

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 301 of 2008**

- Budhram Bargah, S/o Turchu @ Turcha Bargah, aged about 22 years, R/o Village Sonbarsa, P.S. Darima, District Surguja (C.G.)

---- Appellant

Versus

- The State of Chhattisgarh through Police Station Darima, District Surguja (C.G.)

---- Respondent

For Applicant	:	Mr. A.N. Pandey, Adv.
For State	:	Ms. Reena Singh, PL

Hon'ble Smt. Justice Rajani Dubey**Order on Board****30.08.2019**

1. The present appeal arises out of the impugned judgment of conviction and order of sentence dated 19.02.2008 passed by Special Judge, Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, Sarguja-Ambikapur (C.G.) in Special Sessions Trial No. 62/2007, whereby the learned Special Judge convicted the appellant under Section 3 (1)(xi) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sentenced him to undergo R.I. for six months and to pay fine of Rs. 200/- with default stipulation.

2. Brief facts of the case are that, on 30.07.2007 in the evening time, prosecutrix was standing outside her residence at village Sonbarsa and, at that time, appellant/accused came there and asked her for intercourse on which she refused then the appellant caught hold of her hand and tried to humiliate her,

thereafter, he fled away. On that basis a report was lodged at P.S. Darima. After completion of investigation charge-sheet has been filed and charges were framed against the applicant/accused under Section 3(1)(ix) of the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. So as to prove the guilt of the applicant/accused, the prosecution has examined 4 witnesses in support of its case. Statement of the accused was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the charges levelled against him and pleaded innocence & false implication in the case.

4. After hearing the parties, the trial Court, has convicted the applicant under Section 3 (1)(xi) of the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act and sentenced him to undergo R.I. for six months and to pay fine of Rs. 200/- with default stipulation. Hence, the present appeal filed by the appellant.

5. Learned counsel for the applicant submits that the judgment passed by the learned trial Court is perverse and contrary to the law, facts and circumstances of the case and the order was passed without proper appreciation of the material available on record. He further submits that the caste certificate, which has been filed in this case, has been prepared by the Sarpanch of the village, who is not a competent person to issue it, even then such certificate has been marked before the learned trial Court. Thus, it cannot said that the prosecutrix belongs to the member of Scheduled Tribe. He added in his submission that the entire investigation under the SC/ST Act should be investigated by an Officer not below the rank of S.D.O. but in this case the investigation has been done by the Officer-in-charge of the Police Station, which is not legal. He next added that learned

trial Court ought to have acquitted the accused as the prosecutrix herself admitted in her cross examination that, they have cultivated the field of the appellant and as such there was a dispute between them, therefore, they complained against the accused/applicant.

6. On the other hand, learned counsel appearing on behalf of State has supported the impugned order of the Court below convicting the appellant under Section 3(1)(xi) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act being based on the material available on record, are just and proper and do not call for any interference in this appeal.

7. Heard learned counsel for the parties and perused the material on record including the impugned order.

8. Prosecutrix (PW-2) has stated in her evidence that at about 8.00 AM, when she was washing the utensils, appellant/accused Budhram came there, caught hold her hand and dragged her near the courtyard and when she bit him, applicant freed her. Prosecutrix has also stated that she gave Caste Certificate to the police and lodged the FIR before the concern police station. Gurbal (PW-3), husband of the prosecutrix, has stated in his evidence that the prosecutrix had narrated the whole story just after the incident. J.R. Thakur (PW-4) submitted that he has recorded the statements of the prosecutrix and her husband, prepared spot map (Ex. P/3) and arrest memo (Ex.P/4). Neeraj Chandrakar (PW-1) stated that he has lodged FIR (Ex.P/1).

9. Bare reading of the evidence adduced by the prosecution makes it clear that the prosecution has failed to prove the caste of the complainant as no evidence, oral or documentary, has been brought forth to this effect. Cross examination of the prosecutrix and her husband also shows that they have cultivated the land of the appellant and there was a dispute

between both the parties. The next contention is that, in the FIR, prosecutrix stated that the time of incident was about 8 PM but before the trial Court she stated the time of incident to be 8 AM. There is contradiction with regard to time of incident.

10. In **Mafidar vs. State of M.P.** reported in **[2011(2) C.G.L.J. 212]**, it is held that where caste of the complainant is not proved, the conviction under this act, the provision of this act are not attracted in this case as well. Prosecution has failed to prove the caste of the complainant and did not exhibit caste certificate of prosecutrix. Statements of the prosecutrix and her husband are contradictory and there was also old dispute between the parties. Thus, the possibility of false implication of the appellant in the case cannot be ruled out.

11. Consequently, it is held that the conviction of the accused/appellant under this special enactment is liable to be set-aside by allowing the appeal. Accordingly, the appeal is allowed. Judgment impugned is set-aside. Accused/appellant is acquitted of the charge levelled against him. He is on bail. Bail bonds furnished by him stand discharged.

Sd/-
(Rajani Dubey)
JUDGE