

Criminal Appeal No.97 of 2010

1. Chaman Lal @ Shiv Kumar S/o Hinsaram, aged about 22 Years,
 2. Chandresh Kumar S/o Hinsaram Patel, Aged about 30 years,
 3. Hinsaram Patel S/o Sahasram, Aged about 55 years,
- All R/o Vill. Kasniya Police Station Katghora, Distt. Korba (CG)

---- Appellants

Versus

State Of Chhattisgarh Through Police Station Katghora, Dist.
Korbra (CG)

---- Respondent

For the appellants : Shri Shashi Bhushan Singh Patel,
Advocate
For the respondent/State : Shri Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

19.9.2018.

1. This appeal has been directed against the judgment of conviction and order of sentence dated 28.01.2010 passed by Special Session Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities), Act 1989 in Special Session Case No.29/2009, wherein the said Court convicted appellant Chaman Lal @ Shiv Kumar for commission of offence under Section 354 of the Indian Penal Code and sentenced to undergo Rigorous imprisonment for six months and to pay fine of Rs.500/- and convicted all the appellants under Section 323 read with Section 34 IPC and sentenced them to undergo RI for three months and to pay fine of Rs.500/- each with default stipulations.
2. As per the prosecution case, on 05.3.2009 at about 7.00 am prosecutrix (PW-1) had gone to river for fetching water. On seeing

her alone appellant Chamanlal came there and pulled her sari with intend to outrage her modesty. When the husband of the prosecutrix namely Barjrang Lal intervened into the matter, all the appellants caused simple injury to him. The matter was reported and investigated and after the trial the trial Court convicted and sentenced the appellants as aforementioned.

3. Learned counsel for the appellants submits as under:

(i) There is material contradiction in the statements of the prosecutrix and her husband Bajrang Lal and the case of the prosecution is cooked up on account of enmity.

(ii) Simple injuries found on the body of Bajrang Lal might be caused due to fall on hard surface and therefore, the same is not corroborative piece of evidence.

(iii) There is no seizure of articles to prove the commission of offence and the prosecution has failed to establish the charges.

4. On the other hand, learned counsel for the State submits that the finding arrived at by the trial Court is based on proper marshaling of evidence which is not liable to be interfered with.

5. I have heard learned counsel for the parties and perused the material available on record.

6. Date of incident is 05.3.2009 and the report was lodged on the same day at Police Station Katghora. All the appellants have been named in the FIR and as per the version of the prosecutrix and supportive evidence of Barjrang Lal (PW-2), Lalji shukla (PW-4), it is established that appellant Chaman Lal tried to pull the sari of the prosecutrix in order to outrage her modesty. The advance of said appellant shows that he is willing to outrage the modesty of the

prosecutrix and for that he used criminal force against her. All the witnesses have been subjected to searching cross-examination but nothing could be elicited in favour of the defence.

7. From the evidence of the prosecutrix (PW-1) and Bajrang Lal (PW-2), it is established that all the appellants have assaulted Bajrang Lal by club. Version of this witness is supported by medical expert Dr. SD Dahire (PW-3), who examined Bajrang Lal and noticed following injuries on his body.

(1) One incised wound of 1 x ¼" on left hand in between thumb and 2nd finger.

(2) Bruise of 3 x 1" on the left side forearm at upper part of peripheral lateral aspect

(3) Swelling on the top of the finger of right hand and swelling on the back side of the hand.

(4) swelling on the left side scapular region

(5) swelling on left ankle.

8. As per the opinion of the medical expert all the injuries were caused by hard and blunt object and the injuries were sustained within 24 hours of examination. Though this witness has deposed in his cross-examination that the injuries might be caused by fall on hard surface but there is no evidence that the injuries on the body of Barjrang Lal was caused due to fall on hard surface. From the evidence it is established that the injuries were caused by all the three appellants. Case of none of the appellants falls under any exception mentioned in the Indian Penal Code and that they knew that their assault will cause pain in the body of Bajrang Lal. Looking to the entire evidence, it is established that all the appellants have

voluntarily caused simple injury on the body of Bajrang which is an offence punishable under Section 323 IPC for which the trial Court convicted the appellants. Outraging the modesty of a woman and using criminal force for that purpose is the offence under Section 354 IPC for which the trial Court convicted appellant Chaman Lal and this Court has no reason to substitute a contrary finding . Accordingly, conviction of the appellants for the said offence is hereby affirmed.

9. Heard on sentence part.

Offence was committed on 05.3.2009 i.e. about nine years back. At that time there was no minimum punishment for commission of offence under Section 354 IPC. Even corporeal punishment was not required. For offence under Section 323 IPC corporal punishment is not required. Looking to the legal aspects of the matter corporal sentences of both the offences imposed on the appellants are reduced to the period already undergone by them. Fine sentence imposed by the trial Court shall remain intact.

10. With this modification, the appeal is allowed in part.

SD/-
(Ram Prasanna Sharma)
JUDGE