stated that when the prosecutrix tried to intervene in the quarrel between the accused/appellant and Nandu, he (accused) beat her. Thereafter, when this witness tried to save the prosecutrix, accused/appellant beat her also. She

however has not stated that the accused/appellant abused the prosecutrix in the name of caste. Kishanlal (PW-7) has stated that when he reached the spot, accused/appellant was seen holding the hair of the prosecutrix and abusing her filthily.

9. This Court has scrutinized the entire material available on record including the evidence of the witnesses. Prosecution has not been able to prove that the accused/appellant did anything to the prosecutrix with an intention to humiliate her knowing her to be a member of scheduled tribe community. It has further not been able to prove the caste of the prosecutrix by filing the requisite certificate to the effect that she belongs to scheduled caste or scheduled tribe community, which is a *sine qua non* to hold one guilty under the provisions of Special Act. More importantly, not even a single question has been put to the accused/appellant while recording his statement recorded u/s 313 of the Code of Criminal Procedure about the caste of the prosecutrix. That apart, there appears to be no personal feud between the accused and the prosecutrix and the so-called incident took place when the prosecutrix intervened in the already going-on verbal attack between the accused and one Nandu. Thus taking into account all these lacunae on the part of the prosecution, the question of accused intentionally insulting, intimidating, humiliating or outraging the modesty of the prosecutrix knowing her to be a member belonging to scheduled caste or scheduled tribe community does not arise. Thus having viewed the matter in legal and factual perspective, this Court is of the opinion that the basic ingredients of the special Act have not been established by the

prosecution. Obviously, the Court below went wrong in holding the accused/appellant guilty under the Special Act and being so finding to that effect is liable to be set aside.

10. As far as conviction of the accused/appellant under Section 323 IPC is concerned, since the prosecution has utterly failed to prove by filing the medical report that the accused/appellant voluntarily caused any hurt to the prosecutrix, it is not maintainable in the eye of law and liable to be set aside. However, as regards conviction u/s 294 and 354, looking to the evidence to the effect that the accused/appellant hurled abuses and also used criminal force on the prosecutrix to some extent amounting to outrage of her modesty, the Court appears to be justified in holding him guilty under these two sections and being so it deserves affirmation.

11. In sum and substance, conviction of the accused under Sections 3 (1) (x) and 3 (1) (xi) of the Special Act and 323 IPC is set-aside and he is acquitted of these charges. However, the conviction under Sections 294 and 354 IPC is hereby maintained.

12. As regards sentence, the record shows that the accused/appellant has already remained in jail for two days, that the incident being of 1998 is quite old, that by now the accused/appellant must be in his middle age and therefore keeping in mind the peculiar facts and circumstances involved in the case, this Court is of the considered opinion that no useful purpose would be served in again sending him to jail and the ends of justice would be met if the sentence imposed on him is reduced to the period

already undergone by imposing some fine amount on the accused payable to the prosecutrix as compensation as provided under Section 357 of the Code of Criminal Procedure. Sentence is accordingly reduced to the period already undergone directing the accused to deposit Rs. 5,000/- in the Court below within a period of six months payable to the prosecutrix as compensation. Failure in doing so would make the accused remain in jail for two more months.

13. Appeal is thus allowed in part.

Sd/-

(Pritinker Diwaker)

Judge