

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 31-7-2019****Pronounced on 1-8-2019****Criminal Appeal No. 289/2004**

(Arising out of judgment of conviction and order of sentence dated 17-2-2004 passed by Special Judge constituted under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities, Act 1989 (hereinafter called as 'SCST Act), Bastar at Jagdalpur in ST No. 110/2003)

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Atul B. Mistri S/o. B.T. Mistri age 33 years, occupation Contractor
Resident Nayapara, Jagdalpur, Distt. Bastar (CG)

Appellant**versus**

State of Chhattisgarh through Station House Officer, PS Korrer, Distt.
Bastar (CG)

Respondent

For appellant : Mr. Y.C. Sharma, Adv.
For respondent/State : Mr. Vinod Tekam, PL.

Hon'ble Shri Sharad Kumar Gupta, Judge
C.A.V. JUDGMENT

1. In this criminal appeal the challenge is levied to the judgment of conviction and order of sentence dated 17-2-2004 passed by Special Judge constituted under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities, Act 1989 (hereinafter called as 'SCST Act), Bastar at Jagdalpur in ST No. 110/2003 whereby and whereunder he convicted and sentenced the appellant as under :-

Offence u/S.	RI for	Fine Rs.	In default of payment of fine
354, IPC	1 and ½ years	1,000/-	RI for 4 months
3(1)(xi), SCST Act	2 years	1,500/-	RI for 6 months

Both the jail sentences have been directed to run concurrently.

2. In brief the prosecution story is that at the time of alleged incident prosecutrix who was 18 years old resident of village Budeli. She is a member of scheduled tribe. On 5-7-2002 she, her girlfriends Ku. Dashmat, Ku. Dayaro Bai and other labours had gone to do the work at the construction site of new culvert. At about 1.30 am **mansion** Lalsu and Balram told her that she prepare tea for appellant who was the contractor. She went in camp quarter along with Ku. Dashmat. When she served tea to the appellant, he caught hold her hand and pressed her breast. He also threatened her to kill. Her girlfriends Ku. Dashmat had intervened and separated her from him. Due to shame she narrated the incident to her father, mother and uncle on 6-7-2002. On 7-7-2002, about 19.30 hour she lodged an FIR against him in police station Korar. After completion of the investigation, a charge sheet was filed against him for the offences punishable under Sections 354, 506-B, IPC and Section 3(1)(x), (xi) of the SCST Act. Trial Court framed charges against him for the offences publishable under Sections 354, 506-II, IPC and Section 3(1)(xi) of the SCST Act. To bring home the charges the prosecution examined 5 witnesses in all. He examined 2 witnesses on his defence. After completion of trial, trial Court convicted and sentenced him as aforesaid. However, trial Court acquitted him of the offence punishable under Section 506-II of the IPC.

3. Being aggrieved, appellant preferred this Criminal Appeal.

4. Counsel for the appellant argued that Trial Court has not appreciated the evidence in proper perspective. Thus, the conviction and sentences of the appellant are bad in eyes of law. Hence, appellant may be acquitted of the aforesaid charges.

5. Counsel for the State argued that the conviction and sentences of the appellant are based on clinching evidence. The conviction and

sentences of the appellant do not call for any interference by this Court.

6. P.W. 1 prosecutrix says in para 3 of her statement given on oath that when she served tea to appellant, he caught hold her hand and pressed her breast.
7. P.W. 2 Ku. Dasmata says in para 2 of her statement given on oath that when she entered inside after hearing the shouts of P.W. 1 Prosecutrix, she saw that appellant had caught hold hand of prosecutrix.
8. P.W. 3 Ku. Dayaro Bai says in para 2 of her statement given on oath that P.W. 1 Prosecutrix had told her that appellant had caught hold her hand.
9. D.W. 1 Lalsuram and D.W. 2 Balram Mandavi say in para 2 of their statements given on oath that P.W. 1 Prosecutrix had served tea to appellant and them. After closing the work of the site all the people had gone away. Due to some dispute appellant had engaged the labours from other villages thus, labours of village Budeli had given threatening that they will falsely implicate him.
10. There is no such evidence on record on strength of which it can be said that aforesaid statements of P.W.1 prosecutrix, P.W.2 Ku. Dasmata, P.W.3 Ku. Dayaro Bai are not simple, not natural, not normal.
11. As per the alleged FIR Ex.P-1 appellant had caught hold the hand of the prosecutrix and pressed her breast.
12. There is no such evidence on record on strength of which it can be said that Ex.P-1 is fabricated and lodged after thought to falsely the appellant.

