

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1072 of 2002

Rajendra Prasad S/o. Shri Ramprasad, Aged about 28 years, R/o.
Village Sarna, P. S. Surajpur, District Surguja (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through Police Station- Scheduled Castes/
Scheduled Tribes Welfare, Surajpur District Surguja (C.G.)

---- Respondent

For Appellant : Mr. Sushil Dubey, Advocate
For Respondent : Mr. Arvind Dubey, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

Judgement on Board

12.04.2018

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 27.09.2002 passed by the Special Judge,(Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act) 1989 (for short 'Act 1989') Ambikapur District Surguja (C.G.) in Special Sessions Case No. 89/2001, wherein the said Court convicted the appellant for commission of offence punishable under Section 355 of the IPC and Section 3(1)(X) of the Special Act for using criminal force on one Bundkunwar on 30.12.2000, intended to dishonour her and insulting with intention to humiliate her being member of Scheduled Tribe.

2. As per case of the prosecution, on 30.12.2000 the appellant's child died in his house at village Sarna just after birth. Because of his child's death, the appellant suspected victim Bundkunwar to be black magician. The appellant demanded rice from the victim and when she gave rice to him the appellant lit three lamps which was kept in the head of the victim, thereafter, the appellant made her standing near a canal and thrown some rice on her and applied some vermilion on her and cut her hair and same was flown to canal. The matter was reported to Police Basdei. The matter was investigation and charge sheet was filed, the trial Court framed the charge against the appellants in which the appellants pleaded innocent and thereafter the trial was conducted, after examination of the prosecution witnesses statement of the accused/appellants under section 313 of the Cr.P.C. was recorded. After hearing the parties, the trial Court convicted and sentence the appellants as mentioned above.

3. To substantiate the charge prosecution has examined as many as 9 witnesses in their support.

4. Case of the prosecution is based on the statement of victim Bundkunwar, who is firm in her statement right from the date of investigation till her deposition before the Court. Version of Bundkunwar is unshaken during the cross examination and her version is supported by version of Kumar Sonmarani (PW-6). True, it is that Ranjit (PW-1), Mukdeo Singh (PW-2), Sukhdeo ram (PW-3), Nandlal Singh (PW-4) and Indrapal (PW-5) are the witnesses who have not supported the case of the prosecution.

From the statement of these witnesses, it is clear that they have not seen the incident, therefore, they are not the real witnesses, and their version cannot be acted upon.

5. From the statement of Bundkunwar (PW-7) and Kumari Sonmarani (PW-6) it is established that the appellant used criminal force on the victim intending thereby to dishonour her, therefore, act of the appellant falls within the mischief of Section 355 of the IPC for which the trial Court has rightly convicted the appellant and there is no reason to disturb the findings of the trial Court.

6. Though, the appellant is charged under Section 3(1)(X) of the Special Act, but there is nothing on record to show victim's caste, the person can be member of Scheduled Tribe only when her caste included under the list of Scheduled Tribe, but in the present case, no Officers has been examined to establish her caste and no certificate of her caste is produced before the trial Court, therefore, it is not established that the victim is a member of Scheduled Tribe.

7. Again, the incident took place because of one child died in the house of the appellant just after birth, therefore, the appellant suspected the victim to be black magician and the same is not occurred on the basis of her caste. The incident took place only on the basis of assumption of black magician and the same is not related to caste, it is not established that the appellant committed any offence against the member of Scheduled Tribe. Therefore, conviction of the appellant under

Section 3(1)(X) of the Special Act is not sustainable under the eye of law. Thus, the appellant is acquitted of the charges punishable under Section 3(1)(X) of the Special Act.

8. Heard on the sentence part. The appellant was in jail since 30.01.2001 to 19.06.2001 and he has completed terms of 4 months and 21 days, in our view, the period already undergone by the appellant would be sufficient for the offence under Section 355 of the IPC, therefore, he is sentenced to the period of imprisonment already undergone by him. However, the fine amount imposed by the trial Court upon the appellant shall remain intact.

9. Accordingly, the appeal is partly allowed while maintaining the conviction under Section 355 of the IPC. The appellant is sentenced to the period already undergone by him.

Sd/-

(Ram Prasanna Sharma)
JUDGE