HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 267 of 2010

Nandlal Yadav, S/o Samar Sai, aged about 22 years, R/o Ghumani-Dand (Dwaripara), Thana- Bango.

Present R/o – Katghora, District- Korba (C.G.)

---- Appellant

Versus

State of Chhattisgarh, through District Magistrate, Korba, District-Korba (C.G.)

---- Respondent

For Appellant : Mrs. Indira Tripathi, Advocate.

For State/respondent : Mr. Ramakant Pandey, PL.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

19/09/2018

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 17.03.2010 passed by Special Sessions Judge (Atrocities) under Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, Korba (C.G.) in Special Session Trial No. 11/2007, wherein the said court convicted the appellant for commission of offence under Section 354 of IPC and sentenced to R.I. for 6 months and under Section 3(1)(xi) of Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989 (for short “the Act, 1989”) and sentenced to R.I. for 6 months and fine of Rs. 500/- with further default stipulations.

2. In the present case, prosecutrix - Sukhmaniya Bai is resident of village- Ghumani Dand and on the date of incident i.e. on 08.12.2006 at about 1.00 p.m., she was flying paddy and her

son was sleeping at house. At this juncture, the appellant came there and caught hold hand of prosecutrix and also caught her breast. The prosecutrix raised alarm, thereafter her son Mukesh reached there and appellant ran away. It is further case of the proscutrix that she is Gond by caste which comes within Scheduled Tribe. The matter was reported and investigated and after completion of trial, the trial court convicted and sentenced the appellant as mentioned above.

3. Learned counsel for the appellant submits that the offence is not committed on the basis of caste and therefore, offence under Section 3(1)(xi) is not made out. Statement of Sukhmaniya Bai - prosecutrix (PW-5) are also not reliable in light of evidence of Rohit Kumar (PW-3), other witnesses are also not reliable witnesses, therefore, finding of the trial court is not sustainable.

4. On the other hand, learned State counsel submits that the finding of the trial court is based on proper marshaling of evidence and the same is not liable to be interfered with.

5. Prosecutrix - Sukhamaniya Bai (PW-5) deposed that she was at house at about 1.00 p.m. Her son Mukesh was sleeping in the house and her husband Pratap Singh was working in kitchen garden. At the same time, the appellant entered into her house and caught hold her breast and when she cried, her husband reached to the house and appellant flee away. She further deposed that the matter was reported to police as per Ex. P/7. Version of this witness is supported by version of

Pratap Singh (PW-4) who is husband of the prosecutrix. As per version of Budhwar Singh (PW-1), Pratap Singh was beating his wife. He reached in the house of Pratap Singh and intervene into the matter and asked Pratap Singh not to assault the prosecutrix.

6. Dr. G.S. Jatra (PW-2) examined the prosecutrix on 11.12.2006 at 10.30 a.m. and noticed following injuries.

(i) Contusion 3x2 cm. over right lower eyelid.

(ii) Contusion 3x2 cm. over right forehead.

(iii) Contusion 2x2 cm. over left forehead.

7. As per version of medical expert, injuries found in the body of prosecutrix were simple in nature. Sukhmaniya Bai and Pratap Singh were subjected to searching cross-examination, but nothing could be elicited in favour of defence. Now, point for consideration is whether the appellant can be convicted under Section 3(1)(xi) of the Act, 1989. Though, from evidence of James Kindo, Tahsildar (PW-6) and the prosecutrix, it is established that the prosecutrix is Gond by caste within Schedule Tribe, but further point is whether, the offence is committed on the basis of caste. Looking to the entire evidence, it appears that the offence is committed on the basis of sex not on the basis of caste.

8. It is not the case that the appellant tried to outrage modesty of the prosecutrix because she is member of Schedule Tribe. As per law laid down by this Court in the matter of **Udai Singh**

Vs. State of Chhattisgarh reported in **2011 (3) CGLJ 455**, it is held that when outraging modesty of a woman is not done as she is member of Schedule Tribe, offence under Section 3(1)(xi) of the Act, 1989 is not established.

9. Though, offence under Section 3(1)(xi) of the Act, 1989 is not established, but the fact remains as to what offence the appellant has committed. Looking to the entire evidence, it is established that the appellant intended to outrage modesty of the prosecutrix that is why he caught hold her and caught her breast, which shows his advancement towards outraging modesty for which he used force intentionally without consent of the prosecutrix. In order to committing offence which caused injuries to the prosecutrix in that way, the appellant used criminal force to outrage modesty of the prosecutrix. Act of the appellant falls within mischief of Section 354 of IPC for which the trial court convicted the appellant and this Court has no reason to substitute contrary finding as to what is recorded by the trial court. Accordingly, finding of the trial court regarding commission of offence by the appellant under Section 354 of IPC and his conviction is hereby affirmed.

10. In the present case, date of offence is 08.12.2006 and at that point of time, corporal punishment for offence under Section 354 of IPC was not compulsory. Punishment for the said section is amended on 13th February, 2013 while, the offence was committed prior to that date.

11. The appellant has suffered jail sentence of 25 days during trial. Looking to the legal aspect of the matter, jail sentence awarded to the appellant is reduced to the period already undergone by him for the offence punishable under Section 354 of IPC. The fine amount shall remain intact. The appellant is acquitted the charges under Section 3(1)(xi) of the Act, 1989 while his conviction and sentence under Section 354 of IPC is modified as mentioned above.

12. With these modifications, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge

Arun