

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 23-8-2018****Pronounced on 28-8-2018****CRIMINAL APPEAL No. 3067/1999**

[Arising out of the judgment dated 14-10-1999 passed by the Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Bastar at Jagdalpur in Special Case No. 5/99.]

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Munna @ Hemant S/o. Ravi Pandey, aged about 19 years, R/o. Village Chapka, PS Bhanpuri, Distt. Jagdalpur

Appellant**-Versus-**

State of Chhattisgarh through Police Station Bhanpuri, Distt. Bastar

Respondent

For appellant : Shri Vikas Shrivastava, Adv.

For State : Shri Sangarsh Pandey, Dy.Govt. Adv.

Hon'ble Shri Sharad Kumar Gupta, Judge

C.A.V. JUDGMENT

1. In this criminal appeal challenge levied is to the judgment of conviction and order of sentence dated 14-10-1999 passed by the Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Bastar at Jagdalpur in Special Case No. 5/1999 whereby and whereunder the appellant has been convicted for the offence punishable under Section 354 of the Indian Penal Code (in brevity 'IPC') and sentenced to undergo RI for 6 months and to pay a fine of Rs. 5,000/-, in default of payment of fine, to further undergo additional RI for 3 months.

2. In brief, the prosecution story is that the prosecutrix is a member

of scheduled tribe and appellant is not a member of scheduled caste or scheduled tribe. On the date of alleged incident the prosecutrix was student of 12th Class. On 24-9-1998 at about 2.00 pm near village Chapka when she was returning back from the bank on bicycle along with one Gandaru, the appellant stopped her bicycle and caught hold of her hand and bit on her cheek. The prosecutrix gave an application to the Principle on very day. The Principal wrote to SO Bhanpuri to take action against the appellant. Panchayat was also convened on next day. On 26-9-1998, the prosecutrix lodged an FIR in police station Bhanpuri. After completion of the investigation, a charge sheet was filed against him under Sections 354 of the IPC and Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in brevity 'SCST Act). The trial Court framed the charges against him punishable under Section 354, IPC and 3(1)(xi) of the SCST Act. He abjured the charges and faced trial. To bring home the charges, prosecution examined as many as 7 witnesses. The appellant did not examine any witness in his defence.

3. After conclusion of the trial, the trial Court acquitted the appellant of the charge punishable under Section 3(1)(xi), SCST Act, however convicted and sentenced him as mentioned above. Being aggrieved, the appellant has preferred the instant appeal.

4. Counsel for the appellant argued that the trial Court has not appreciated the evidence in proper perspective, FIR is delayed. Thus, the conviction and sentence of the appellant may be set aside and he may be acquitted of the aforesaid charge.

5. The Dy. Govt. Advocate appearing for the State argued that conviction and sentence of the appellant is just and proper and do not

call for any interference by this Court.

6. P.W. 1 the prosecutrix says in para 1 of her statement given on oath that when she was returning back from the bank along with Gandaru on bicycle, the appellant stopped her bicycle and caught hold of her hand.

7. P.W. 3 Lakheshwar Kashyap who is brother of the prosecutrix says in para 2 that, prosecutrix had told him that when she was returning from bank along with Gandaru on a bicycle, on the way the appellant caught hold of her hand.

8. P.W. 4 Sonaru says in para 2 of his statement given on oath that the prosecutrix had told him that the appellant had caught hold of her hand. She had narrated the incident in panchayat also.

9. There is no such evidence on record on the strength of which it can be said that P.W. 1 Prosecutrix, P.W. 3 Lakheshwar Kashyap, P.W. 4 Sonaru had given aforesaid statement because they had enmity with the appellant, or P.W. 4 Sonaru is interested with the prosecutrix.

10. As per the alleged application Ex. P-2, the prosecutrix had moved said application to the Principal on the very day. There is no such evidence on record on the basis of which it can be said that the prosecutrix had not moved Ex. P-2 on very day.

11. Alleged FIR Ex. P-1 had been lodged on 26-9-1998. For delay, the reason has been mentioned in Ex. P-1 that the prosecutrix had given an application in school and panchayat was convened. [There is no such evidence on record on the strength of which it can be said that said reasons for lodging the FIR with delay are not natural.

