

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 334/2003****Reserved on 04.04.2019****Delivered on 09.04.2019**

(Arising out of judgment of conviction and order of sentence dated 21.02.2003 passed by the Special Judge Established under Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, Rajnandgaon, CG in Special Case No.49/2002)

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Chandar Singh son of Suklal Singh Lohar, aged about 35 years, R/o. Kahagaon, PS Manpur, Distt. Rajnandgaon (CG)

Appellant**VERSUS**

State of Chhattisgarh

Respondent

 For Appellant : Mr. Adil Minhaz, Advocate.
 For Respondent : Mr. Ishan Verma, Panel Lawyer.

Hon'ble Shri Justice Sharad Kumar Gupta**CAV JUDGMENT**

1. In this criminal appeal, challenge is levied to the judgment of conviction and order of sentence dated 21.02.2003 passed by the Special Judge Established under Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, Rajnandgaon, CG in Special Case No.49/2002 whereby and whereunder he convicted the appellant as under :-

Conviction under Section	Sentence	Fine sentence
354 IPC	RI for 2 years	---

2. In brief, prosecution case is that prosecutrix was 26 years old at the time of alleged incident. She was resident of village Kahgaon. She was worker of Anganbadi at village Gudatola. On 11/05/2002 at about 12.00 p.m., she was returning back to her house from village Godatola by footpath. On the way appellant met her, to outrage her modesty he caught hold her both hands and pulled her. When she shouted he fled

away from the spot. Her bangles were broken. After reaching her house she informed the incident to her sister-in-law Rajni Amde, wife of appellant Bhuneshwari Bai. Her husband, her father-in-law and her mother-in-law had gone for plucking Tendu leaves to village Kohka, thus she went to village Kohka and informed them about the incident. On 13/05/2002 she lodged an FIR in Police Station Manpur against him. After completion of investigation a charge sheet was filed against him under Section 354 of the Indian Penal Code (hereinafter referred to, 'IPC'), 3 (i)(xi) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter called as 'SCST Act'). The trial Court framed charges against him under Section 354 of the IPC, 3 (i)(xi) of SCST Act. He abjured the charges levelled against him and faced trial. To bring home the charges against him, prosecution examined as many as 8 witnesses. The appellant did not examine any witness on his defence. After conclusion of the trial, the trial Court acquitted him from the charge punishable under Section 3 (i)(xi) of SC/ST Act, however, convicted and sentenced him as aforesaid.

3. Being aggrieved, the appellant has preferred this criminal appeal.

4. Counsel for appellant submits that trial Court has not appreciated the evidence in proper perspective. All the prosecution witnesses are interested witnesses. The FIR is delayed by two days. There was animosity between prosecutrix and appellant because he had made the complaints against her. Thus, the conviction and sentence of the appellant are bad in eyes of law. Hence, he may be acquitted of the aforesaid charge.

5. The Panel Lawyer appearing for the State argues that the aforesaid conviction and sentence are based on the sufficient evidence available on record. Thus, no interference is called for.

6. As per the alleged MLC report, Ex.P-1, P.W.1 Dr. Rajendra Katariya had examined prosecutrix and found pain on her right hand, no visible injury was present.

7. There is no such evidence on record on strength of which it can be said that Ex.P.1 is not believable thus this Court believes on Ex.P.1.

8. P.W.4 prosecutrix says in para No. 1 of her statement given on oath that at about 12 p.m. she was returning back from the school by footpath. On the way appellant caught hold her hands and pulled her. She had shouted, her bangles were broken.

9. P.W.7 Rajni Bai says in para No. 1 of her statement given on oath that P.W.1 prosecutrix had told her in the house that when she was returning back from Anganbadi, the appellant had caught hold her hands, her bangles were broken.

10. P.W.3 Rajesh Kumar, who is the husband of PW-1 prosecutrix, P.W.5 Sitabai, who is the mother-in-law of the prosecutrix, P.W.6 Kachru Ram, who is the father-in-law of the prosecutrix say in para No.1 on their statements given on oath that they had gone to pluck the Tendu leaves at village Kohka, P.W.1 prosecutrix had come there and informed that when she was returning back to house, on the way appellant caught hold her hands, her bangles were broken.

