

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No. 200 of 2002**

Damaru S/o Chetan, aged about 22 years, Occupation Motor Driver, R/o Bakal,  
P.S. Bhanpuri, Distt. Bastar (C.G.).

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

State of Chhattisgarh, Through P.S. Ajak, Jagdalpur, Distt. Bastar (C.G.)

**---- Respondent**


---

|                |   |                              |
|----------------|---|------------------------------|
| For Appellant  | : | Mr. Rajkumar Yadav, Advocate |
| For Respondent | : | Ms. Seema Dixit, PL          |

---

**Hon'ble Shri Justice Arvind Singh Chandel****Judgment on Board****22/11/2019**

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 06/02/2002 passed in Sessions Case No. 444/2001 by the Special Judge, Schedule Caste & Schedule Tribe (Prevention of Atrocities) Act, Jagdalpur, whereby the Appellant has been convicted under Section 354 of the Indian Penal Code and Section 3 (1) (xi) of the Schedule Caste & Schedule Tribe (Prevention of Atrocities) Act (henceforth 'the Act') and sentenced to undergo RI for 2 years with fine of Rs. 1000/- and RI for 2 years with fine of Rs. 1000/-, respectively, with default stipulations.
2. Facts of the case are that Prosecutrix/Complainant Mangali (PW2) belongs to caste of Bhatra (schedule tribe). The Appellant belongs to general caste. On 21/07/2001, the Prosecutrix had gone to her elder father to perform Hareli festival along with Dasami and Somli. At about 8:00 pm, when she was returning from there on the way, the Appellant

caught hold her and pulled her to go with him. Somli and Dasami tried to intervene, but the Appellant threatened them. Thereafter, he took the Prosecutrix towards Mahuva Tree and removed her clothes. On crying, husband of the Prosecutrix reached to the spot, then the Appellant fled away from the spot. The matter was report and on that basis, offence has been registered. Statement of the witnesses as well as the Prosecutrix 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 5 prosecution witnesses have been examined. Sukhmati (DW1) has been examined in defence. 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 convicted and sentenced the Appellant 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 the Prosecutrix has falsely implicated the Appellant due to some dispute with her husband. There are material contradictions and omissions occurred in the statement of the witnesses, therefore, the trial Court has wrongly believed the statement of the witnesses. The conviction of the Appellant is not sustainable. He further submits that if the entire case of the Prosecution is taken as it is, yet it is not established that the alleged act has been committed because the Prosecutrix belongs to a particular caste.
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. D.S. Ukey (PW1) is a witness who prepared spot map vide Ex.P-1 and recorded statement of witnesses under Section 161 of the Cr.P.C. The Prosecutrix (PW2) is a married lady who, in her Court statement, has deposed that on the date of incident at about 8:00 pm, when she was returning along with Dasmi and Somli, the Appellant met them on the way. He pulled her then Dasmi and Somli tried to intervene, but the Appellant committed Marpeet with them. Thereafter, Somli and Dasmi had gone to call other people. The Appellant took her towards bushes of Mahua tree and removed her clothes. When she shouted, then her husband Chailu came there. During cross-examination of this witness, some suggestions were made by the defence that there was one other person namely Mahra with the Appellant who had caught hold the Prosecutrix, but she denied the suggestion. Further suggestion was made to her that when the Appellant was holding her at that time, she was not feeling shame. This suggestion itself suggests that it has been admitted by the Appellant that he has caught hold the Prosecutrix. Somli (PW3) is one of the eye-witness of the incident and she has supported the entire incident. This witness has remained firmed during her cross-examination. Chaitu Ram (PW4) has also supported the statement of the Prosecutrix and deposed that on listening the crying of the Prosecutrix, he reached there and saw that the Appellant was removing the clothes of the Prosecutrix.

8. On minute examination of above evidence, it makes clear that the Prosecutrix has categorically stated that the Appellant had caught hold her and pulled off her sarree. The above statement of the Prosecutrix was dully supported by Somli (PW3). During cross-examination of the Prosecutrix, it was suggested to her that the Appellant caught hold the Prosecutrix, this itself means that the offence was committed by the Appellant. Thus, offence under Section 354 of the IPC is duly proved against the Appellant.
9. With regard to offence under Section 3 (1) (xi) of the Act, there is no evidence available on record on the basis of which it can be said that the alleged act has been committed with the Prosecutrix because she belongs to a particular caste. In these circumstances, offence under Section 3 (1) (xi) of the Act is not proved against the Appellant.
10. In the result, the Appeal is partly allowed. The Appellant is acquitted from the charge framed under Section 3(1) (xi) of the Act, however, his conviction Section 354 of the IPC is affirmed.
11. As submitted by the counsel for the Appellant, the Appellant has already undergone about 2 days in jail, there is no previous antecedent against the Appellant and he is facing the *lis* since 2001, therefore, I am of the view that the ends of justice would be met if, while convicting the Appellant under Section 354 of the IPC, the jail sentenced awarded to him is reduced to the period already undergone by him and the fine sentence imposed under Section 354 of the IPC is enhanced to Rs. 15000/-. Ordered accordingly. The above fine amount shall be payable within 2 months. In default of payment, the Appellant shall be liable to undergo RI for 3 months. If any amount towards fine has been paid, the

same shall be adjusted the fine amount enhanced today.

12. It is reported that the Appellant/accused 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 view of the provisions contained in Section 437-A of Cr.P.C.
13. 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**