

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 953 of 2005**

- Kedarram Janghel, S/o Late Ramdayal, aged about 38 years, R/o Vicharpur, Police Station Chhuikhadan, District Rajnandgaon, C.G.

----Appellant**Versus**

- State of Chhattisgarh, Through Police Station, Chhuikhadan, District Rajnandgaon, C.G.

---- Respondent

For Appellant

Shri Rakesh Pandey, Advocate.

For Respondent/State

Shri Ayaz Naved, Government Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Judgment****22.06.2020**

1. The matter is heard through Video Conferencing.
2. Challenge in this appeal is to the judgment of conviction and order of sentence dated 9.12.2005 passed by the Special Judge, Rajnandagon, C.G. in Special Case No.100/04, whereby the appellant stands convicted for the offence under Section 3 (1) (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth 'the Act of 1989') and sentenced to undergo rigorous imprisonment for one year and fine of Rs.1,000/-, in default of payment of fine amount to undergo additional simple imprisonment for 6 months.
3. Case of the prosecution in brief is that prosecutrix, aged about 31 years, a member of Scheduled Tribe, lodged FIR Ex.P-5 on

24.07.2004 alleging that on 23.07.2004 at 9:00 am, when she was alone in her home, accused/appellant entered her home with an intent to outrage the modesty of the prosecutrix and to humiliate her, caught hold of her breast and dragged her. At the same time, she came out of his clutches, ran away from there and came back to her home. She also alleged that on the date of incident her husband had gone to his duties and when he returned she lodged FIR against the accused/appellant. During investigation, caste certificate Exs.P-1 & P-2 of prosecutrix were seized. Spot Map Ex.P-6 was prepared which was proved by PW-6 Revaram. Statements of the witnesses were recorded. After completion of investigation, charge sheet was filed against the appellant under Section 354 of Indian Penal Code and under Section 3 (1) (xi) of the Act. The trial Court framed the charge under Section 354 of Indian Penal Code read with 3 (1) (xi) of the Act against the appellant which was denied by him and he prayed for trial.

4. So as to hold the accused/appellant guilty, the prosecution examined as many as 10 witnesses i.e. PW-1 Pyare Lal, PW-2 Birchi Bai, PW-3 Neelkanth, PW-4 Nandkumar, PW-5 Prosecutrix, PW-6 Revaram, PW-7 Dulari Bai, PW-8 Indraman, PW-9 Vivek Shukla and PW-10 Rajeev Sharma. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the incriminating circumstances appearing against him in the prosecution case, pleaded innocence and false implication. However, no witness was examined by him in his defence.
5. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned

judgment convicted and sentenced the appellant as mentioned in para-1 of this judgment.

6. Learned counsel for the appellant submits that in this case no independent witness has supported the prosecution case. There are material contradictions and omissions in the statements of the prosecutrix PW-5 and other witnesses. No cogent evidence is available on record against the appellant. Learned counsel for the appellant also submits that prosecutrix lodged the FIR on the next day of the incident without proper explanation for the delay. He further submits that in this case prosecution has utterly failed to prove the caste of the prosecutrix whether she belongs to the Scheduled Caste or Scheduled Tribe. He further submits that neither the author of caste certificate Ex.P-1 was examined before the Court nor any opportunity of cross-examination was available to the appellant to challenge that certificate. Therefore, the impugned judgment of conviction and order of sentence deserves to be set aside and the appellant be acquitted of the aforesaid charges.

Alternatively, he submits that if this Court ultimately comes to the conclusion that the appellant is guilty of the said offence, considering the fact that the incident took place around 16 years ago, the age of the appellant at the relevant time was 38 years and he has no criminal antecedent, he has already remained in jail for 12 days, therefore, in these circumstances, the accused be sentenced to the period already undergone by him.

7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/appellant

is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.

8. Heard learned counsel for the parties and perused the material available on record.
9. PW-5 Prosecutrix specifically and categorically stated that on 23.07.2004 at 9:00 am, when she was alone in her home, accused/appellant entered her home with an intent to outrage the modesty of the prosecutrix and to humiliate her, caught hold of her breast and dragged her. At the same time, she came out of his clutches, ran away from there and came back to her home. She also stated that on the date of incident her husband had gone to his duties and when he returned she lodged FIR against the accused/appellant.
10. PW-4 Nandkumar is the husband of the Prosecutrix. He also stated in his deposition that prosecutrix told him about the incident when he returned from his duty.
11. PW-6 Revaram is the village Kotwar. He also stated that on 23.07.2004 at about 9:30 am, prosecutrix reached his home and narrated the said incident to him.
12. PW-7 Dulari Bai has also stated that the prosecutrix informed her that the appellant had caught her and pressed her breast. PW-8 Indraman also supported the statement of this witness.
13. PW-9 Vivek Shukla, Investigating Officer, prepared the Spot Map Ex.P-3, seized caste certificate of the prosecutrix vide Exs.P-1 and P-2, recorded the statement of the witnesses and duly proved the same.
14. PW-10 Rajeev Sharma, Sub-Inspector, recorded the FIR lodged by prosecutrix vide Ex.P-5. In cross-examination, he states that the FIR was written at the instance of the prosecutrix.