11. P.W. 8 Bhuneshwari says in para 1 of her statement given on oath that prosecutrix had told her that she would persuade her husband, he makes complaints against her that she comes school late.

12. In the matter of **Hari Obula Reddy -v- State of Andhra Pradesh** [1981 (3) SCC 675] Hon'ble Supreme Court has laid down following judicial precedent -

“Even Partisan-ship by itself is not a valid ground for discrediting or rejecting sworn testimony. Interested evidence can form basis of conviction even it is not corroborated on material extent in material particular by independent evidence. What is required is that the evidence of interested witness should be subjected to careful scrutiny and accepted with caution. If on such scrutiny the interested is found to be intrinsically reliable or inherently probable, the conviction can be based on the same.

13. Looking to the aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of **Hari Obula Reddy** (supra), this Court finds that aforesaid statements of P.W. 3 Rajesh Kumar, P.W. 5 Sitabai, P.W. 6 Kacharuram, P.W.7 Rajnibai cannot be rejected on the ground of aforesaid relation with prosecutrix. What is needed is that there should

be close scrutiny of aforesaid statements of said witnesses.

14. P.W. 5 Sitabai says in para 3 during her cross-examination that this is true that in the context of the complaint the superior officer of prosecutrix had made inquiry and warning was issued to her.

15. In the matter of **Balwant Singh Vs State of Punjab** [(1987) 2 SCC 27] Hon'ble Supreme Court has laid down the following judicial precedent-

“Defence case that the father of prosecutrix falsely implicated the accused persons on the ground of litigation and enmity cannot be accepted as it is absurd that on account of litigation father of prosecutrix would falsely involve his daughter in case of rape by the appellant”.

16. There is no such material available on record on the strength of which it can be said that prosecutrix lodged alleged FIR Ex. P-5, P.W. 4 Prosecutrix, P.W. 3 Rajesh Kumar, P.W. 5 Sitabai, P.W. 6 Kacharuram had made aforesaid statements, P.W.7 Rajnibai had made aforesaid statement of para 1 merely because earlier the appellant had made complaints against prosecutrix that she comes school late. Moreover, it is absurd that on account of said previous complaints the said witnesses would falsely involve him in alleged crime. In these circumstances, the aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of **Balwant Singh** (supra) is applicable in favour of prosecution case and against the appellant's case. Thus, the appellant does not get any help from the aforesaid statement of para 3 of P.W. 5 Sitabai.

17. On behalf of the appellant, suggestion was given to P.W. 4 prosecutrix during her cross-examination in para 3 that appellant had met her on the way.

18. No such material omissions and contradictions have been dealt on behalf of appellant during the cross-examination of P.W. 3 Rajesh Kumar, P.W. 4 Prosecutrix, P.W. 5 Sitabai, P.W. 6 Kachruram, P.W. 7 Rajnibai which may adversely affect the aforesaid testimony of para 1 of P.W. 3 Rajesh Kumar, P.W. 4 Prosecutrix, P.W. 5 Sitabai, P.W. 6 Kacharuram and P.W.7 Rajnibai.

19. In the matter of **State of H.P. -v- Shree Kant Shekari** [2004(8) SCC 153], Hon'ble Supreme Court has held in para 18 as under :-

“18. The unusual circumstances satisfactorily explained the delay in lodging of the first information report. In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging the first information report cannot be used as a ritualistic formula for discarding the prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the court is to only see whether it is satisfactory or not. In case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand, satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of the prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen her. That being so, the mere delay in lodging of the first information report does not in any way render the prosecution version brittle. These aspects were highlighted in *Tulshidas Kanolkar v. State of Goa* [(2003) 8 SCC 590 : 2004 SCC (Cri) 44] .”

20. The relevant portion of para-13 in **Puran Chand -v- State of H.P.** [(2014) 5 SCC 689] wherein the Hon'ble Supreme Court has made some observation is quoted below :-

“13.The delay in lodging the FIR has been clearly explained by the prosecution relating the circumstance and the witnesses supporting the same have stood the test of scrutiny of the cross-examination as a result of which the version of the victim girl cannot be doubted. The delay in lodging the FIR thus stands fully explained.”

