

HIGH COURT OF CHHATTISGARH, BILASPUR

(SB: Hon'ble Mr. Justice Ram Prasanna Sharma)

CRA No. 28 of 2009

1. Kamal Lochan Behra @ Pandu Behra S/o Joidharam Patel, R/o Village-Taragarh, Present R/o Hukradipa, Bajemura, P.S. Tamnar, Distt.-Raigarh CG.
2. Lalit Patel @ Duryodhan Patel S/o Joidharam Patel, R/o Village -Taragarh, Present R/o Hukradipa, Bajemura, P.S. Tamnar, Distt.-Raigarh CG.

---- Appellants

Versus

- State of Chhattisgarh Through P.S. Tamnar, Distt.-Raigarh CG

---- Respondent

For Appellants : Mr. Manoj Kumar Sinha, Advocate.

For Respondent/State : Mrs. M. Asha, Panel Lawyer.

**Judgment on Board
(15-11-2018)**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 27-12-2008 passed by Special Judge under Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short, "the Act, 1989") Raigarh in Sessions case No. 9 of 2008 wherein the said Court convicted the accused/appellant No.2 Lalit Patel for commission of offence under Section 354 of IPC and sentenced to undergo RI for one year and fine of Rs.500/- with default stipulations and convicted the appellant No.1 Kamal Lochan Behra @ Pandu Behra for commission of offence under Section 354 read with Section 120-

B of IPC and sentenced him to undergo RI for six months and fine of Rs.500/- with default stipulations.

2. In the present case, prosecutrix is PW/3. On 27-10-2007 at about 10.00 am., she went to Hukradipa by Bus and she was waiting for vehicle to go to village Libra near the garage of the appellant No.2. Appellant No.2 told her that he had to go to village Libra for cutting of hair by motor-cycle and told her to go with him in motor-cycle for the village Libra. She agreed to go with him on his motor-cycle. Thereafter, appellant No.1 Kamal Lochan Behra also joined in Motor cycle. It is alleged that appellant No.2 Lalit Patel tried to use criminal force on her body that is why, the matter was reported. After completion of trial, the trial Court framed charges as mentioned above against the appellants, to which they did not plead guilty, therefore, trial was conducted and after completion of evidence of the prosecution side, statements of the appellants under Section 313 of the Cr.P.C., were recorded. After completion of trial, the trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused/appellants as mentioned above.
3. Learned counsel appearing for the appellants would submit that this appeal is preferred on the ground that there is no

evidence to establish the aforesaid charge and the finding of the trial Court is based on conjectures and surmises which is not liable to be sustained.

4. On the other hand, learned State counsel supporting the impugned judgment submits that the finding of the trial Court is based on proper marshaling of evidence which is not liable to be interfered while invoking jurisdiction of the appeal.
5. I have heard learned counsel for the parties, perused the record of the lower court in which judgment impugned has been passed.
6. PW/3 prosecutrix deposed that she agreed to go with appellant Lalit Patel in motor-cycle. The other appellant Pandu Behra @ Kamal Lochan also sat in the said motor-cycle. As per version of this witness, appellant No.2 Lalit Patel kept his hand near her thigh. In view of this court, when three persons were sitting in motor-cycle, it is difficult for each of them to maintain such distance that body of every one should not touch to others. It is not a case where any act was done by any of the appellants towards sexual assault. For commission of offence under Section 354 of the IPC, intention of the person charged is the only criteria for establishing the guilt. If intention is not established then offence cannot be established. From the evidence of prosecutrix (PW/3) it is

clear that she jumped from the motor-cycle that is why she sustained some injuries. It is not a case that any of the appellants pushed her from motor-cycle. Therefore, injury on the body of the prosecutrix is not as a result of any act of the appellants.

7. Looking to the entire evidence on record, it is not established that any of the appellants has conspired for outraging modesty of the prosecutrix or any of the appellants has used criminal force to outrage her modesty. The finding arrived at by the trial Court is not sustainable and the same is liable to be set aside.
8. In the result, the appeal is allowed. Conviction and sentence passed by the trial Court is set aside. The accused/appellants are acquitted of the charges framed against them. The appellants are reported to be on bail. Their bail bonds shall continue for further period of six months in view of Section 437-A of the Cr.P.C.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju_

