

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 94 of 2005

- Rudal Yadav, S/o Baldev Yadav, Aged about- 26 years, Occupation- Fabrication work in company, R/o Ghasidas Nagar, P.S.- Jamoul, Tahsil & District- Durg (C.G.)

---- Appellant

Versus

- State of Chhattisgarh, Through- P.S.- Jamoul, District- Durg (C.G.)

---- Respondent

For Appellant	: Shri Rajesh Jain, Advocate
For State/Respondent	: Smt. Smita Jha, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

Oral Judgment

14/10/2019

1. This appeal is preferred against judgment dated 11th January, 2005 passed by Special Judge/Additional Sessions Judge, [Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, "the Act, 1989") Durg (C.G.) in Sessions Trial No. 116/2003, wherein the said Court convicted the appellant for commission of offence under Section 3(1)(xi) of the Act, 1989 and Sections 294 and 354 of Indian Penal Code, 1860 and sentenced him to undergo R.I. for one month and fine of Rs. 200/-, R.I. for the six months and fine of Rs. 500/- and R.I. for six months and fine of Rs. 500/- respectively with default stipulations.
2. As per the prosecution case on 19th September, 2003 at about 10:00 pm, the prosecutrix went to ease outside of house and at the same time the appellant came there caught hold her

and outraged her modesty. The matter was reported at Police Station- Jamoul on the same date naming the appellant as culprit. After registration of FIR matter was investigated and appellant was convicted and sentenced as mentioned above.

3. Learned counsel for the appellant submits that there is no evidence that appellant had knowledge regarding caste of the prosecutrix, therefore, it is not a case related to caste, but at the most it can be related with sex, therefore, offence under Section 3(1)(xi) of the Act, 1989 was not made out. Version of the prosecutrix and other witnesses is contradictory in nature, therefore, charge under Sections 354 and 294 of IPC is also not made out. The trial Court has not evaluated the entire evidence in its true perspective, therefore, conviction and sentence awarded by the trial court be quashed.
4. On the other hand, learned counsel for the State submits that finding of the trial Court is based on proper marshalling of evidence which is not required to be quashed while invoking jurisdiction of appeal.
5. I have heard learned counsel for the parties and perused the record of the Court below wherein judgment has been passed.
6. The question for consideration of this Court is whether offence under Section 3(1)(xi) of the Act, 1989 was made out. Though one document Ex.P/4 is filed before the trial Court which is caste certificate of the prosecutrix and as per caste certificate prosecutrix is Pasi by caste. In the caste certificate it is mentioned that certificate is issued on the basis of earlier

certificate issued at Jahanabad (Bihar), but no one was examined to prove this certificate regarding caste of the prosecutrix, therefore, document Ex.P/4 is not proved and it cannot be used against the appellant. Prosecutrix (PW-5) did not depose before the trial Court that appellant had knowledge about her caste and he committed any act against her on the basis of caste. As the certificate regarding caste of the prosecutrix is not proved and there is no evidence that appellant had knowledge of caste of the prosecutrix, therefore, it cannot be held that appellant committed any act against the prosecutrix knowing her to be a member of scheduled caste.

7. In view of the above, charge under Section 3(1)(xi) of the Act, 1989 is not established. The next question for consideration of this Court is whether appellant outraged modesty of the prosecutrix by criminal force. As per version of prosecutrix (PW-5) she was sitting in the field to ease herself and at the same time appellant reached there and hug her and also used obscene words in front of her house. Version of this witness is not rebutted in her cross-examination and it is further supported by version of Jogendar Choudhary (PW-4) and Arjun Lal (PW-3) which is supported by Ex.P/2. Looking to the entire evidence it can be inferred that appellant used criminal force against the prosecutrix knowing it to be likely that outraged her modesty and used obscene words which were related to sex and moral. After re-assessing the entire evidence, this Court has no reason to record a contrary finding

regarding commission of offence under Sections 354 and 294 of IPC, 1860. The appellant is acquitted from the charge under Section 3(1)(xi) 1989, but his conviction under Sections 354 and 294 of IPC is hereby affirmed.

8. Heard on the point of sentence.

9. As per record, offence was committed on 19th September, 2003 and at that time Criminal Law Amendment Act, 2013, was not in force which is in force since 3rd February, 2013 before passing of amendment Act. Jail sentence was not compulsory for offence under Section 354 of IPC and jail sentence is also not compulsory for offence under Section 294 of IPC. The appellant already suffered jail term of 7 days and paid fine of Rs. 1200/-. Considering the facts and circumstances of the case, this court is of the view that ends of justice would be served if the sentence of the appellant under Sections 354 and 294 of IPC is reduced to the period already undergone by him while maintaining the he sentence of fine which shall not be refundable to appellant. It is ordered accordingly.

10. Accordingly, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge