

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1090 of 2001

- Tilak Chand S/o Sakharam Kalar, Aged about 39 years, R/o Ghortalab, Police Station Bagnadi, District Rajnandgaon (Chhattisgarh)
---- Appellant

Versus

- State of Chhattisgarh, through Police Station Bagnadi, District Rajnandgaon (Chhattisgarh)
---- Respondent/State

For Appellant	:	Shri Rohitashava Singh, Advocate
For Respondent/State	:	Shri Ashish Gupta, Panel Lawyer

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

24.10.2019

1. This appeal arises out of the judgment of conviction and order of sentence dated 29.10.2001 passed by the Special Judge, Rajnandgaon (C.G.) in Special Case No. 91 of 2001, whereby the appellant stands convicted and sentenced as under:-

<u>Conviction</u>	<u>Sentence</u>
Under Section 354 of Indian Penal Code (for short 'IPC')	R.I. for two years
Under Section 3(1)(xi) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short 'Special Act')	R.I. for four years and pay a fine of Rs.1,000/-, in default of payment to further undergo R.I. for six months
Both sentences to run concurrently	

2. Facts of the case in brief are that the prosecutrix (PW-1) is a resident of Ghortalab and is working as labour in Sira Dhabha. On 08.06.2001 at about 09:45 am FIR Ex.-P-5 was lodged by the prosecutrix (PW-1) a widow lady aged about 35 years alleging that on 07.06.2001 at about 03:00 pm when she was washing the utensils behind the Sira Dhabha, accused/appellant came there and told her to go towards jungle, then the appellant caught hand of the prosecutrix and touched her private part with an intent to outrage

her modesty. It is alleged that due to the said act of appellant, the prosecutrix started abusing the appellant and came inside the Dhabha, where also appellant caught the prosecutrix's waist. This incident was witnessed by PW-2 Sheikh Rajjak, PW-5 Khorbaharin Bai, PW-7 Dashrath and Bihari and then report was lodged. Based on this FIR, the offence under Section 3(1)(xi) of the Special Act was registered against the accused/appellant and after completion of investigation, charge-sheet was filed by the police on 22.06.2001 for the offence under Section 3(1)(xi) of the Special Act. The Court below however framed the charges against the appellant under Section 354 of IPC and Section 3(1)(xi) of the Special Act.

3. So as to hold the accused/appellant guilty, the prosecution examined 8 witnesses i.e. prosecutrix (PW-1), Sheikh Rajjak (PW-2), Koprao (PW-3), G.S. Bambera (PW-4), Khorbaharin Bai (PW-5), Rajesh Joshi (PW-6), Dashrath (PW-7) and Bhuwan (PW-8) in support of its case. Statement of the accused/Appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.
4. After appreciation of the evidence available on record, the learned Special Judge, Rajnandgaon (C.G.) by the impugned judgment convicted and sentenced the accused/Appellant as mentioned in para- 1 of this judgment, hence this appeal.
5. Learned counsel for the appellant submits that as some amount was borrowed by the prosecutrix (PW-1) from the appellant and she was not returning the same, for this reason dispute arose between the appellant and the prosecutrix, therefore, the appellant has been falsely implicated by the prosecutrix in the above offences. He also submits that there is no eyewitness who has supported the case of prosecution. He further submits that merely on account of the prosecutrix being a member of scheduled caste community, the Special Court has erred in law in convicting the

appellant under the above mentioned Sections of IPC and Special Act.

6. On the other hand, learned counsel for the State supports the impugned judgment and submits that as per the contents of the FIR (Ex.-P/5) as well as the statement of complainant/prosecutrix (PW-1), conviction of the appellant is strictly in accordance with law.
7. Heard learned counsel for the parties and also perused the records of the Special Court.
8. It is not disputed by the parties that as per Ex.-P/3 (caste certificate of the prosecutrix), the prosecutrix (PW-1) belongs to scheduled caste community and her caste is *Satnami*.
9. PW-1 prosecutrix stated that on the date of incident, at about 03:00 pm, while she was washing the utensils at Dhabha, the appellant came there and told the prosecutrix to go towards jungle and then the appellant touched private part of the prosecutrix with bad intention for sexual favour. Thereafter, prosecutrix abused the appellant for this act. This incident was witnessed by PW-2 Sheikh Rajjak, PW-5 Khorbaharin Bai, PW-7 Dashrath and Bihari and on the next day, she lodged the report against the appellant.
10. As per FIR (Ex.-P/5), the incident happened on 07.06.2001 at about 03:00 pm and the FIR was lodged on 08.06.2001 at about 09:45 am. It was mentioned in the FIR that the distance between the police station Bagnadi and place of incident i.e. Sira Bhabha is about 12 Km, the explanation given by the prosecutrix that the report was lodged on the next day of incident is just and satisfactory and there is no any contradiction and omission between the statement of the prosecutrix (PW-1) and the contents of FIR (Ex.-P/5).
11. PW-2 Sheikh Rajjak, PW-5 Khorbaharin Bai and PW-7 Dashrath were declared hostile and Bihari was not examined. But, PW-2 Sheikh Rajjak, who is owner of Sira Dhabha, stated that on the date of incident prosecutrix was abusing the appellant behind the Dhabha and looking to this evidence, there is no reason to disbelieve the statement of prosecutrix (PW-1).

Therefore, the learned trial Court has rightly convicted the appellant under Section 354 of IPC and Section 3(1)(xi) of the Special Act.

12. It was also argued by learned counsel for the appellant that some amount was borrowed by the prosecutrix (PW-1) from the appellant and therefore the dispute arose between appellant and prosecutrix, but that fact was not proved by the appellant during trial.

13. So far as quantum of sentence is concerned, considering the fact that the incident had taken place in the year 2001 and that the appellant has already remained in jail for ten months, this Court is of the considered opinion that no useful purpose would be served in again sending him to jail and it would be in the interest of justice if he is sentenced to the period already undergone by him.

14. In the result, the appeal is allowed in part. While maintaining the conviction of the appellant under Section 354 of IPC and Section 3(1)(xi) of the Special Act, he is sentenced to the period already undergone by him. However, the fine amount imposed on him with default sentence by the trial Court shall remain intact. The appellant is reported to be on bail, therefore, his bail bonds shall remain in force for a period of six months from today in view of the provisions of Section 437-A of Cr.P.C.

Sd/-
(Gautam Chourdiya)
Judge