

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 37 of 2011**

- Ramlal Sahu, S/o- Shri Vasudev Sahu, Aged about- 50 years, R/o- Near Bharti Vidya Mandir, Beladula, Thana-Chakradharnagar, District- Raigarh (C.G.) ---- **Appellant**

Versus

- State of Chhattisgarh, through- Station House Officer, Scheduled Caste and Scheduled Tribe Welfare, P.S.- Raigarh (C.G.)

---- Respondent

For Appellant : Shri Rajendra Tripathi, Advocate.

For State/Respondent : Shri Aman Kesharwani, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****29/11/2019**

1. This appeal is preferred against the judgment dated 24th September, 2010 passed by Special Judge {Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989} (for short 'the Act, 1989') in Special Case No. 04/2009 wherein the said Court convicted the appellant for commission of offence under Section 3(1)(xi) of the Act, 1989 read with Section 354 of IPC and 3(1)(x) of the Act, 1989 and sentenced to undergo R.I. for six months and fine of Rs. 1000/- and R.I. for six months and fine of Rs. 1000/- respectively with default stipulations.
2. In the present case, prosecutrix is PW-1. To substantiate the charge the prosecution examined as many as 5 witnesses. No one examined to establish the caste of the prosecutrix. No certificate was produced in this regard. Though it is deposed by the prosecutrix (PW-1) and Sattu Singh (PW-2) that the prosecutrix is Gond by caste and she is a member of Scheduled Tribe, but no one deposed before the trial Court that any offence was committed against prosecutrix on the basis of caste. As per version of the prosecutrix the appellant asked to marry with him

and then he touched the body of the prosecutrix. From the statement of prosecutrix, it is clear that appellant was willing to marry with the prosecutrix that is why incident took place, therefore, it is a case based on sex and not based on caste. From the statement of the prosecutrix and other witnesses offence is not based on caste and therefore, charge under Sections 3(1)(x) and 3(1)(xi) of the Act, 1989 is not established. Accordingly, the appellant is acquitted from both the charges. His conviction and sentenced passed by the trial Court is hereby set aside for these offences.

3. From the evidence of the prosecutrix and other witnesses, it is clear that the appellant tried to outrage modesty of the prosecutrix by touching her body, therefore, case of the prosecutrix falls within mischief under Section 354 of IPC for which the trial Court convicted him and his conviction for the said offence is hereby affirmed.
4. Heard on point of sentence.
5. Jail sentence was not compulsory for offence under Section 354 of IPC at the time to commission of offence i.e. on 17th March, 2008. In the facts and circumstances of the case, this Court is of the opinion that ends of justice would be served if the jail sentence imposed by the trial Court is reduced to period already undergone by the appellant which is two days of jail term. It is ordered accordingly. However the fine imposed by the trial Court shall remain intact.
6. With this modification, the appeal is allowed in part.

Sd/-
(Ram Prasanna Sharma)
Judge