

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1266 of 2002

Judgment Reserved on : 8.12.2017

Judgment Delivered on : 27.2.2018

Rajesh Kumar Nage, aged about 25 years, son of Late Shri Jeevanlal Nage, occupation Taxi Driver, resident of Neharpara, Kondagaon, District Bastar, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh

--- Respondent

For Appellant : Shri Avinash K. Mishra, Advocate
For Respondent/State : Shri Neeraj Kumar Mehta, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 28.11.2002 passed by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth 'the Act of 1989'), Bastar at Jagdalpur in Sessions Trial No. 359 of 2002 convicting and sentencing the Appellant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 456 of the Indian Penal Code	Rigorous Imprisonment for 2 years and fine of Rs.500/- with default stipulation
Under Section 354 of the Indian Penal Code	Rigorous Imprisonment for 1 year and 6 months and fine of Rs.700/- with default stipulation
Under Section 323 of the Indian Penal Code	Rigorous Imprisonment for 6 months and fine of Rs.300/- with default stipulation
Under Section 3(1)(xi) of the Act of 1989	Rigorous Imprisonment for 1 year and 6 months and fine of Rs.700/- with default stipulation
Under Section 3(1)(x) of the Act of 1989	Rigorous Imprisonment for 1 year and 6 months and fine of Rs.700/- with default stipulation

2. Facts of the case, in brief, are that on 30.4.2002 at about 00:30

a.m., First Information Report (Ex.P1) was lodged by Complainant Lakhmanibai (PW1), a member of the Scheduled Tribe alleging that on 29.4.2002 at about 11:30 p.m., she was sleeping in the house. Her sister Shambai (PW2) and *jija* (brother-in-law) Pratap (PW3) were also present in the house. No door was fixed on the entry point of the house and only a curtain was hanged on the entry point of the house. At that time, somebody caught her hand. When she woke up, she saw that the Appellant had caught her hand. She shouted. On this, her sister Shambai woke up. Then the Appellant ran away from there and hid near a shop situated in front of the house. Her *jija* and sister went and caught the Appellant. The Appellant said that he was not hiding. He assaulted the Complainant and her sister Shambai. The Appellant also abused the Complainant using filthy words. The FIR (Ex.P1) was registered against the Appellant for offences punishable under Sections 456, 354, 294, 323 of the Indian Penal Code and Section 3(1)(xi) of the Act of 1989. The Complainant was medically examined by Dr. R.K. Singh (PW4). He gave his report (Ex.P2). As per Ex.P2, the Complainant had sustained simple injuries. On completion of the investigation, a charge-sheet was filed against the Appellant for the offences punishable under Sections 456, 354, 294, 323 of the Indian Penal Code and Section 3(1)(x) of the Act of 1989. Charges were framed against him under Sections 456, 354, 323 of the Indian Penal Code and Sections 3(1)(xi) and 3(1)(x) of the Act of 1989.

3. To rope in the Appellant, the prosecution examined as many as 6 witnesses. Statement of the Appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied

the circumstances appearing against him, pleaded innocence and false implication. Two witnesses have been examined in his defence.

4. The Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant argued that there are contradictions and omissions in the testimony of the prosecution witnesses. The Appellant has been falsely implicated in the case. The evidence of the prosecution reveals that the Complainant is not of a good character because earlier also she had levelled such false allegations against some other persons.
6. On the contrary, Learned Counsel appearing for the State supported the impugned judgment.
7. I have heard Learned Counsel appearing for the parties and perused the material available on record minutely.
8. Complainant Lakhmanibai (PW1) has stated that on the date of incident at about 11:30 p.m., she was sleeping with her sister and brother-in-law. At that time, the Appellant came inside the room and caught her both hands. On her being shouted, her sister and brother-in-law woke up. The Appellant began to flee, but he was caught by the sister and brother-in-law. She has further stated that the Appellant said that he was not hiding and he abused the

Complainant filthily. She having heard the abuses, felt bad and, therefore, lodged the FIR. She has further sated that the Appellant had also assaulted her, her sister and brother-in-law.

9. The above statement of the Complainant is duly corroborated by her sister Shambai (PW2) and brother-in-law Pratap (PW3). Both of them have stated that when they heard shout of the Complainant, they saw that the Appellant had caught the hands of the Complainant. They chased the Appellant and caught him. On being asked, he said that he had not entered their house and had not hidden and also abused the Complainant and assaulted all of them.
10. Dr. R.K. Singh (PW4) examined the Complainant on 30.4.2002. His report is Ex.P2 in which he found a simple injury near the left elbow of the Complainant. In cross-examination, he has stated that the injury could not occur due to fall.
11. Sub-Inspector Anup Bajpai (PW5) is the witness who had registered the FIR (Ex.P1). Deputy Superintendent of Police D.R.S. Uike (PW6) investigated the alleged offence.
12. Admittedly, the Complainant is a member of Scheduled Tribe. As per her Court statement, the Appellant is not a member of Scheduled Caste or Scheduled Tribe.
13. On minute examination of the evidence on record, it is found that Complainant Lakhmanibai (PW1) has categorically stated that the

Appellant had entered her house and caught her hands. When the Appellant was caught, he abused filthily and assaulted her. Her statement is duly corroborated by her sister Shambai (PW2) and brother-in-law Pratap (PW3) and the medical examination report (Ex.P2). The FIR (Ex.P1) was promptly lodged by the Complainant in the midnight soon after an hour of the incident. The finding of the Trial Court appears to be just and proper and, therefore, the same does not warrant any interference by this Court. Hence, the conviction imposed upon the Appellant by the Trial Court is affirmed.

14. So far as sentence part is concerned, the matter is pending for about 15 years. The Appellant had already undergone about 3-4 months and in compliance of the order of this Court dated 5.9.2017, as communicated by the Superintendent of Police, District Kondagaon vide his memo dated 12.9.2017, the Appellant has again been arrested on 11.9.2017 and since then he is in custody. He is a first offender. No known criminal antecedent is found against him. At the time of incident, he was only 25 years of age.
15. Therefore, considering the foregoing, in the interest of justice, the jail sentence awarded to the Appellant by the Trial Court is reduced to as follows: 6 months' rigorous imprisonment for the offence under Section 456 of the IPC, 6 months' rigorous imprisonment for the offence under Section 354 of the IPC, 1 month's rigorous imprisonment for the offence under Section 323 of the IPC, 6 months' rigorous imprisonment for the offence under Section 3(1) (xi) of the Act of 1989 and 6 months' rigorous imprisonment for the

offence under Section 3(1)(x) of the Act of 1989. The fine sentences imposed upon the Appellant by the Trial Court are also affirmed. In default of payment of the said fine amounts, the Appellant shall be liable to undergo 2 months' rigorous imprisonment for the offence under Section 456 of the IPC, 1 month's rigorous imprisonment for the offence under Section 354 of the IPC, 7 days' rigorous imprisonment for the offence under Section 323 of the IPC, 1 month's rigorous imprisonment for the offence under Section 3(1)(xi) of the Act of 1989 and 1 month's rigorous imprisonment for the offence under Section 3(1)(x) of the Act of 1989. All the sentences are directed to run concurrently.

16. Consequently, the appeal is allowed in part to the extent indicated above.
17. 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