

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.335 of 2005**

Nagendra Kumar Keshari, aged 25 years, S/o. Gulab Chand Keshari, R/o. Village Balangi PS Chandani, Distt. Sarguja (CG)

---- Appellant

Versus

The State of Chhattisgarh through Police Station S.T & S.C. Ambikapur, Sarguja (CG)

---- Respondent

 For the appellant : Shri Bishnu Muni, Advocate
 For the Respondent/State: Shri Aman Kesharwani, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****29.11.2019**

1. The appeal is preferred against judgment dated 06.4.2005 passed by Special Judge, Sarguja (Ambikapur) (CG) in Special Session Trial No.140/2000 wherein the said Court convicted the appellant for the commission of offence under Section 354 of the Indian Penal Code read with Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act 1989 (for short 'the Act 1989') and sentenced him to undergo rigorous imprisonment for six months and to pay fine of Rs.1000/- with default stipulation.

2. In the present case prosecutrix is PW-6. To substantiate the charges, the prosecution has examined as many as six witnesses. No one proved the caste certificate of the prosecutrix. The appellant has been charge sheeted for the offence under

Section 3(i)(xi) of the Act, 1989 on the basis that the prosecutrix is a member of Scheduled Tribe. As per Article 342 of the Constitution of India, definition of Scheduled Tribes is given as under:

“342. Scheduled Tribes.- (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 tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes 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 Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.”

3. In the present case, 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 Tribe. Again there is no evidence that the offence is committed on the basis of the caste. As per the version of the prosecutrix, the appellant tried to outrage her modesty and that is because she is of opposite sex.

4. From the entire record neither it is established that the prosecutrix is a member of Scheduled Tribe nor it is established that any act was committed on the basis of the caste. For

commission of offence under Section 3(i)(xi) of the Act, 1989, it has to be established that the prosecutrix is a member of the Scheduled Tribe or Scheduled Caste. For proving this fact, no one was examined and therefore, charge under this Act is not established. Therefore, The appellant is acquitted of the said charges. Accordingly, his conviction and sentence for the said offence is hereby set aside.

5. From the evidence of the prosecutrix, it is established that the appellant caught hold the hands of the prosecutrix and tried to remove her garments and tried to press her body parts. This evidence is not rebutted in cross-examination and it is further supported by FIR (Ex-P/11) in which name of the appellant is mentioned as culprit and his act of outraging the modesty is also mentioned. From the entire evidence, it is established that the appellant outraged the modesty of the prosecutrix. The trial Court after evaluating the entire evidence, recorded finding of conviction against said offence and this Court has no reason to record a contrary view. Accordingly, conviction of the appellant under Section 354 IPC is hereby affirmed.

6. In the present case date of incident is 17.02.1998. On the said date jail sentence was not compulsory for offence under Section 354 IPC. The appellant has served jail term from 21.9.1998 to 17.10.1998 which comes out to 26 days. He was also fined to pay Rs.1000/-. Considering the facts and circumstances of the case, this court is of the opinion that ends of justice would be met if the appellant is sentenced to the jail term

of period already undergone by him. Accordingly, his sentence is reduced to the period already undergone by him. However, fine sentence imposed by the trial Court shall remain intact.

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

Sd/-
(Ram Prasanna Sharma)
JUDGE

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