

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1016 of 2002

Reserved on : 12/07/2018

Delivered on : 08/08/2018

- Kalu Ram Sahu S/o Dharamu Ram Sahu, aged 29 years, R/o Kopra, P.S. Rajim, District Raipur (C.G.)

---- Appellant

Versus

- State of Chhattisgarh

---- Respondent

For Appellant	: Shri C.R. Sahu, Advocate
For Respondent/State	: Shri Avinash K. Mishra, Panel Lawyer

Hon'ble Shri Justice Gautam Chourdiya, J

C.A.V. Judgment

1. This appeal arises out of the judgment of conviction and order of sentences dated 02.09.2002 passed by the Special Judge, under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Raipur (C.G.) in Special Sessions Trial No. 50/2002, whereby, the appellant stands convicted and sentenced as under:-

<u>Conviction:</u>	<u>Sentences:</u>
Under Section 452 of the Indian Penal Code (hereinafter referred to as the 'IPC')	Rigorous imprisonment for one year and pay a fine of Rs. 500/- and in default of payment to further undergo rigorous imprisonment for two months
Under Section 3(1) (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'Special Act')	Rigorous imprisonment for one year and pay a fine of Rs. 500/- and in default of payment to further undergo rigorous imprisonment for two months
Both the sentences to run concurrently	

2. Case of the prosecution, in brief, is that a First Information Report (FIR –

Ex.-P/1) lodged by the prosecutrix/complainant (PW-1) on 08.01.2002 at 11:55 AM against the accused/appellant- Kalu Ram under Sections 451, 354 of IPC and under Section 3(1) (xi) of the Special Act. In this report, she makes allegations against the accused that on 07.01.2002, at about 8:00 PM, she was in her house and her husband was gone Aarang. When she was alone in her house, the accused entered in her house and he demanded match-stick for smoking *bidi*, this was refused by the prosecutrix, then he caught hold of her hands and told her to go inside. Thereafter, she crying, then suddenly the accused gaged her mouth and started pulling her saree and blouse. Thereafter, the prosecutrix removed his hand from her mouth and crying for help. Then Sirwa Bai (PW-4), Taasin Bai (PW-3), Sunetin Bai (PW-2) and Dhanuj Yadav came there and seeing accused-Kalu running from there. She stated that the accused had entered her house with an intention to outrage her modesty.

3. Spot map was prepared by P.C. Sharma, DSP (PW-5), Caste-certificate for the prosecutrix (PW-1) was seized under Ex.-P/3. During investigation, statements of the witnesses- Sunetin Bai (PW-2) vide Ex.-P/4, Taasin Bai (PW-3) vide Ex.-D-2 and Sirwa Bai (PW-4) vide Ex.-D3 including the prosecutrix (PW-1) vide Ex.-D-1 were recorded under Section 161 of Cr.P.C.

4. After investigation, the charge-sheet was filed against the accused/appellant under Sections 451 and 354 of IPC and Section 3(1) (xi) of the Special Act and while framing the charges, the trial Judge framed the charge under Section 452 of IPC and Section 3(1) (xi) of the Special Act.

5. So as to hold the accused/appellant guilty, the prosecution examined 6 witnesses in all. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. In his defence, accused/appellant examined one Meghsing (DW-1).

6. The trial Court after hearing the counsel for the parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant as mentioned in para- 1 of this judgment, hence this appeal.

7. Learned counsel for the appellant submitted that no ingredients of offence was proved by the prosecution under Section 452 IPC. He further submitted that the author of caste-certificate (Ex.-P/3) was not examined by the prosecution and in the statement of prosecutrix and other witnesses, they have not stated that the prosecutrix belongs to scheduled caste. He also submitted that no opportunity of cross-examination was available to appellant regarding the caste certificate of the prosecutrix because the author of the certificate has not been examined by the prosecution. He argued that the trial Court has failed to consider the statements of the witnesses, which is without corroborating the material particulars of the case. He further argued that contradictory statements have given by witnesses because there is enmity between the accused and Shiva Bai which were not considered by the learned trial Court. He submitted the trial Court has mis-appreciated the entire evidence on record and the findings are bad in law and perverse, therefore, the judgment of conviction and sentences are liable to be set aside.

