

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.249 of 2011**

Ramkumar Patel alias Bhuvneshwar, son of Mohan Patel, aged about 42 years, occupation Panchayat Secretary, resident of Village Hichcha, Station Sarangarh, District Raigarh, Chhattisgarh

---- **Appellant**

versus

State of Chhattisgarh through Station Incharge, SC/ST, District Raigarh, Chhattisgarh

--- **Respondent**

For Appellant	:	Shri Arvind Shrivastava, Advocate
For Respondent	:	Shri K.K. Dewangan, Dy. Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

30.7.2019

- The instant appeal has been preferred against the judgment dated 4.3.2011 passed by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (henceforth 'the Act'), Raigarh in Special Case No.2 of 2010, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 448 of the Indian Penal Code	Rigorous Imprisonment for 3 months and fine of Rs.1000/- with default stipulation
Under Section 354 of the Indian Penal Code	Rigorous Imprisonment for 3 months and fine of Rs.1000/- with default stipulation

- Prosecution case, in brief, is that on 21.10.2009 at about 11:30 p.m., the prosecutrix (PW1), a married woman was present at her

house along with her children. Her husband had gone to Raigarh. Allegedly, the Appellant came to her house, knocked the door and when she opened the door he entered her house and made indecent proposal to her. When she refused, he used criminal force to outrage her modesty. She warned him of the consequences. Thereafter, he left her house. The matter was informed by her to her husband telephonically and on 22.10.2009, First Information Report (Ex.P6) was lodged by her. On the basis of the report, offence was registered against the Appellant. On completion of the investigation, a charge-sheet was filed against the Appellant for offences punishable under Sections 456 and 354 of the Indian Penal Code and Section 3(1)(xi) of the Act. Charges were framed against him under Sections 456 and 354 of the Indian Penal Code and Section 3(1)(xi) of the Act.

3. In support of its case, the prosecution examined as many as 11 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellant denied the guilt and pleaded false implication. No witness has been examined in his defence.
4. On completion of the trial, vide the impugned judgment, the Trial Court acquitted the Appellant of the charge under Section 3(1)(xi) of the Act, but convicted and sentenced him as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submits that the statement of the prosecutrix (PW1) is unreliable, incredible and illogical. There are material contradictions and omissions in her statement. It has been admitted by her and her husband that before lodging of the FIR, they had visited their Advocate which raises a serious doubt over veracity of the allegation and the FIR.

Children of the prosecutrix, who were present inside the house, have not been examined nor has any of them been cited as a witness.

6. Learned Counsel appearing for the State opposes the submission and supports the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. The prosecutrix (PW1) has deposed that on the date of incident when she was alone at her house along with her children, at about 11:00 p.m., she heard voice of knocking of the door of her house. She replied that she will not open the door because her husband was not present at home. Thereafter, when she opened the door, the Appellant entered her house and catching her hands said her that they will celebrate wedding night. She refused him and told that she will told about this to her husband. On this, the Appellant went away. It has been further deposed by this witness that on the next day in the morning, she went to Sarangarh and talked to her husband telephonically. She also asked him to come to Sarangarh from Raigarh. Her husband reached Sarangarh. Thereafter, she lodged the FIR. In her cross-examination, in paragraph 9, she has further deposed that she had talked to her husband on phone from the shop of a Marwadi at Sarangarh. Contrary to this, Khemrajeshwar (PW7) has stated that on the next day of the incident at about 6 a.m., the prosecutrix came to him and told him about the incident took in the night and she informed her husband about the incident by using his phone. In his cross-examination, Khemrajeshwar has admitted in paragraph 5 that near the house of the prosecutrix, houses of Navratan, Manohar, Chandan and Anjor

Singh were situated and the prosecutrix was not at inimical terms with them. In her cross-examination, in paragraph 7, the prosecutrix (PW1) has admitted the fact that at the time of incident, she was along with her children and her eldest daughter was of 13 years and her all children were sleeping at that time and none of her children woke up. It has further been deposed by her that when the Appellant had caught her arm, bangles of her wrist had broken, but she has not mentioned this fact in her report nor did she state this in her statement recorded under Section 161 of the Code of Criminal Procedure nor did she give the broken bangles to the police. The prosecutrix, in her cross-examination, has also admitted that the Appellant was the Sarpanch of the village from 2000 to 2005 and he had not got her allotted/received a house being made available in the Indira Awas Scheme. Though she denied the suggestion that due to this reason she has falsely implicated the Appellant.

9. On a minute examination of the evidence available on record, it is clear that in the First Information Report (Ex.P6), it was mentioned by the prosecutrix that the Appellant had come to her house in the night and had given her call and he had also asked her to open the door of her house and she opened the door on being recognised his voice. But, in her Court statement, the prosecutrix (PW1) has deposed that having heard knocking of the door, first she refused to open the door, but thereafter, she opened the door and then the Appellant entered the house. But, the above statement given by the prosecutrix does not inspire confidence because the incident had taken place at about 11:30 p.m. and her husband was not present at home at that time. In these circumstances, if any known or unknown person asked her to open the door and she opened

the door of her house, it is not natural. Apart from this, from the statement of the prosecutrix, it is also clear that Navratan, Manohar, Chandan and Anjor Singh were also residing near her house, but she did not inform any of them about the incident. Instead, she informed about the incident to Khemrajeshwar (PW7), who was not her neighbour. For this reason also, the statement of the prosecutrix does not appear to be reliable. In her Court statement, the prosecutrix has stated that she had called her husband by giving him a phone call from the shop of a Marwadi situated at Sarangarh. But, her husband Mangal Singh (PW2) and Khemrajeshwar (PW7) have deposed that the prosecutrix had informed her husband about the incident after going to the house of Khemrajeshwar (PW7) by using his phone. For the reasons discussed above, the entire statement of the prosecutrix appears to be suspicious. Therefore, the Appellant is entitled to get benefit of doubt.

- 10.** Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charges framed against him.
- 11.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge