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HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 781 of 2001**

- Kasim Khan s/o Abdul Rajjak, aged 52 years, occupation Kastkar, r/o. Regakhar Khurd, Police Station Kawardha, District Kawardha (CG).

---- Appellant

Versus

- State of Chhattisgarh through Station House Officer, Police Station Kawardha (CG).

---- Respondent

For the appellant.	:	Shri Malay Shrivastava, Advocate.
For the State	:	Mr. Ishwar Jaiswal, Panel Lawyer.
For complainant	:	Mrs. Kumari Bai is present in person along with her counsel Mr. Sanjay Patel.

Hon'ble Shri Justice Ram Prasanna Sharma**ORAL JUDGMENT****28-11-2019.**

1. Appellant is convicted under Sections 354 and Section 3(1)(xi) of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1985 (for short, "the Act, 1985").
2. Complainant Kumari Bai who is present in person before the court was assaulted in the present case and she filed an application to compound the case under Section 320(2) of Code of Criminal Procedure 1973.

3. Perused the application. Complainant Shanti Bai is permitted to compound the offence. Composition of the offence shall have effect of an acquittal of the accused with whom the offence has been compounded as per Section 320(8) of the Cr.P.C. Accordingly, the appellant is acquitted of the charge under Section 354 of IPC.
4. So far as offence under Section 3(1)(xi) of the Act, 1989, separate judgment was delivered.
5. This appeal is directed against the judgment dated 23-8-2001 passed by the Special Judge (SC & ST Act, 1989), Rajnandgaon, (CG) in Special Case No. 30 of 2000 wherein the said court convicted the appellant for commission of offence under Section 3(1)(xi) of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989.
6. To substantiate the charge prosecution examined as many as nine witnesses. No one deposed before the trial court that the appellant did anything on the basis of caste. For commission of offence under Section 3(1)(xi) of the Act, 1989 it is the basic ingredient that the victim should be of Schedule Caste or Schedule Tribe and the person charged should not be from the member of Schedule Caste or Schedule Tribe.

7. In the present case, no caste certificate is proved by any of the witnesses that the victim is a member of Schedule Caste or Schedule Tribe. In absence of caste certificate and in absence of evidence that act is committed on the basis of caste charge under Section 3(1)(xi) of the Act, 1989 is not established.
8. Appellant is also convicted under Section 354 of IPC which was compounded by the complainant Kumari Bai and on compounding the offence, appellant is acquitted of the said charge. As the offence is not established to be committed on the basis of caste, finding arrived at by the trial court is not sustainable.
9. Accordingly, the appeal is allowed. Conviction of the appellant under Section 3 (1)(xi) of the Act, 1989 is set aside. He is acquitted of the said charge. The appellant is reported to be on bail. His bail bonds shall continue for a further period of six months in view of Section 437-A of the Cr.P.C.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju