

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.467 of 2003**

Bhuru Alias Abdul Rafique, aged about 19 years, S/o. Abdul Rashid R/o. Darri Basti PS Darri Distt. Korba (CG)

---- Appellant

Versus

The State of Chhattisgarh through Police Station Darri Distt. Korba (CG)

---- Respondent

 For the appellant : Shri Ishwar Jaiswal, Advocate
 For the Respondent/State: Smt. Smita Jha, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****19.11.2019**

1. The appeal is preferred against judgment dated 22.02.2003 passed by Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act 1989 (for short 'the Act 1989'), Bilaspur (CG) in Special Session Trial No.148/2001 wherein the said Court convicted the appellant for the commission of offence under Section 354 of the Indian Penal Code and under Section 3(1)(xi) of the Act 1989 and sentenced him to undergo simple imprisonment for six months and simple imprisonment for six months respectively.

2. In the present case prosecutrix is PW-1. As per the case of the prosecution, on the date of incident, i.e. on 27.9.2000, the prosecutrix was at her home in village Darri, where the appellant entered into the room and removed the undergarments of the

prosecutrix and also removed his pant and caught hold her hands. At that time, brother of the prosecutrix came there and seeing to the brother, the appellant fled away from there. The matter was reported and investigated and the appellant was charge sheeted. After completion of the trial, he was convicted and sentenced as mentioned above.

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

(i) Evidence of the prosecutrix is not dependable because the same is deposed after due deliberation and it is a case of concoction.

(ii) Evidence of other witnesses are not supporting piece of evidence and the same is not liable to be acted upon.

(iii) The offence was not committed because the prosecutrix belongs to Scheduled Caste (Satnami), therefore, finding of the trial Court regarding the offence under the Act 1989 is liable to be set aside.

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

5. In the present case, date of incident is 27.9.2000 and report was lodged on the same day naming the appellant as culprit at Police Station Darri. The prosecutrix deposed before the trial Court that the appellant removed her undergarments and thereafter removed his pants and caught hold her hands. At that

time, her brother came there that is why the appellant fled away from there. Version of this witness is unrebutted during cross-examination and it is further supported by the FIR. Other witnesses are not the eyewitness of the incident and some of the witnesses are witnesses of the investigation after registration of FIR. From the evidence of the prosecutrix, which is dependable and supported with FIR, it is clear that the appellant tried to outrage the modesty of the prosecutrix and this act of the appellant falls within the mischief under Section 354 IPC.

6. It is not a case where the offence is committed on the basis of the caste of the prosecutrix, but it is committed on the basis of sex. Therefore, finding of the trial Court that the offence under Section 3(1)(x) of the Act 1989 is established against the appellant is without substance. Conviction of the appellant for the offence under Section 3(1)(xi) of the Act 1989 is not liable to be sustained and the same is hereby set aside. Accordingly, he is acquitted of the said charge.

7. The appellant has been convicted under Section 354 IPC. Date of incident is 27.9.2000 and on that date no minimum sentence was prescribed for commission of offence under Section 354 IPC. The appellant suffered jail term from 30.10.2001 to 28.11.2001 i.e. thirty days, the incident took place 19 years ago, therefore, no useful purpose would be served if the appellant is again sent to jail. 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.

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

Sd/-
(Ram Prasanna Sharma)
JUDGE

Bini