

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 192 of 2010

Judgement reserved on 4-9-2018

Judgement delivered on 29-10-2018

- Sita Ram S/o Loknath aged about 23 years, R/o. Village Chichiya Police Station Deobhog, District Raipur (CG)

---- Appellant.

oVersus

- State of Chhattisgarh through Station House Officer, Police Station, Debhog, District Raipur (CG).

---- Respondent

For Appellant : Mr. Ajay Kumar Chandra Advocate.

For Respondent/State : Ms. K. Tripti Rao, Panel Lawyer

(SB: Hon'ble Mr. Justice Ram Prasanna Sharma)

CAV Judgment

1) This appeal is directed against the judgment of conviction and order of sentence dated 24-2-2010 passed by Special Judge (Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)Act, 1989 (for short, "the Act, 1989"), Raipur, District Raipur in Special Case No. 72/2008, wherein the said Court convicted the accused/appellant under Sections 341, 354 of the IPC and Section 3 (1)(xi) of the Act, 1989 and sentenced him to undergo SI for one month, RI for six months and RI for six months and fine of Rs.200/- with default stipulations.

2) As per prosecution case, on 30-3-2008 at about 6.00 pm, prosecutrix is a student of Class 10 to whom the accused teased about

her caste and when she went to Shiv temple with her friend namely Vishakha for the purpose of worship, the appellant reached near canal and while she was returning from the said temple, appellant caught hold her and dragged her towards canal. Thereafter she shouted and her friend ran away from the place of incident. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced the accused/appellant as mentioned above.

3) Learned counsel for the appellant submits as under:

- I) Prosecutrix has not submitted written report before the Police Station and written report was submitted by her maternal uncle;
- ii) The trial Court has discarded the statement of Vishakha PW/3 who was single eye-witness as well as important witness.
- lii) As per version of prosecutrix she cut the hand of the accused by teeth, but the Doctor has not found any injury on the body of the accused.
- iv) Present is a case of consent and story of crime developed later on, therefore, finding of the trial court is liable to be reversed.

- 4) *Per contra*, learned State counsel supporting the impugned judgment has submitted that the judgment of the trial Court is strictly in accordance with the law and well founded and there is no illegality or infirmity in it warranting any interference by this Court invoking the jurisdiction of appeal.
- 5) I have heard learned counsel for the parties and perused the record of the court below in which impugned judgment has been passed.
- 6) In the present case prosecutrix is PW/1. Date of incident is 30-3-2008 and the report was lodged on the same day at Police Station Deobhog as per Ex.P/12. Place of incident is village Chichiya which is distance of 12 kms from Police Station Deobhog. Name of the appellant is mentioned in FIR as culprit and his act is also mentioned.
- 7) To substantiate the charge, prosecution examined as many as eight witnesses. To nullify the charge, defence side examined one defence witness namely Kaleshwar (DW/1).
- 8) As per version of prosecutrix, on the date of incident she went to Shiv temple for worship with her friend Vishakha and while she was returning from the said temple, appellant came there from behind, caught hold her and dragged her towards canal. She tried to release herself from the clutches of the appellant and make teeth bite on his hand and cried. Thereafter, her father came there and the appellant fled

away from the spot. This witness has been subjected to searching cross examination, but nothing could be elicited in favour of defence. Version of prosecution is supported by version of PW/2 Narhari who is father of the prosecutrix. Again her version is supported by the statement of Tulsi Bai (PW/5). All the witnesses have been subjected to incisive cross examination, but they are unshaken. Version of all these witnesses is supported by FIR which is lodged on the date of incident in which act of the appellant is clearly mentioned.

- 9) DW/1 Kaleshwar though deposed that on hearing the cries of the prosecutrix, appellant reached there, but this witness has not answered the question that at whose instance he came to quote for deposition. The trial Court has noted demeanour of this witness and opined that witness has made false statement. This court has no reason to see the witness, therefore, demeanour recorded by the trial Court cannot be substituted by some other way.
- 10) Now, the point for consideration is whether the act of the accused/appellant falls within the mischief under Section 354 of the IPC.

As per section 354 of the IPC- Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty shall be punished.

The essential ingredients of offence under Section 354, IPC are;-

- (a) That the assault must be on a woman.
 - (b) That the accused must have used criminal force on her.
 - (c) That the criminal force must have been used on the woman intending thereby to outrage her modesty.
- 10) Criminal force is defined under Section 350 of IPC.

“Section 350 of the IPC read as under:- Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other”.

11) In **State of Punjab v Major Singh (AIR 1967 SC 63)** a question arose whether a minor female could be said to be possessed of modesty which could be outraged. In answering the above question it has been held by Their lordships that the essence of a woman's modesty is her sex and from her very birth she possesses the modesty which is the attribute of her sex. From the test for ascertaining whether modesty has been outraged is whether the action of the offender is such as could be perceived as one which is capable of shocking the sense of decency of a woman. Same view was reiterated in **Rupan Deol Bajaj (Mrs) and Anr. v. Kanwar Pal Singh Gill & Anr. 1995(6) SCC 194.**

12) In the present case, the prosecutrix is firm in reporting the matter to the people of locality and firm in lodging the FIR in Police Station

on the same day and looking to the statements of number of witnesses cited by the prosecution, it is clear that criminal force is used by the appellant against the prosecutrix and act of the appellant amounts to outrage her modesty.

13) Looking to the evidence adduced by the prosecution it is established that the accused/appellant knowingly outraged the modesty of the prosecutrix by using criminal force upon her and the same is offence under Section 354 of the IPC for which the trial Court convicted the accused/appellant which is not liable to be interfered with by this Court and the conviction of the appellant is hereby affirmed. Again, the appellant caught the prosecutrix when she was moving towards her home and restraining a person from free movement is mischief of wrongful restraint which is punishable under Section 341 of IPC. Conviction of the appellant under Section 341 of IPC is also hereby affirmed.

14) From the evidence of PW/1 prosecutrix, PW/2 Narhari and PW/3 Vishakha, PW/4 Jaising Sandiyal, PW/5 Tulasi Bai and certificate (Article 1-C), it is established that the appellant is Gond by caste which is included in Scheduled Tribe and using criminal force to outrage of the prosecutrix (member of Schedule Tribe) is also punishable under Section 3 (1)(xi) of the Act, 1989 as he is not a member of scheduled tribe/caste for which the trial Court convicted

the appellant as mentioned above and this court has no reason to record contrary finding. Conviction of the appellant under Section 3 (1)(xi) of the Act, 1989 is also hereby affirmed.

15) Heard on the point of sentence.

The trial Court has awarded minimum sentence for offence under Section 3(1)(xi) of the Act, 1989 and less than minimum sentence cannot be awarded. The trial Court has also directed that all the sentences shall run concurrently which is not liable to be interfered with by this Court.

16) Accordingly, the appeal being devoid of merit is liable to be and is hereby dismissed. The appellant is reported to be on bail. His bail bonds shall stand canceled. The trial Court will prepare supersession warrant and issue warrant of arrest against the appellant. After his arrest, he be sent to concerned jail to serve out the remaining part of the jail sentence. The trial Court shall submit the compliance report before this court on 24-1-2019.

Sd/-
(Ram Prasanna Sharma)
JUDGE

Raju