8. On the other hand, learned Panel Lawyer appearing on behalf of the State opposes these arguments and supports the judgment impugned. It has been argued by the State counsel that the conviction of the appellant/accused is in accordance with law and there is no infirmity in the same.

9. Firstly, I consider the caste of the prosecutrix (PW-1)

10. PW-1 – prosecutrix/complainant stated, in para-1, that “मैं जाति से सहीस होकर घसिया हूँ” but, in her statement, there is no any word has come that she belongs to scheduled caste category. Even PW-2 – Sunetin Bai also stated, in

para-1, about the caste of the prosecutrix that the prosecutrix is “जाति से सहीस होकर घसिया है”. PW-3 – Taasin Bai also stated that the caste of the prosecutrix is *ghasiya*. In the evidence of PW-1, PW-2 and PW-3, there is no any word has come in their evidence that the prosecutrix belongs to scheduled caste category. The prosecution has failed to prove the caste-certificate of the prosecutrix by authentic evidence and the author of the caste certificate has not been examined by the prosecution.

11. Ex.-P/3 is the caste certificate of the prosecutrix, but she is not author of that certificate. Caste certificate was given by the Gram Panchayat, Kopra. That certificate was prepared by Sarpanch-Shivkumar, but the prosecution has not examined the Sarpanch and prosecution has failed to produce Shivkumar who given caste certificate to the prosecutrix (PW-1) and on what basis it was issued. There is no evidence about the caste of the prosecutrix that she belongs to scheduled caste. So it is very difficult to say that the prosecutrix belongs to scheduled caste category and the Sarpanch was duly authorized or not to issue that certificate, therefore, prosecution has failed to prove this fact beyond all reasonable doubt. In the given facts and circumstances, the conviction of the appellant under Section 3(1) (xi) of the Special Act cannot be sustained.

12. Now I shall examine the evidence of prosecutrix (PW-1), Sunetin Bai (PW-2), Taasin Bai (PW-3) and Sirwa Bai (PW-4).

13. PW-1 – prosecutrix/complainant stated that on the date of incident i.e. 07.01.2002 at about 8:00 PM, she was alone in her house, the accused/appellant came her house and demanded match-stick for smoking *bidi*, she refused to give it. She also stated that the accused had come her house with an intention to outrage her modesty. On this, she crying, the accused caught hold of her hands and gagged her mouth and started pulling her saree and his hand entered inside the blouse and caught her breast. Thereafter, she crying, at that time Sunetin Bai (PW-

2), Taasin Bai (PW-3) came there. Seeing PW-2 and PW-3, the accused ran away from there. On next day immediately, the prosecutrix lodged the FIR (Ex.-P/1). There is no major contradiction or omission in the Court evidence, in police statement (Ex.-D-1) of the prosecutrix, even also in FIR (Ex.-P/1) proved by the prosecutrix. Her statement is trustworthy and supports the evidence of independent witness- Sirwa Bai (PW-4) and other witnesses. Prompt FIR was lodged on the next day morning by the prosecutrix.

14. PW-2 – Sunetin Bai, PW-3 - Taasin Bai and PW-4 – Sirwa Bai also narrated this fact in the night about 9.00 PM, crying of prosecutrix was heard, they came back from their home and the prosecutrix was narrated that the accused caught hold of her hands. It is clearly proved that the accused was entered into the house of the prosecutrix for demanding match-stick for smoking *bidi* and suddenly accused caught hold of her hands and started pulling her *saree* and blouse to outrage her modesty. PW-4 – Sirwa Bai also clearly stated that on crying of the prosecutrix, she came out from her home and saw the accused-Kalu running away from the house of the prosecutrix and the prosecutrix narrated to her that accused was catching her hand and the prosecutrix was also abusing the accused. There is no reason to disbelieve the evidence of PW-2, PW-3 and PW-4 which supports the evidence of prosecutrix (PW-1).