15. On a minute examination of the above evidence, it is clear that on the date of incident i.e. 23.07.2004, the appellant had caught the prosecutrix in her home with an intent to outrage her modesty, caught her breast and also dragged her. The prosecutrix has remained firm during her cross-examination and her statement is also supported by PW-4 Nandkumar and PW-6 Revaram, PW-7 Dulari Bai and PW-8 Indraman.
16. Learned counsel for the appellant submits that due to previous enmity with the prosecutrix, she has falsely implicated the appellant. However, no evidence has been adduced by the defence to substantiate the plea of previous enmity. There is no such complaint or evidence showing previous enmity between the appellant and prosecutrix. Therefore, the argument of learned counsel for the appellant in this regard has no substance and is hereby rejected.
17. Thus, considering the facts and circumstances of the case and the manner in which the offence took place as stated by the prosecutrix which is duly corroborated by the evidence of PW-4 Nandkumar and PW-6 Revaram, PW-7 Dulari Bai and PW-8 Indraman, this Court is of the opinion that the prosecution has successfully proved its case under Section 354 of IPC against the appellant.
18. So far as the offence alleged under Section 3 (1) (xi) of the Act of 1989 is concerned, though caste certificate (Ex.P-1) was produced before the Court but author of that caste certificate (Tehsildar) was not produced as an evidence before the trial Court nor any evidence was given by the prosecutrix or any other witnesses that on the basis of caste of the prosecutrix, she was subjected to the assault. Therefore, the main ingredients of the offence were not proved by the prosecution.

No evidence was given by the prosecutrix that she belongs to the Scheduled Caste or Scheduled Tribe community in her deposition nor by any other witnesses.

19. In the matter of ***Dabloo alias Shahjad vs State of M.P., 2007 (1) M.P.L.J. Page 250***, the High Court of M.P. held as under:-

“Section 3 (1) (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is an aggravated offence under Section 354, Indian Penal Code. There was no evidence to show that the appellant used criminal force against the prosecutrix to degenerate her modesty only because she belonged to a particular caste or community, whereby there was no such circumstances to suggest that her modesty was intended or tried to degenerate simply because she belonged to a particular community. Thus, the ingredients under Section 3 (1) (xi) of the Act were not proved by the prosecution. But, from the evidence of prosecutrix and other witnesses it is clear that ample evidence was produced against the appellant to hold him guilty under Section 354, Indian Penal code, although on the date of incident the appellant caught hold of the prosecutrix and molested her with the knowledge that he will by doing such act is the intention or to outrage the modesty of the prosecutrix. Therefore, the conviction and sentence as awarded by the trial Court under Section 354, Indian Penal Code is maintained but conviction under Section 3 (1) (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is set aside.”

20. In the matter of ***Tarachand vs. State of M.P. (Now C.G.)*** reported in ***2015 (3) C.G.L.J. 327***, this Court held as under:-

“The Prosecution proved this fact that the appellant tried to outrage modesty of the complainant (PW-1) by holding her hands which was protested and thereafter a call for help was made by the complainant – This act of the appellant is an offence defined under Section 354 of the IPC for which the trial

Court also framed charge for the same – To part with, in view of this court, the prosecution not proved its case against the appellant under Section 451 of the IPC and S. 3(i)(xi) of the Act, 1989, on the other hand, the prosecution proved its case under Section 354 of the IPC against the appellant.”

21. From the record it is seen that neither the author of the caste certificate was produced for examination before the trial Court nor it is proved by any of the witnesses. Therefore, the caste of prosecutrix was not proved by the Prosecution as per the Evidence Act. Thus, keeping in view the over all evidence on record and the judgments in the matter of *Dabloo alias Shahjad vs State of M.P. & Tarachand vs. State of M.P. (Now C.G.)* (supra), conviction of the appellant under Section 3 (1) (xi) of the Act of 1989 is liable to be set aside and he is acquitted of the charge framed thereunder, but he is held guilty for the offence under Section 354 of IPC.

22. As regards the sentence under Section 354 of IPC, as per Criminal Law (Amendment) Act, 2013 which came into force with effect from 03.02.2013, the minimum sentence prescribed under Section 354 of IPC is one year and the maximum is 5 years with fine as well. However, the present incident took place in the year 2004 i.e. prior to the amendment and at that time the aforesaid offence was punishable with imprisonment of either description for a term which may extend to two years or with fine, or with both. In the present case, considering the facts and circumstances of the case, the manner in which the incident occurred, the fact that the incident took place around 16 years ago, that at the time of incident accused/appellant was 38 years of age and at present he must be 54 years of age, the fact that he has already remained in jail for 12 days, keeping in view the judgment of Hon'ble

Supreme Court in the matter of ***George Pon Paul vs. Kanagalet and Others, (2009) 13 SCC 478*** wherein considering the fact that the fine amount has been deposited and paid to the victim as also the long passage of time, the accused was sentenced to the period already undergone, this Court is of the opinion that no useful purpose would be served in sending the accused/appellant back to jail at this stage and the ends of justice would be served, if he is sentenced to the period already undergone by him and is directed to pay a fine of Rs.5,000/-. If the fine amount is not deposited by the accused/appellant within three months from today, he shall have to suffer additional rigorous imprisonment for two months.

23. In the result, the appeal is allowed in part. While acquitting the appellant of the charge under Section 3 (1) (xi) of the Act, he is held guilty under Section 354 of IPC and is sentenced to the period already undergone by him. However, he shall pay a fine of Rs.5,000/-. In default of payment of fine within three months from today, the appellant shall have to undergo additional rigorous imprisonment for 2 months. The fine amount deposited earlier by the appellant shall be adjusted accordingly.

24. The appellant is reported to be on bail, therefore, his bail bonds shall continue for a period of six months from today in view of provisions of Section 437-A of Cr.PC.

Sd/-
Gautam Chourdiya
Judge