

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.304 of 2018

L.R. Sahu, S/o Late Salik Ram Sahu, aged about 50 years, R/o R.E.S. Colony, Geedam, Police Station Geedam, District Dantewada, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through District Magistrate, Dantewada, District Dantewada, Chhattisgarh

--- Respondent

For Appellant	:	Shri Awadh Tripathi, Advocate
For Respondent	:	Shri K.K. Dewangan, Dy. Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

9.7.2019

1. The instant appeal has been preferred against the judgment dated 8.2.2018 passed by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (henceforth 'the Act'), South Bastar Dantewada in Special Case No.4 of 2015, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 509 of the Indian Penal Code	Simple Imprisonment for 6 months and fine of Rs.1,000/- with default stipulation

2. Case of the prosecution, in brief, is that on the relevant date and time, the prosecutrix (PW7) was working as a Cluster Samanvayak on contract basis in Janpad Panchayat Geedam. The Appellant was working as an Assistant Grade-II. Both were sitting in a common room. As per the prosecution story, between 15th and 20th of February, 2015, the Appellant caught the hands of the

prosecutrix with a bad intention and asked her to come to his house. Thereafter also, he used to watch her and using obscene words he used to give her gestures. On 7.4.2015 at about 12:00 noon, the prosecutrix was inside the office. Allegedly, at that time, the Appellant came to her and gave her a gift packet asking her to open the packet at her house. The prosecutrix opened the gift packet in the office itself and found therein lady bra and underwear. When she told the Appellant what mischief was played by him, the Appellant replied her that he likes her and thereafter he caught her hands. On this, the prosecutrix threw away the gift packet. She also made oral and written complaints to the higher officers and also lodged First Information Report (Ex.P5). On completion of investigation, a charge-sheet was filed against the Appellant for offence punishable under Sections 354, 509 of the Indian Penal Code and Section 3(1)(xi) of the Act. Charges were framed against the Appellant under Sections 354, 509 of the Indian Penal Code and Section 3(1)(x) of the Act.

3. In support of its case, the prosecution examined as many as 11 witnesses. The Appellant was examined under Section 313 of the Code of Criminal Procedure in which he denied the guilt. 2 witnesses have been examined in his defence.
4. After trial, the Trial Court acquitted the Appellant of the charges framed under Section 354 of the Indian Penal Code and Section 3(1)(x) 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 conviction of the Appellant is based only on the statement of the

prosecutrix (PW7). Other witnesses have not supported the case of the prosecution in the manner as described by the prosecutrix. It is further submitted that as stated by the prosecutrix, between 15th and 20th of February, 2015, the Appellant had caught hands of the prosecutrix and thereafter he had been watching her and also saying her obscene words. At that time, the prosecutrix had made a complaint to Chief Executive Officer Atul Pandey, but Atul Pandey has not been examined by the prosecution. It is further submitted that according to the prosecutrix, she, about the incident dated 7.4.2015, had made oral and written complaints to the Chief Executive Officer and the Collector on 7.4.2015 itself and on the next day she had also submitted a written complaint in the Ajak Police Station, but, none of the above mentioned complaints are available on record of the Court below. As stated by the prosecutrix/complainant, the incident took place on 7.4.2015, but the FIR (Ex.P5) was lodged belatedly on 14.4.2015. This delay in lodging the FIR has not been explained by the prosecutrix. The statement of the prosecutrix is not reliable, but even thereafter, the Trial Court has relied upon her statement. Even if the statement of the prosecutrix is considered to be true, the act of the Appellant ended when he gave a closed gift packet to the prosecutrix in the office. At that time, the Appellant had asked the prosecutrix to open the gift packet at her house. Thereafter, no act was done by the Appellant. Thus, the offence under Section 509 of the Indian Penal Code is not proved against the Appellant.

6. Learned Counsel appearing for the State supported 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. To rope in the Appellant, the prosecution has examined as many as 11 witnesses. The prosecutrix (PW7) has deposed that in February, 2015, the Appellant, asking her to come with him to take tea, had caught her hands and expressed that he liked her. At that time, the prosecutrix had made an oral complaint against the Appellant to Chief Executive Officer Atul Pandey. But, Atul Pandey has not been examined nor has he been cited as a witness. It has been further stated by the prosecutrix that on 7.4.2015 at about 12:00 noon, the Appellant gave her a closed gift packet and asked her to open the packet at her house. But, she opened the packet there itself and found therein a lady bra and underwear. Then she shouted on the Appellant and made an oral complaint to the Chief Executive Officer and the Collector. But, no such complaint is placed on the record of the Court below nor has the Chief Executive Officer or the Collector been examined to corroborate statement of the Complainant/prosecutrix. In paragraph 27 of the cross-examination, the prosecutrix has stated that at that time, in the office, Chief Executive Officer Atul Pandey, Rammurti Iyer (PW3), Smt. Rashmi Yadav (PW2), Tularam Korram (PW1) and Ku. Taramati Mandavi (PW4) were present, but Tularam Korram (PW1), Smt. Rashmi Yadav (PW2), Rammurti Iyer (PW3), Ku. Taramati Mandavi (PW4) and Dilip Sharma (PW5) have categorically stated that they were present in the office on that date, but they are not aware of any such incident. The prosecutrix in her cross-examination has also admitted that on that date a meeting was convened in the office from 11 am to 5 pm and the

Appellant was in charge of the section relating to that meeting. The prosecutrix has also stated during her cross-examination that after throwing away the gift packet she did not tell about the same to anyone nor did she show the said gift packet to anyone in the office. It is not natural that if such an incident happens with a lady in her office during office hours, she will not disclose about the same to anyone or will not show the gifted under garments to anyone in the office. Apart from this, the incident took place on 7.4.2015, but the FIR was lodged on 14.4.2015. As stated by Suraj Kumar (PW9), husband of the prosecutrix, on 7.4.2015 itself, at about 1:30 pm, the prosecutrix had telephonically informed him about the incident. Despite that, why was no report lodged before 14.4.2015, has not been explained by the prosecutrix. In these circumstances, the statement of the prosecutrix requires corroboration by other witnesses, but the same is not available. Apart from this, even if it is accepted that the Appellant had given her the gift packet and in that packet lady under garments were kept, the prosecutrix herself has stated that the Appellant had given her a closed gift packet and had asked her to open the packet at her house. Thus, the alleged act of the Appellant ended at the time itself when he gave the closed packet to the prosecutrix. Therefore, it cannot be said that the Appellant exhibited the object to the prosecutrix with an intent to insult her modesty. Thus, the finding of conviction under Section 509 of the Indian Penal Code arrived at by the Trial Court is not in accordance with the evidence available on record.

9. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of

the charge framed against him.

- 10.** 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