

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.248 of 2002

Judgment Reserved on : 18.4.2018

Judgment Delivered on : 12.7.2018

Shiv Ram, S/o Ram Lal, age 50 years, R/o Village Bhilai, P.S. Charama,
District Kanker, Chhattisgarh

---- Appellant

versus

The State of Chhattisgarh through Police of P.S. Charama, District Kanker,
Chhattisgarh

--- Respondent

For Appellant : Shri Shobhit Koshta, Advocate
For Respondent/State : Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 14.2.2002 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.306 of 2001 convicting and sentencing the Appellant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 354 of the Indian Penal Code	Rigorous Imprisonment for 2 years and fine of Rs.2,000/- with default stipulation
Under Section 3(1)(xi) of the Act of 1989	Rigorous Imprisonment for 2 years and fine of Rs.2,000/- with default stipulation

2. The prosecution case, in brief, is that the prosecutrix (PW1) is a member of the Scheduled Tribe and is dumb. On 25.4.2001 at about 6:00 a.m., she had gone to the agricultural field to pick up

Mahua flowers. At that time, the Appellant was sitting nearby under a tree. It is alleged that he, with an intent to outrage and humiliate the prosecutrix, caught hold of her breast. She came out of his clutches, ran away from there and came back to her house. She told about the incident to her mother Bhagwati (PW2). A written report (Ex.P1) was submitted by Bhagwati. On the basis of Ex.P1, First Information Report (Ex.P2) was registered. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellant for the offence punishable under Section 354 of the Indian Penal Code and Section 3(1)(xi) of the Act of 1989. Charges were framed against him under Section 354 of the Indian Penal Code and Section 3(1)(xi) of the Act of 1989.

3. To rope in the Appellant, the prosecution examined as many as 5 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. One witness has been examined in his defence.
4. After trial, 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 material contradictions and omissions in the statements of the prosecutrix (PW1) and her mother Bhagwati (PW2). No cogent

evidence is available on record against the Appellant. Even if for the sake of argument it is considered that any such incident had taken place, the act done by the Appellant with the prosecutrix was not with a view that she is a member of the Scheduled Tribe. Therefore, the offence alleged under Section 3(1)(xi) of the Act of 1989 is not made out. He further submitted that the matter was investigated into by Sub-Inspector Santosh Singh (PW5), who is below the rank of a Deputy Superintendent of Police and, therefore, there is violation of Rule 7 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (henceforth 'the Rules of 1995').

6. On the other hand, Learned Counsel appearing for the State supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with utmost circumspection.
8. The prosecutrix (PW1) is dumb. As per her statement recorded by the Trial Court, the Appellant gagged her mouth, caught her breast, also caught her private part and tried to remove her underwear. Thereafter, she ran away, went to her house and told about the incident to her mother.
9. Bhagwati (PW2), mother of the prosecutrix has stated that the prosecutrix had gone to the agricultural field to pick up *Mahua*. After some time, she returned and fell down. She was weeping. On being asked, she told by hints that the Appellant had met her in

the agricultural field and caught her. She has further stated that she called a village meeting in which she told about the incident to the villagers and thereafter she submitted the written report (Ex.P1) in the police station.

10. Hinjaram (PW3) has stated that Bhagwati (PW2) had come to his house and told about the incident. Thereafter, a village meeting took place in which he had asked the prosecutrix about the incident. The prosecutrix told by hints that the Appellant had caught her and pressed her breast. She had come out of his clutches and run away from there and come back to her house.
11. Somlal (PW4) has also supported the statement of Hinjaram (PW3). He has also stated that the prosecutrix had told him that the Appellant had caught her and pressed her breast.
12. Sub-Inspector Santosh Singh (PW5) is the witness who investigated into the offence in question. He recorded the FIR (Ex.P2) on the basis of the written report (Ex.P1). He prepared the spot-map (Ex.P3). He recorded statements of witnesses under Section 161 of the Code of Criminal Procedure. He has also stated that he had seized the caste certificate of the prosecutrix, but no seizure memo nor any caste certificate is available on record.
13. On a minute examination of the above evidence, it is clear that the Appellant had caught the prosecutrix in the field with an intent to outrage her modesty and also caught her breast. The prosecutrix

has remained firm during her cross-examination and her statement is also supported by Bhagwati (PW2), Hinjaram (PW3) and Somlal (PW4).