12. P.W. 1 Prosecutrix says in para 6 during her cross-examination

that she had given an application on very day to the Principal. Second day of the incident a meeting was convened.

13. There is no such evidence on record on the basis of which it can be said that aforesaid statement of para 6 of P.W. 1 prosecutrix, para 2 of P.W. 4 Sonaru in reference that allegedly panchayat was convened, are not natural. Thus this Court believes on aforesaid statements of para 6 of the prosecutrix and para 2 of Sonaru in that reference.

14. Looking to the above-mentioned facts and circumstances, this Court finds that for lodging belatedly the Ex. P-1, the aforesaid reasons are just and sufficient. In other words, this Court finds that the delay in lodging the FIR Ex. P-1, has been satisfactorily explained by the prosecution. Thus, looking to the judicial precedents laid down by Hon'ble Supreme Court in the matter of **State of HP -v- Gian Chand** [(2001) 6 SCC 71], **State of HP -v- Shri Kant Shekari** [(2004) 8 SCC 153], **Pooran Chand -v- State of HP** [(2014) 5 SCC 689], this Court finds that belated Ex. P-1 does not affect adversely the testimony of aforesaid para 2 of the prosecutrix, para 2 of P.W. 3 Lakheshwar Kashyap, Para 2 of P.W. 4 Sonaru.

15. In Ex. P-1 and Ex. P-2, it has been described that the appellant had caught hold of the hand of prosecutrix. There is no such evidence on record on the strength of which it can be said that Ex. P-2 and Ex. P-1 are result of afterthought or are not natural.

16. After appreciation of the evidence discussed herebefore, this Court finds that there is no such evidence on record on the strength of which it can be said that aforesaid statements of para 2 of the prosecutrix, para 2 of Lakheshwar Kashyap, para 2 of Sonaru are not simple, not natural, not normal. Thus, this Court believes on the

aforesaid statements of para 2 of the prosecutrix, para 2 of P.W. 3 Lakheshwar Kashyap, para 2 of P.W. 4 Sonaru.

17. After appreciation of the evidence discussed herebefore, this Court finds that the prosecution has succeeded to prove beyond reasonable doubt the charge punishable under Section 354 of the IPC against the appellant. Thus, this Court affirms the conviction of the appellant under Section 354, IPC.

18. So far as sentence is concerned, the appellant has not remained in jail even for a single day. Near about 20 years have passed from the date of incident. At the time of incident, he was aged about 19 years, now he is about 38 years old. Now he is in mainstream of society. Sending him to jail would disturb him as well as his family members' life. At the time of the incident, no minimum jail sentence was provided. Hence, no useful purpose would be served if he is sent to jail after 20 years of the incident. Looking to these circumstances and observations made by Hon'ble Supreme Court in the matter of **Manjappa -v- State of Karnataka** [(2007) 6 SCC 231], I am of the opinion that cause of justice would be sub-served, if RI of six months is reduced to sentence till rising of the Court and fine of Rs. 5,000/- may be enhanced to Rs. 20,000/-.

19. Consequently, the appeal is partly allowed. The sentence of the appellant for RI for 6 months is reduced to till rising of the Court and fine sentence of Rs. 5,000/- is enhanced to Rs. 20,000/- (Rupees twenty thousand only). In default of payment of fine, he shall further undergo RI for 3 months.

20. The appellant shall surrender before the trial Court for suffering the sentence till rising of the Court. He is granted two months' time from

the date of receipt of certified copy of this order for depositing the fine amount. The fine amount deposited earlier, if any, by the appellant shall be adjusted in the fine amount of Rs. 20,000/-.

21. After the prescribed period of appeal or revision, Rs. 15,000/- (Rupees fifteen thousands only) out of the fine amount of Rs. 20,000/-, if deposited, be given to the prosecutrix as compensation.

22. The appellant is reported to be on bail. His bail bonds stands discharged subject to conditions provided under Section 437-A, Cr.P.C.

**Sd/-
(Sharad Kumar Gupta)
Judge**