

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.781 of 2002

Smt. Shalini Rahi alias Saida, W/o Laxmi Narayan, aged about 35 years, R/o Chimni Bhatta, Police Station Kotwali, Korba, District Korba, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Police Inspector, Police Station Kotwali, Korba, District Korba, Chhattisgarh

--- Respondent

For Appellant	:	Shri Saleem Kazi, Advocate
For Respondent	:	Shri Sumit Jhanwar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

3.8.2018

1. This appeal is directed against the judgment dated 23.7.2002 passed by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (henceforth 'the Act'), Bilaspur in Special Case No.15 of 2001 convicting and sentencing the Appellant as under:

Conviction	Sentence
Under Section 380 of the Indian Penal Code	Rigorous Imprisonment for 2 years and fine of Rs.500/- with default stipulation
Under Section 448 of the Indian Penal Code	Simple Imprisonment for 6 months and fine of Rs.500/- with default stipulation

2. Prosecution case, in brief, is that Complainant Geetabai (PW1) belongs to the Scheduled Tribe. Initially, Complainant Geetabai was residing in the house of the Appellant as a tenant. Thereafter, she purchased a piece of land from the Appellant and got a house

built up over that said piece of land. Some dispute was existing between the Complainant and the Appellant regarding the consideration amount of the land. On 6.5.2000, the Complainant locked her house and went to Raigarh for her treatment. On 20.5.2000, one Lallu Kanwar came to Raigarh and informed the Complainant that the Appellant had broken the lock of her house and taken her all household articles with her. On receiving the information, the Complainant returned her house and found that lock of her house had been broken and the domestic utensils, clothes, furniture and some ornaments, total worth about Rs.12,000/- had been stolen. She lodged First Information Report (Ex.P1). During the course of investigation, vide seizure memo (Ex.P6), some of the stolen articles were seized from the possession of Laxmi Narayan, husband of the Appellant. Allegedly, some articles were identified by the Complainant vide Ex.P4. On completion of the investigation, a charge-sheet was filed against the Appellant for offences punishable under Sections 448 and 506 of the Indian Penal Code and Section 3(1)(v) of the Act. Charges were framed against her under Sections 380, 448, 506B of the Indian Penal Code and Section 3(1)(v) of the Act.

3. In support of its case, the prosecution examined as many as 10 witnesses. Statement of the Appellant was recorded under Section 313 of the Code of Criminal Procedure in which she denied the guilt, pleaded innocence and false implication. No witness has been examined in her defence.
4. After trial, the Trial Court acquitted the Appellant of the charge under Section 506B of the Indian Penal Code and Section 3(1)(v)

of the Act, but convicted and sentenced her as mentioned in the first paragraph of this judgment. Hence, this appeal.

5. Learned Counsel appearing for the Appellant submits that the Appellant is innocent. She has been falsely implicated in the case due to a dispute with the Complainant. He further submits that there is no legal evidence on the basis of which the Appellant could be convicted. He further submits that there is no iota of evidence available on record that any person witnessed the Appellant breaking the lock of the house of the Complainant and taking out articles of the house with her. Though some of the articles were seized from the possession of her husband, there is nothing on record to show that those articles were given by her to her husband. He further submits that though Ex.P4 states that few of the articles were identified by the Complainant, Ex.P4 does not mention that which of the articles were identified by the Complainant. Therefore, no offence is made out against the Appellant.
6. Per contra, Learned Counsel appearing for the State opposes the arguments advanced on behalf of the Appellant and supports the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. Complainant Geetabai (PW1) has stated that she had locked her house and gone to Raigarh. When she returned, she found that lock of her house was broken. She has further stated that the

Appellant had kept household articles of her house and had given her house to some other person on rent.

9. Vimlabai (PW2) has not supported the case of the prosecution and she has been declared hostile.
10. Geeta Sharma (PW3) has stated that when Complainant Geetabai had gone to Raigarh, the Appellant had broken the lock of the house of the Complainant and taken the household articles of the house with her. She has further stated that at that time, the Appellant had herself told her that she had broken the lock of the house of the Complainant and taken the household articles with her. But, all these facts are not mentioned in her case diary statement.
11. Munna Khan (PW4) has also stated that the Complainant had gone to Raigarh. 15 days thereafter, he had seen that the Appellant had broken the lock of the house of the Complainant and taken the household articles kept inside the house with her. He has further stated that from the house of the Appellant, household articles of the Complainant were seized vide Ex.P6. Basically, this witness is only the witness of seizure memo (Ex.P6) and his statement under Section 161 of the Code of Criminal Procedure has not been recorded by the prosecution.
12. Rajkumar (PW5), husband of the Complainant has stated that after putting lock on the house, they had gone to Raigarh for treatment. On return, they found that the lock of their house was broken and a tenant was residing therein.

- 13.** Sub-Inspector S.P. Bhagat (PW8) is the witness who conducted the proceeding of identification vide Ex.P4. He has admitted that the articles mentioned in Ex.P4 were not seized. From the above, it is clear that at the time of identification, no articles were present there. Sub-Inspector D.S. Thakur (PW9) has stated that he recorded the First Information Report (Ex.P1).
- 14.** S.D.O. (P) Mithilesh Shukla (PW10) has stated that he investigated the offence in question. During investigation, vide Ex.P6, he seized few of the household articles allegedly stolen from the house of the Complainant from the possession of Laxmi Narayan, husband of the Appellant.
- 15.** A minute examination of the above evidence makes it clear that when the lock of the house of the Complainant was broken and household articles of the house were taken out, the Complainant and her husband were not present at the spot. It has been mentioned in the FIR (Ex.P1) that one Lallu Kanwar went to Raigarh and informed the Complainant about the stealing. But, said Lallu Kanwar has not been examined by the prosecution. Though Geeta Sharma (PW3) and Munna Khan (PW4) have stated that in their presence, the Appellant had broken the lock of the house of the Complainant and taken the household articles of the house with her, this fact is not mentioned in the case diary statement of Geeta Sharma (PW3) and case diary statement of Munna Khan (PW4) is not available. Basically, Munna Khan (PW4) is only the witness of seizure memo (Ex.P6). Thus, it is clear that Munna Khan has exaggerated his statement before the Court. Though few of the articles were seized from the possession of the

husband of the Appellant vide seizure memo (Ex.P6), those seized articles were the same belonging to the Complainant is not established and it is also not established that those articles were given by the Appellant to her husband. In these circumstances, there is no legal evidence on record on the basis of which the conviction imposed upon the Appellant could be affirmed.

16. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charges framed against her.
17. It is reported that the Appellant is on bail. Her bail bonds shall continue for a further period of six months in terms of the provisions contained in Section 437A of the Code of Criminal Procedure.
18. 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