

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 27-11-2019

Delivered on 20-12-2019

CRA No. 329 of 2011

- Ramsharan @ Bablu S/o Bhaiya Lal Sahu, R/o Village Kushmaha, P.S.-Sonhat, Distt.-Korea, C.G.

---- Appellant

Versus

- State of Chhattisgarh

---- Respondent

 For Appellant : Mr. Manoj Mishra, Advocate
 appears as Amicus Curiae

For respondent/State : Mr. Ishwar Jaiswal, PL.

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

1. This appeal is preferred against the judgment of conviction and order of sentence dated 2-4-2011 passed by the Special Judge (SC & ST (Prevention of Atrocity) Act 1989), Korea Baikunthpur, in Special Session trial No. 25 of 2009 wherein the said court convicted the appellant for commission of offence under Section 456 of the IPC and Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of

Atrocities) Act, 1989 (for short, “the Act, 1989”) and sentenced him to undergo rigorous imprisonment for three years and to pay fine of Rs.500/- on each count, with default stipulations. Both sentences are directed to run concurrently.

2. In the present case, prosecutrix is PW/2. As per version of prosecution, appellant entered into the house of prosecutrix on 30-5-2009 at about 11.00 pm at village Kushmaha and tried to outrage her modesty. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced him as aforementioned.

3. Learned counsel for the appellant would submit as under:

- i) The trial court has not appreciated the facts that the appellant was running shop for the last 10 – 15 years and prosecutrix borrowed some domestic items from his shop and appellant used to go to her house for recovery of money, therefore, it is not a case of lurking house trespass.
- ii) From the evidence of prosecutrix it is clear that the dispute between appellant and family members of the prosecutrix with regard to money borrowed by the family members of the prosecutrix, therefore, prosecutrix is not dependable. Nothing is

done on the basis of caste, therefore, Section 3 (1)(xi) of the Act, 1989 is not applicable.

- iii) Independent witnesses have not supported the version of prosecution, therefore, finding of the trial court is liable to be set aside.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshalling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. From the statement of PW/2 Shanti Bai and PW/1 Jyoti, it is established that appellant entered into the house of the prosecutrix and caught hold her hand, that is why she cried. Version of these witnesses is unrebutted during cross examination and it is further supported by FIR dated 31-5-2009 which is lodged on the next day of the incident as per Ex.P/1 in which name of the appellant was mentioned as culprit and his act of trying to outrage modesty of the prosecutrix is also mentioned, therefore, it is an offence as defined in IPC and his act falls within mischief of outraging modesty of woman under Section 354 of

IPC. From the evidence it is not clear that the act is committed on the basis of caste, therefore, act of the appellant does not fall within mischief of the Act, 1989. For commission of the said offence, it has to be established that the offence is committed on the basis of caste and the appellant is not a member of Scheduled Caste or Scheduled Tribe. In the present case, caste of the appellant is not established by evidence.

7. Looking to the entire evidence this court is of the view that charge under Section 3 (1)(xi) of the Act, 1989 is not established. Argument advanced on behalf of the appellant regarding other charges are not sustainable. The act of the appellant falls within mischief of Sections 456 and 354 of IPC and this court has no reason to take a contrary view what is recorded by the trial Court. The trial court also awarded compensation of Rs.25,000/- to the prosecutrix. Conviction of the appellant under Sections 456 and 354 of IPC and compensation awarded to the victim is hereby affirmed.

8. In the present case, date of incident is 30-5-2009. On that date jail sentence was not compulsory for offence under Section 354 of IPC. Appellant has suffered jail term of four days i.e., from 14-6-2009 to 18-6-2009 for both offences. In view of this court no useful purpose would be served if appellant is again sent to jail, therefore, sentence awarded to the appellant is reduced to the period already undergone by him.

9. 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.
10. With the aforesaid modification, the appeal is partly allowed.

Sd/-

(Ram Prasanna Sharma)
Judge

Raju