13. Looking to the above mentioned facts and circumstances of the case this Court finds that aforesaid statements of P.W.1 prosecutrix, P.W. 2 Ku. Dasmal, P.W.3 Ku. Dayaro Bai are simple, natural, normal. Thus, this Court believes on them and disbelieves aforesaid statements of D.W.1 Lalsu Ram, D.W.2 Balram Mandavi in the reference that appellant had not committed any offence.
14. In **Bhalchand Tiwari @ Bhola v State of Chhattisgarh {2016 (3) CGLJ Vol. 363}** it has been held that the appellant is acquitted of the charge under Section 3(1)(XII) of the Special Act because it is not proved that the appellant had dominated the will of the Prosecutrix and used his position to exploit her sexually simply because she belonged to the Scheduled Tribe Category.
15. In the judgment of the Division Bench of this Court in **Bhikhar and Others v. State of Chhattisgarh passed in Cr.A. No. 328 of 2003 decided on 14.06.2016** it was observed that so far as the conviction of the appellants under Section 3(2)(V) of the Act is concerned, in the present case, there is no evidence at all to the effect that appellants had committed the offence on the ground that the deceased belonged to Scheduled Caste Category. In the absence of such ingredients merely because the deceased happens to be a member of Scheduled Caste Category, automatically the offence under Section 3(2)(V) of the Act is not made out against the appellants.
16. The Division Bench of this Court in its decision dated 14-12-2017 passed in Cr.A. No. 304/2007 in the matter of **Devchand Patel and Others v. State of Chhattisgarh** observed that so far

as conviction under Section 3(2)(V) of the Act, 1989 is concerned, since it has already been held that the appellants have not committed any offence as against the deceased, the question of their conviction under this Section does not arise. Even otherwise this is not a case of the prosecution that as the deceased belonged to a particular caste, he was subjected to beat, rather it has been established from the evidence that it was the deceased who being at fault was beaten by the villagers, which unfortunately resulted in his death. Therefore, the accused are acquitted of this charge also.

17. The Hon'ble Supreme Court in **Dinesh @ Buddha v. State of Rajasthan {2006 (3) SCC771}** in para-15 has held as under:

“ 15. Sine qua non for application of Section 3(2)(v) is that an offence must have been committed against a person on the ground that such person is a member of Scheduled Castes and Scheduled Tribes. In the instant case no evidence has been led to establish this requirement. It is not case of the prosecution that the rape was committed on the victim since she was a member of Scheduled Caste. In the absence of evidence to that effect, Section 3(2)(v) has no application. Had Section 3(2)(v) of the Atrocities Act been applicable then by operation of law, the sentence would have been imprisonment for life and fine.”

18. From the aforesaid judicial precedents laid down by this Court in the matter of **Bhalchand Tiwari @ Bhola, Bhikhar and Others**, and **Devchand Patel and Others** and by the Hon'ble Supreme Court in the matter of **Dinesh @ Buddha (supra)**, this Court finds that to attract the provisions of SCST Act it is not sufficient that prosecutrix was either member of scheduled caste or

scheduled tribe. The essential element for applicability of SCST Act is that accused had committed offence only this ground that she was either member of scheduled caste or scheduled tribe. In the case in hand, there is no such evidence on record on the strength of which it can be said that the appellant had committed said offence allegedly merely on the ground that the prosecutrix was a member of the Scheduled Tribe.

19. After appreciation of the evidence this Court finds that the prosecution has succeeded to prove beyond reasonable doubt the charge punishable under Section 354 of the IPC, but failed to prove beyond reasonable doubt the charge punishable under section 3(1)(xi) of the SCST Act, 1989 against the appellant. Thus, this Court affirms the conviction of the appellant under Section 354 of the IPC and sets aside the conviction and sentence of the appellant punishable under section 3(1)(xi) of the SCST Act.

20. Appellant is acquitted from the charge punishable under Section 3(1)(xi) of the SCST Act extending him benefit of doubt. The fine amount as awarded by the trial Court for said offence, if already deposited by the appellant, the same be refunded to him after the expiration of prescribed period of the further legal remedy available to the parties.

21. So far as sentence is concerned for the offence punishable under Section 354 IPC, the appellant remained in jail since 29.08.2002 to 03.09.2002. Near about 17 years have passed from the date of incident. At the time of incident, he was aged about 33 years, now he is about 50 years old. Now he is in

mainstream of society. Sending him to jail would disturb him as well as his family members' life. At the time of the incident, no minimum jail sentence was provided for the offence punishable under Section 354 of IPC. Hence, no useful purpose would be served if he is sent to jail after 17 years of the incident. Looking to these circumstances and observation made by Hon'ble Supreme Court in the matter of **Manjappa -v- State of Karnataka** [(2007) 6 SCC 231] this Court is of the opinion that cause of justice would be sub-served, if RI for one and half year for the offence punishable under Section 354, IPC is reduced to the sentence for the period already undergone by him and fine amount be suitably enhanced.

22. Consequently, the appeal is partly allowed. The sentence of the appellant under Section 354, IPC for one and half year is reduced to the period already undergone by him and fine amount of Rs. 1000/- is enhanced to Rs. 25,000/- (Rupees twenty five thousands only), in default of payment of fine, to further undergo additional RI for four months.

23. The appellant is granted two months' time from the date of this order for depositing the fine amount. The fine amount deposited earlier by the appellant shall be adjusted in the fine amount of Rs. 25,000/-.

24. After the prescribed period of legal remedy available to the parties, Rs. 20,000/- (Rupees twenty thousands only) out of the fine amount of Rs. 25,000/-, if deposited, be given to the prosecutrix as compensation.

25. Accordingly, the appeal is partly allowed.

26. The appellant is reported to be on bail. His bail bonds stands cancelled subject to the provisions of Section 437-A, Cr.P.C.

Sd/-
(Sharad Kumar Gupta)
Judge