

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 3016 of 1999

Mahesh Lohar, S/o- Mohan Lal Lohar, Aged about- 43 years,
R/o- Village Labhandi, Near School, Police Station- Civil Lines,
Raipur (C.G.) **---- Appellant**

Versus

The State of Madhya Pradesh(Now State of Chhattisgarh)
Through:Police Station- Civil Lines, Raipur (C.G.) **---- Respondent**

For Appellant : Mr. Manoj Mishra appears as Amicus
Curiae

For State : Mr. Smita Jha, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

13/12/2019

1. This appeal is preferred against the judgment dated 28th October, 1999 passed by Special Judge (Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act, 1989) Raipur (C.G.), in Special Sessions Case No.105/1998 wherein the said Court convicted the appellant for charge under Sections 451 of Indian Penal Code, 1860 and 3(i)(xi) of the Act, 1989 and sentence him to undergo R.I. for 6 months and fine of Rs.100 and R.I. for 6 months and fine of Rs. 500/- respectively with default stipulations. Though he is convicted for offence under Section 354 of IPC but sentenced for offence under Section (3) (i)(xi) of the Act, 1989.
2. As per version of the prosecution, the prosecutrix was all alone in her house at about 8:30 am on 7th August, 1998 in the house situated at village Labhandi at that time the appellant

entered into her house and inquired about her family members when she replied that no one is present in the house, the appellant caught hold her hand and asked her to sleep with him when her father-in-law namely Agarahit (PW-2) came there the appellant assaulted him. Thereafter, matter was reported at police Station Civil Line Raipur and investigated, the appellant was charge-sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits as under:-

(i) Caste of the prosecutrix is not proved to be Scheduled Castes and her version is contradictory to the version of the other witnesses therefore, the case of the prosecution is not established.

(ii) Trial Court has not evaluated the evidence properly therefore, same is liable to be set aside.

4. On the other hand, learned State counsel submits that finding of the trial Court is based on proper marshaling of the evidence and same is not liable to be interfered with invoking jurisdiction of appeal.

5. As per version of the prosecutrix, the appellant earlier used to come her house for watching television and he is known to her. On date of the incident, he inquired about the family members of the prosecutrix (PW-1) and he caught hold her hand to take her in a room. Version of this witness is supported by FIR which was lodged on the same day. It is further supported by the version of Agarahit Satnami (PW-2), Dukala Bai (PW-3) and Bhavdas (PW-4). Version of these

witnesses have been subjected to the searching cross examination but nothing could be illicited in favour or defence.

6. Appellant has been charge-sheeted for offence under Section 3(i)(xi) of the Act, 1989 on the basis that prosecutrix is a member of Scheduled Castes. As per Article 341(1)(2) of the Constitution of India, definition of Scheduled Castes is given as under:-

Article 341.—(1) The President may with respect to any State or Union Territory and where it is a State after consultation with the Governor thereof, by public notification specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State . Or Union Territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause of any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

7. In the present Case, no notification is proved and no caste certificate is proved by any witnesses. In absence of caste certificate caste of the prosecutrix is not proved to be Scheduled Caste. As no officer was examined before the trial

Court to establish that as per the Public Notification the prosecutrix included in any of the caste which is included in such notification to be Scheduled Castes. Therefore, conviction of the appellant under Section 3(i)(xi) of the Act, 1989 is not sustainable.

8. From the evidence of the prosecution supported with an FIR, it is established that appellant intended to outrage the modesty of the prosecutrix and that is why he entered into her house. Act of the appellant falls within mischief of the Section of 451 of IPC and 354 of IPC therefore, conviction of the appellant under Section 451 and 354 is hereby affirmed.
9. In the present case, date of the offence is 7th August, 1998. At that time jail sentence was not compulsory and no minimum sentence was prescribed for offence under Section 354 of IPC and no minimum sentence was prescribed for Section 451 of IPC. The appellant has suffered jail term of two days. In the present case, his sentence is reduced to the period already undergone by him. However, fine amount imposed on appellant by the trial Court shall remain intact.
10. With this modification, this appeal is partly allowed.

Sd/-

(Ram Prasanna Sharma)
Judge