

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 28-1-2019

Delivered on 8-3-2019

Criminal Appeal No. 552 of 2009

- Bablu s/o Ramsai Rajwar aged about 19 years, occupation agriculturist, r/o. Village Panpurkhurd, PS Ambikapur, Dist. Sarguja (CG).

---- Appellant

Versus

The State of Chhattisgarh Through Police Station Schedule
Caste Welfare (Ajaak) Ambikapur, Dist. Sarguja (CG).

---- Respondent

For the appellant : Mr. Jitendra Shrivastava, Advocate

For the respondent/State : Mr. V.B. Singh, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is directed against the judgment of conviction and order of sentence dated 28-7-2009 passed by the Special Judge, Ambikapur, Dist. Sarguja (CG) in Special Sessions Trial No. 82 of 2008 wherein the said Court convicted the appellant for the commission of offence under Section 3 (1) (11) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, the Act, 1989 and Section 323 of the IPC and sentenced him to undergo rigorous imprisonment for RI for six months and to pay

fine of Rs.1000/- and RI for six months and to pay fine of Rs.500/- with default stipulations.

2. In the present case, prosecutrix is PW/1. As per version of the prosecution, on 29-6-2008 at about 7.00 pm when the prosecutrix went to answer the call of nature, accused forcibly tried to outrage her modesty. When she shouted then neighbour namely Munni Gond came there and thereafter appellant fled away from the spot. The matter was reported to the Police Station and after completion of investigation charge sheet was filed, the appellant did not plead guilty and the trial was conducted. After completion of trial, the trial Court convicted and sentenced the appellant as aforementioned.

3. Learned counsel for the appellant submits as under:

- I) As per version of prosecutrix , appellant did not act on the basis of caste, therefore, conviction under Section 3(1)(11) of the Act, 1989 is not proper.
- II) There is major contradiction in the statement of the prosecutrix and PW/4 Munni Bai has not supported her version, therefore, finding of the trial Court is not liable to be sustained.
- iii) The trial court overlooked the major contradictions and omissions in the statements of

the prosecution witnesses, therefore, finding of the trial Court is liable to be set aside.

4. On the other hand, learned counsel for the State submits that the finding recorded by the trial Court is based on proper marshaling of evidence and the same is not required to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the material available in the record.

6. PW/1 prosecutrix deposed before the trial Court that at the time of incident appellant caught her and tried to uplift her saree and petticoat that is why she cried and one Munni Gond reached there and appellant fled away. From the statement of this witness, it is clear that act is of sexual assault and same is not based on any caste, but it is based on sex. Dr. H.N. Ram who examined the prosecutrix on 30-6-2008 found minor tenderness on her left hand and pain on her left leg and opined that injuries were simple in nature.

7. From the entire evidence it is established that the appellant outraged modesty of the appellant and caused simple injuries to her within mischief under Sections 354 and 323 of IPC. The act of the appellant does not fall within mischief under Section 3(1)(11) of the Act, 1989, therefore, finding of the trial Court is liable to be

modified. Conviction of the appellant under Section 3(1)(11) of the Act, 1989 is set aside. Instead, the appellant is convicted under Sections 354 and 323 of the IPC.

8. The date of incident is 29-6-2009. On the said date, no minimum sentence was prescribed for offence under Section 354 of the IPC. The appellant was in jail from 7-7-2008 to 8-7-2008, 28-7-2009 to 7-8-2009 and 22-9-2012 to 18-11-2013 which goes to show that the appellant has completed two months and ten days of jail sentence. Considering all the facts and circumstances of the case this court is of the view that ends of justice would be served if the sentence is reduced to the period already undergone by him. Accordingly, the appellant is sentenced to the period already undergone by him. The fine mount imposed by the trial Court shall remain intact.

9. Accordingly, the appeal is partly allowed. The appellant is reported to be on bail. His bail bonds shall continue for further period of six months in view of Section 437-A of Cr.P.C.

Sd/-

(Ram Prasanna Sharma)

JUDGE

Raju