

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRIMINAL APPEAL No. 1062 of 2002**

Hem Singh son of Kashiram Nayak, age 38 years, R/o. Dabpali, P.S.
Pithaora, Distt. Mahasamund, CG

-Versus-

State of Chhattisgarh through P.S. Pithaora, Distt. Mahasamund, CG

For appellant : Shri Alok Dewangan, Adv.

For State : Shri Neeraj Sharma, Dy. Govt. Adv.

Hon'ble Shri Sharad Kumar Gupta, Judge

ORAL JUDGMENT**4-10-2018**

1. In this criminal appeal the challenge levied is to the judgment of conviction and order of sentence dated 4-10-2002 passed by Special Judge constituted under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in brevity 'SCST Act') in Special Case No. 151/2001 whereby and whereunder he convicted and sentenced the appellant as under :-

Section	Sentence
341 IPC	RI for 1 month.
3(1)(xi), SCST Act	RI for 6 months and fine Rs. 500/- in default RI for 1 month.

2. In brief the prosecution story is that prosecutrix is a resident of village Dabpali. On 1-7-2001 at about 5.30 am she was returning back to her house after dumping the garbage and cow dung in heap. Near the Holedand the appellant stopped her way, demanded sex from her, caught hold her right hand. Prosecutrix twitched him and came back to

her house. She narrated about the incident to her father-in-law and her husband. A meeting was convened in the village where the appellant admitted alleged allegation. On the very day the prosecutrix lodged the report in police station Pithaora. After conclusion of the trial a charge sheet under Section 354 of the IPC and Section 3(1)(xi) of the SCST Act was filed against the appellant. The trial Court framed the charges against the appellant under Sections 341, 354, IPC read with Section 3(1)(xi), SCST Act. The appellant abjured the charges and faced trial. To bring home the charges prosecution examined as many as 7 witnesses. Appellant examined one witness on his defence.

3. After conclusion of the trial, Trial Court convicted and sentenced the appellant as aforesaid.

4. Counsel for the appellant argued that Trial Court has not appreciated the evidence in proper perspective. The conviction and sentence of the appellant are bad in eyes of law. Thus, appellant may be acquitted of the aforesaid charges.

5. Counsel for the State argued that the conviction and sentence of the appellant are based on clinching evidence. The conviction and sentence of the appellant do not call for interference by this Court.

6. P.W. 1 the prosecutrix says in para 2 and 3 of her statement given on oath that when she was returning back after dumping the garbage in the heap, on the way, the appellant met her and uttered rubbish words, caught hold her hand. In the meeting the appellant had admitted the alleged allegations.

7. P.W. 2 Neel Kumar says in para 2 of his statement given on oath

that in the meeting the appellant had admitted the allegations.

8. P.W.3 Khemraj says in para 2 of his statement given on oath that he had seen that the appellant had caught hold hand of the prosecutrix.

9. P.W. 7 Dhaniram says in para 3 of his statement given on oath that in the meeting the appellant had admitted the allegations.

10. D.W. 1 Ghasiram says that in the meeting the appellant had told that he does not know anything, the prosecutrix had not stated anything against the appellant.

11. There is no such evidence on record on the strength of which it can be said that P.W. 1 Prosecutrix, P.W. 2 Neel Kumar, P.W. 3 Khemraj, P.W. 7 Dhaniram had made aforesaid statements because the appellant was member of opposite party.

12. In FIR Ex. P-1 which was lodged promptly it has been mentioned that the appellant had caught hold the right hand of the prosecutrix and prevented her to go on the way. The appellant had also admitted the allegations in the meeting which was convened.

13. There is no such evidence on record on strength of which it can be said that lodging of Ex. P-1 is an afterthought to falsely implicate the appellant.

14. There is no such evidence on record on the strength of which it can be said that aforesaid statements of P.W. 1 Prosecutrix, P.W. 2 Neel Kumar, P.W.3 Khemraj, P.W. 7 Dhaniram are not simple, not natural, and not normal.

15. Looking to the above-mentioned facts and circumstances of the

case, this Court believes on aforesaid statements of P.W. 1 Prosecutrix, P.W. 2 Neel Kumar, P.W.3 Khemraj, P.W. 7 Dhaniram and disbelieves aforesaid statement of D.W. 1 Ghasiram.

16. In **Bhalchand Tiwari @ Bhola v State of Chhattisgarh {2016 (3) CGLJ Vol. 363}** it has been held that the appellant is acquitted of the charge under Section 3(1)(XII) of the Special Act because it is not proved that the appellant had dominated the will of the Prosecutrix and used his position to exploit her sexually simply because she belonged to the Scheduled Tribe Category.

17. In the judgment of the Division Bench of this Court in **Bhikhar and Others v. State of Chhattisgarh passed in Cr.A. No. 328 of 2003 decided on 14.06.2016** it was observed that so far as the conviction of the appellants under Section 3(2)(V) of the Act is concerned, in the present case, there is no evidence at all to the effect that appellants had committed the offence on the ground that the deceased belonged to Scheduled Caste Category. In the absence of such ingredients merely because the deceased happens to be a member of Scheduled Caste Category, automatically the offence under Section 3(2)(V) of the Act is not made out against the appellants.

18. The Division Bench of this Court in its decision dated 14-12-2017 passed in Cr.A. No. 304/2007 in the matter of **Devchand Patel and Others v. State of Chhattisgarh** observed that so far as conviction under Section 3(2)(V) of the Act, 1989 is concerned, since it has already been held that the appellants have not committed any offence as against the deceased, the question of their conviction under this Section does not arise. Even otherwise this is not a case of the prosecution that

as the deceased belonged to a particular caste, he was subjected to beat, rather it has been established from the evidence that it was the deceased who being at fault was beaten by the villagers, which unfortunately resulted in his death. Therefore, the accused are acquitted of this charge also.

19. The Hon'ble Supreme Court in **Dinesh @ Buddha v. State of Rajasthan {2006 (3) SCC771}** in para-15 has held as under:

“ 15. Sine qua non for application of Section 3(2)(v) is that an offence must have been committed against a person on the ground that such person is a member of Scheduled Castes and Scheduled Tribes. In the instant case no evidence has been led to establish this requirement. It is not case of the prosecution that the rape was committed on the victim since she was a member of Scheduled Caste. In the absence of evidence to that effect, Section 3(2)(v) has no application. Had Section 3(2)(v) of the Atrocities Act been applicable then by operation of law, the sentence would have been imprisonment for life and fine.”

20. In the case in hand, there is no such evidence on record that the appellant had allegedly committed said offences merely on the ground that the prosecutrix was a member of the Scheduled Tribe.

21. After appreciation of the evidence this Court finds that the prosecution has succeeded to prove beyond reasonable doubt the charges punishable under Section 341 and 354 of the IPC, but failed to prove beyond reasonable doubt the charge punishable under section 3(1)(xi) of the SCST Act, 1989 against the appellant. Thus, this Court affirms the conviction of the appellant under Sections 341 of the IPC and sets aside the conviction and sentence of the appellant punishable under section 3(1)(xi) of the SCST Act. This Court also holds the appellant guilty of the offence punishable under Section 354, IPC.

22. So far as sentences are concerned, the appellant remained in jail for three days. Near about 17 years have passed from the date of incident. At the time of incident, he was aged about 37 years, now he is about 54 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 for the offences punishable under Section 341 and 354 of IPC. Hence, no useful purpose would be served if he is sent to jail after 17 years of the incident. Looking to these circumstances and observation 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 one month under Section 341, IPC is reduced to the sentence for the period already undergone by him and he may be sentenced for the offence punishable under Section 354, IPC for the period already undergone and fine of Rs. 15,000/-.

23. Consequently, the appeal is partly allowed. The sentence of the appellant under Section 341, IPC to undergo RI for one month is reduced to the period already undergone by him and the he is further sentenced for the offence punishable under Section 354, IPC for the period already undergone and fine of Rs. 15,000/- (Rupees fifteen thousands only), in default of payment of fine, to further undergo additional RI for three months.

24. The appellant 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 by the appellant shall be adjusted in the fine amount of Rs. 15,000/-.

25. After the prescribed period of appeal or revision, Rs. 10,000/- (Rupees ten thousands only) out of the fine amount of Rs. 15,000/-, if deposited, be given to the prosecutrix as compensation.

26. The appellant is reported to be on bail. His bail bonds stands cancelled subject to the provisions of Section 437-A, Cr.P.C.

Sd/-
(Sharad Kumar Gupta)
Judge