15. In 161 Cr.P.C. statements (Ex.D-2, Ex.-D-3 and Ex.-D-4) of Sunetin Bai (PW-2), Taasin Bai (PW-3) and Sirwa Bai (PW-4), they stated that on crying of prosecutrix, when they came out from their house, the accused- Kalu was running away from the house of the prosecutrix, then the prosecutrix told them that the accused had entered her (prosecutrix) house, caught hold of her hand with an intention to outrage her modesty and started pulling her *saree* and blouse. PW-2, PW-3 and PW-4 have seen the accused-Kalu running away from the house of the prosecutrix. There are no major contradictions in the court evidence and 161 Cr.P.C. statements of PW-2, PW-3 and PW-4 which support the evidence of the

prosecutrix (PW-1).

16. Appellant/accused examined DW-1 – Meghsingh who stated that the accused and the husband of the prosecutrix both are having good relations and working together. Prosecution examined PW-4 – Sirwa Bai. This witness (PW-4) stated that she has no enmity with the accused/appellant.

17. In his defence, the accused/appellant stated that the prosecutrix/complainant had demanded Rs.500/- from him, but he refused to give money and he also alleged that there is enmity between him and Shiva Bai, therefore he has been falsely implicated in this case. Accused examined one Meghsing (DW-1) who has also stated that the husband of the prosecutrix and the accused both are having cordial relations, but there is enmity between accused and Shiva Bai, neighbour of the prosecutrix. In this case, Shiva Bai was not examined by the prosecution.

18. In the present case, prosecution has failed to prove that the prosecutrix belongs to scheduled caste category and also looking to the evidence and material available on record that the appellant had entered the house of the prosecutrix with an intention to assault or use criminal force to the prosecutrix, intending to outrage or knowing it to be likely that he will thereby outrage her modesty and or has committed house trespass in order to commit offence punishable with imprisonment. Therefore, it was proved that the accused/appellant has committed an offence under Sections 354 and 451 IPC.

19. For offence under Section 452 IPC, the essential ingredients for conviction under this section is that it is necessary to prove that the appellant committed house trespass after making preparation for causing hurt etc., but, in the instant case, there is no such proof of having made preparation for causing hurt etc. and the prosecution is failed to prove it. Only the appellant/accused has committed house trespass to commit offence punishable under Section 451 IPC.

20. It is also noted that the appellant was 29 years of young offender on the date of incident and he in jail for 11 days and there is no criminal antecedent against the appellant and presently he is on bail. Considering the totality of the circumstances and the fact that offence occurred in the year 2002 and about more than 15 years have elapsed, this Court is of the opinion that and the ends of justice would be served, if the appellant/accused is sentenced to the period already undergone by him. It is ordered accordingly. However, the fine amounts of Rs.3000/- under Section 354 IPC and Rs.3000/- under Section 451 IPC (in total Rs.6000/-) are imposed on the appellant/accused which was payable to the prosecutrix/complainant.

21. For the foregoing reasons and discussions, the appeal is partly allowed. Conviction and sentences awarded to the accused/appellant are set aside and he is acquitted of the charges framed under Section 452 of IPC and Section 3(1) (xi) of the Special Act. However, the appellant/accused is convicted under Sections 354 and 451 IPC by imposing on him fine amount of Rs.6000/-. Sentence is accordingly reduced to the period already undergone and the appellant/accused is directed to pay the above fine amount to the prosecutrix/complainant as compensation, failing which, the appellant shall serve rigorous imprisonment for two months.

22. It is also stated that the accused/appellant is on bail since 18.10.2002, therefore, his bail bonds shall continue for a period of six months from today in view of the provisions of Section 437-A of Cr.P.C.

Sd/-
(Gautam Chourdiya)
Judge