21. In Ex. P-5 it has been mentioned that on the way appellant had caught hold the hands of prosecutrix and pulled her, her bangles were broken.

22. The date of alleged incident is 11-5-2002 at 12.00 pm. Ex. P-5

had been lodged on 13-5-2002 at 11.35 am. The reason for delay is mentioned in Ex. P-5 that allegedly the husband of the prosecutrix was out of village. As per the statements of P.W. 3 Rajesh Kumar, P.W. 4 Prosecutrix, P.W. 5 Sitabai, P.W. 6 Kacharuram, P.W. 7 Rajnibai, allegedly husband of prosecutrix had gone to village Kohka to pluck the Tendu leaves. In these circumstances, this Court finds that delay in lodging Ex. P-5 is satisfactory and convincing. Thus, looking to the aforesaid judicial precedents laid down by Hon'ble Supreme Court in the matters of **Shree Kant Shekari** (supra) and **Puran Chand** (supra), this Court finds that delay in lodging Ex. P-5 is not fatal to the prosecution case.

23. There is no such evidence on record on strength of which it can be said that Ex. P-5 is concocted, lodged after thought, with intention to falsely implicate appellant in alleged crime.

24. Looking to the above mentioned facts and circumstances of the case, this Court finds that aforesaid statements of para 1 of P.W. 3 Rajesh Kumar, P.W. 4 Prosecutrix, P.W. 5 Sitabai, P.W. 6 Kacharuram and P.W. 7 Rajnibai, alleged seizure of 4 pieces of bangles from alleged spot Ex. P-7 are simple, natural and normal. Thus, this Court believes on them and disbelieves aforesaid statement of P.W. 8 Bhuneshwari because it is not simple, natural and normal.

25. After appreciation of the evidence discussed here before, on the strength of aforesaid statements of para 1 of P.W. 3 Rajesh Kumar, P.W. 4 Prosecutrix, P.W. 5 Sitabai, P.W. 6 Kacharuram P.W. 7 Rajnibai, Ex. P-1, Ex. P-5, Ex. P-7, this Court finds that prosecution has succeeded to prove the charge under Section 354 of the IPC against the appellant. Thus, this Court holds that the appellant is guilty of the offence punishable under Section 354 of the IPC. Thus, aforesaid conviction under Section 354 of IPC of appellant is hereby affirmed.

26. At the time of alleged incident, no minimum imprisonment was provided for the offence punishable under Section 354 of IPC. The appellant has remained in jail from 15.05.2002 to 18.05.2002. About 17 years have elapsed after the incident. At the time of incident the appellant was aged about 35 years, now he is 52 years old. Now, he is in main stream of society. Sending him to jail would disturb his as well

as his family members live. Hence, no useful purpose would be served if he is sent to jail after 17 years of the incident. Looking to these circumstances and observation made by Hon'ble Supreme Court in the matter of **Manjappa Vs State of Karnataka** [(2007) 6 SCC 231], this Court of the opinion that cause of justice would be sub-served if the aforesaid jail sentence awarded by the trial Court to the appellant is reduced to the sentence for the period already undergone by him and suitable fine may be imposed upon him.

27. Consequently, the appeal is partly allowed. The jail sentence of appellant for the offence punishable under Section 354 of IPC is reduced to the period already undergone by him. However, a fine sentence of Rs.25,000/- (Twenty five thousand only) is imposed upon the appellant. In default of payment of fine, he shall further undergo R.I. for 05 (Five) months. If fine amount is deposited, Rs.20,000/- (Twenty thousand only) shall be given to prosecutrix after the expiration of prescribed period for legal remedy available to the parties.

28. The appellant is granted two months time from the date of this order for depositing the imposed fine amount.

29. The appellant is reported to be on bail. His bail bond shall continue for a further period of six months as per requirement of Section 437-A of Cr.P.C.

Sd/-
(Sharad Kumar Gupta)
Judge