- 14.** From the above, the offence alleged under Section 354 of the Indian Penal Code is proved against the Appellant and, therefore, he has rightly been convicted thereunder by the Trial Court.
- 15.** So far as the offence alleged under Section 3(1)(xi) of the Act of 1989 is concerned, though the prosecutrix (PW1) belongs to Halba Caste and the Appellant belongs to Kalar Caste yet there is no document or caste certificate on record to show that the Caste Halba falls within the category of the Scheduled Tribe. Though Sub-Inspector Santosh Singh (PW5) has stated that he had seized the caste certificate of the prosecutrix yet no caste certificate of the prosecutrix is available on record. Even if for the sake of argument it is considered that the prosecutrix belongs to Scheduled Tribe, there is nothing on record to show that since the prosecutrix belongs to Scheduled Tribe, the Appellant committed the alleged act with her.
- 16.** Apart from the above, it is also clear that the investigation has been done by Santosh Singh (PW5), who is a Sub-Inspector, that is to say, he is an officer of below the rank of a Deputy Superintendent of Police. As per Rule 7 of the Rules of 1995, the investigation must have been done by a police officer not below the rank of a Deputy Superintendent of Police. Rule 7 of the Rules of 1995 reads as under:

“7. Investigating Officer.–(1) An offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government/Director General of Police/ Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time.

(2) The investigating officer so appointed under sub-rule (1) shall complete the investigation on top priority basis within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director General of Police of the State Government.

(3) The Home Secretary and the Social Welfare Secretary to the State Government, Director of Prosecution, the officer-in-charge of Prosecution and the Director General of Police shall review by the end of every quarter the position of all investigations done by the investigating officer.”

- 17. In 1999 Cri.L.J. 2918 (D. Ramalinga Reddy @ D. Babu v. State of A.P.), it was observed thus:**

“7. There is no dispute that the present case was investigated by a Sub-Inspector of Police and not by an Officer envisaged under Rule 7. Since the investigation itself has been conducted by an officer who was not authorised in law to conduct the investigation the whole trial is vitiated. The same view has been expressed in a judgment of Madras High Court reported in N. Ramu v. Supdt. of Police Villupuram, 1998 Mad LJR (CrI) 132. Therefore, conviction of the appellant for the offence under S. 3(1)(xi) of SCs and STs (Prevention of Atrocities) Act has to be set aside and is accordingly set aside and the accused-appellant is acquitted of the charges under the Act.”

- 18. In 2009 AIR SCW 5335 (State of M.P. v. Chunnilal @ Chunni Singh), it was observed as under:**

“6. By virtue of its enabling power it is the duty and responsibility of the State Government to issue notification conferring power of investigation of cases by notified police officer not below the rank of Deputy Superintendent of Police for different areas in the police districts. Rule 7 of the Rules provided rank of investigation officer to be not below the rank of Deputy Superintendent of Police. An officer below that rank cannot act as investigating officer. The provisions in Section 9 of the Act, Rule 7 of the Rules and Section 4 of the Code when jointly read lead to an irresistible conclusion that the investigation to an offence under Section 3 of the Act by an officer not appointed in terms of Rule 7 is illegal and invalid. But when the offence complained are both under the IPC and any of the offence enumerated in Section 3 of the Act the investigation which is being made by a competent police officer in accordance with the provisions of the Code cannot be quashed for non investigation of the offence under Section 3 of the Act by a competent police officer. In such a situation the proceedings shall proceed in appropriate Court for the offences punishable under the IPC notwithstanding investigation and the charge sheet being not liable to be accepted only in respect of offence under Section 3 of the Act for taking cognizance of that offence.”

19. Thus, in view of the clear mandate of Rule 7 of the Rules of 1995 and the decisions of the Supreme Court referred to above, it is only the officer not below the rank of Deputy Superintendent of Police is competent to investigate the offence under the Act of 1989. In the instant case, undisputedly, the entire incident has been investigated by Sub-Inspector Santosh Singh (PW5), which is flagrant violation of the legal provisions and it renders the entire trial as vitiated.
20. Therefore, in the premises of aforestated, the conviction and sentence imposed upon the Appellant under Section 3(1)(xi) of the Act of 1989 are set aside and he is acquitted of the charge framed thereunder, but the conviction imposed upon him under Section

354 of the Indian Penal Code is affirmed.

- 21.** So far as sentence for the offence under Section 354 of the Indian Penal Code is concerned, the Appellant has remained in custody for about 1 month. He is facing the *lis* since 2001. He has no known criminal antecedent. Therefore, I am of the view that ends of justice would be served if he is sentenced with the period already undergone by him and the sentence of fine is affirmed. Ordered accordingly.
- 22.** Consequently, the appeal is allowed in part to the extent indicated above.
- 23.** 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