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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 2059 of 2000

Dwarikanath Yadav @ Dwarika aged about 46 years S/o Mahendra Pratap Yadav R/o Village Khedpadra, P.S. Sihaba, District Dhamtari (M.P.) (Now Chhattisgarh)

----Appellant

Versus

State of Madhya Pradesh (Now Chhattisgarh)

---- Respondent

For Appellant : Mr. Rahil Arun Kochar, Advocate
For Respondent : Mr. Anand Verma, Dy. Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel
Judgment on Board

20/11/2019

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 29/07/2000 passed in Sessions Trial No. 5/2000 by the Special Judge, Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, Raipur, whereby the Appellant has been convicted under Section 3 (1) (xi) of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act (henceforth 'the Act') and sentenced to undergo RI for 6 months and to pay fine of Rs. 500/- with default stipulation.

2. Facts of the case are that the Prosecutrix (PW1) belongs to Gond Caste. On 20/03/2000 at about 7:00 pm on the day of holy festival, the Prosecutrix had gone to her neighbor namely Phool Chand (PW4) and his wife Sagani Bai (PW4) for taking match box. At that time, the Appellant also came there and seeing her alone, he asked her for Gulal. When the Prosecutrix refused, then the Appellant hold her breasts. The Prosecutrix called her husband. Her husband and Phool chand came

there and seeing them, the Appellant fled away from the spot. Thereafter, she along with her husband had gone to the house of the Appellant, where the Appellant abused them on the name of her caste and told them to do whatever they want. A village meeting was called in the village. The Appellant denied the incident in the meeting. Thereafter, FIR (Ex.P-1) has been lodged. Statement of the Prosecutrix as well as witnesses were recorded under Section 161 of the Cr.P.C. After completion of investigation, a charge-sheet has been filed. Trial Court framed the charges. As many as 13 prosecution witnesses have been examined. No defence witness has been examined. Statement of the Appellant under Section 313 of the Cr.P.C was recorded, wherein he has pleaded his innocence and false implication in the matter.

3. After trial, the trial Court has acquitted the Appellant from charge framed under Section 3 (1) (x) of the Act, however, he has been convicted and sentenced as mentioned in paragraph one of this judgment. Hence, this appeal.

4. Learned Counsel appearing for the Appellant submits that the Appellant has been wrongly convicted by the trial Court without there being any reliable evidence available on record. He further submits that from the evidence adduced by the prosecution, no offence under Section 3 (1) (xi) is made out against the Appellant because there is no evidence available on record on the basis of which it can be said that the alleged act committed with the Prosecutrix was done because of her caste. He further submits that if the entire case is taken as it is, then the offence under Section 354 of the IPC is proved against the Appellant. He further submits that the Appellant has already undergone about 27 days,

therefore, treating the conviction of the Appellant under Section 354 of the IPC, he may be undergone.

5. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that the sentence awarded by the trial Court is just and proper and requires no interference.

6. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.

7. In her court Statement, the Prosecutrix (PW1) has stated that after the alleged incident, she along with her husband had visited to the house of the Appellant. At that time, the Appellant told her that " Ja Godhin Mera Kya Kar Loge". In para 13, she admitted that she is of Gond caste and in her caste, the ladies is described as "Godhin". She further admitted that if someone asked about her caste, then it is said that her caste is Godhin and Godhin word is not an abuse. Thus, from the above, it is clear that at the time of incident, the Appellant had called the Prosecutrix by her caste and not abused her on her caste. Therefore, Section 3 (1) (xi) of the Act is not proved against the Appellant and the same is not made out against him.

8. From the statement of the Prosecutrix and the evidence available on record, only offence under Section 354 of the IPC is proved against the Appellant. Thus, the conviction of the Appellant under Section 3 (1) (xi) of the Act is set-aside and he is convicted under Section 354 of the IPC. As submitted by the counsel for the Appellant that the Appellant has already undergone about 27 days and he is facing the *lis* since 2000, therefore, considering this fact, he is sentenced to the period already undergone by him.

9. Consequently, the Appeal is partly allowed to the extent indicated above.

10. It is reported that the Appellant is on bail. His bail bond is not discharged at this stage and the same shall remain operative for a further period of 6 months in light of Section 437-A of the Cr.P.C.

11. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge

Rahul