

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 24-10-2018****Delivered on 1-11-2018****CRIMINAL APPEAL No. 1025/2001**

(Arising out of judgment of conviction and order of sentence dated 16-10-2001 passed by Special Judge, Durg, CG in Special case No. 71/2000)

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1. Ramesh Kumar son of Sheo Prasad Sahu, age 29 years, R/o. Sikari Para Balod, Distt. Durg (CG)
2. Ahmed Ali son of Mehmood Ali, aged 32 years, R/o. Railway Fatak ke pas, Balod, Distt. Durg

----Appellant**-Versus-**

State of Chhattisgarh

----Respondent

For appellants : Shri Sameer Singh, Adv.
For State : Shri Ramakant Pandey, PL

Hon'ble Shri Sharad Kumar Gupta, Judge**CAV JUDGMENT**

1. In this criminal appeal challenge levied is to the judgment of conviction and order of sentence dated 16-10-2001 passed by Special Judge, Durg, CG in Special case No. 71/2000 whereby and whereunder he convicted and sentenced the appellants as under :-

Offence under Section	Sentence to each appellant
323/34, IPC	Fine Rs. 500/-, in default of payment of fine RI for one month
3(1)(xi) of the SCST Act	RI for six months + fine of Rs. 500/-, in default of payment of fine, RI for one month.

Both the jail sentences are directed to run separately.

2. In brief, case of the prosecution is that on 26-11-1999 prosecutrix had gone to collect paddy at Ganj Mandi, Balod. Son of Shiv Prasad came there along with his friend. He demanded sex with the prosecutrix. He beat her by slipper on his cheek. He caught hold her hand. His friend hit brick on her head. After completing investigation, a

charge sheet was filed against them. Trial Court framed the charges against them under Section 323/34, of Indian Penal Code (in brevity 'IPC') and Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in brevity 'SCST Act'). Trial Court convicted and sentenced them as aforesaid.

3. Shri Sameer Singh, counsel for the appellants strenuously argued that trial Court has not appreciated the evidence in proper perspective. There is no such evidence that alleged offence was committed on the ground that prosecutrix was a member of scheduled caste. Thus, aforesaid conviction and sentences are bad in law and appellants may be acquitted of the aforesaid charges.

4. Shri Ramakant Pandey, Panel Lawyer argued that aforesaid conviction and sentences are just and proper and do not call for any interference.

5. P.W. 1 prosecutrix and P.W. 2 Anopi Bai say in para 2 of their statements given on oath that one accused beat the prosecutrix by slipper and another by brick, caused injury on her head.

6. As per the MLC report Ex. P-5 prosecutrix was examined by P.W. 4 Dr. G.D. Baghel and he found that one lacerated wound was present over vertex of scalp, one contusion was present on occipital region of scalp, one another contusion was present on right parietal region of scalp, injuries were simple in nature.

7. There is no such evidence on record on the strength of which it can be said that Ex. P-5 is not believable. Thus this Court believes on Ex. P-5.

8. In FIR Ex. P-1 it has been mentioned that one accused who is son of Shiv Prasad had beaten her by slipper on her cheek. His friend had hit brick on her head.

9. There is no such evidence on record on the strength of which it can be said that Ex. P-1 is fabricated and lodged as afterthought to falsely implicate appellants.

10. There is no such evidence on record on the strength of which it can be said that aforesaid statement of P.W. 1 Prosecutrix, P.W. 2 Anopi Bai are not believable, thus, this Court believes on them.

11. After appreciation of the evidence discussed herebefore this Court finds that prosecution has succeeded to prove beyond reasonable doubt the charge punishable under Section 323/34 of the IPC against the appellants. The aforesaid fine sentence for said sentence is also just and proper. Thus, this Court finds that trial Court has not committed any illegality in convicting and sentencing the appellants under Section 323/34, IPC. Hence, the same are affirmed.

12. P.W. 1 Prosecutrix and P.W. 2 Anopi Bai do not say clearly and strongly as per the prosecution case that any of the appellants had caught hold her hand to outrage her modesty.

13. P.W. 1 prosecutrix says in para 2 that appellants had pulled her saree, but this is not the prosecution case, thus this Court disbelieves this statement of the prosecutrix.

14. 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.

15. The Division Bench of this Court in its decision in the matter of **Devchand Patel and Others v. State of Chhattisgarh** [2017 (2) CGLJ 393] 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.

16. 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.”

17. In the case in hand, there is no such evidence on record that appellants or any of them had allegedly committed the offence to outrage the modesty of prosecutrix, on the ground that she was a member of scheduled caste.

18. After the appreciation of the evidence discussed herebefore this Court finds that prosecution has failed to prove beyond reasonable doubt the charge punishable under Section 3(1)(xi), of the SCST Act or any lesser offence ingredients of which are covered under this section. Thus, the conviction and sentence awarded to the appellants under Section 3(1)(xi), SCST Act are set aside. They are acquitted of the charge under Section 3(1)(xi) of the SCST Act.

19. Thus, the appeal is partly allowed. The fine amount if deposited by the appellants for offence under Section 3(1)(xi), SCST Act be refunded to them after expiration of the prescribed period of the further remedy available to the parties.

20. The appellants are reported to be on bail. Their bail bonds stand cancelled subject to the provisions of Section 437-A, Cr.P.C.

Sd/-
(Sharad Kumar Gupta)
Judge