

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 248 of 2003

- Bhuwaneshwar Rao alias Chhote S/o Appal Swami, aged 26 years, Student, resident of Sanjay Nagar, Railway Colony, Jagdalpur, P.S. Bodhghat, District Bastar (C.G.)

---- Appellant

Versus

- State of Chhattisgarh, Through : P.S. - A.Ja.K. Jagdalpur(C.G.)

---- Respondent/State

For Appellant	:	Shri Subhash Yadav and Ms. Rajkumari Yadav Advocates
For Respondent/State	:	Shri N.K. Mehta, Panel Lawyer

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

06.02.2020

1. This appeal arises out of the judgment of conviction and order of sentence dated 11.02.2003 passed by the Special Judge, SC/ST Act, Bastar at Jagdalpur (C.G.) in Sessions Case No. 405 of 2002, whereby the Appellant stands convicted and sentence as under:-

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

2. Facts of the case in brief are that on 16.07.2002 at about 15:10 hours FIR Ex.-P/1 was lodged by the prosecutrix (PW-2) student of 10th standard

alleging that on that day at about 12:00 noon, her friend Kamla came to her home and the prosecutrix was standing near the door, at that time appellant Bhuwaneshwar @ Chhote came there, caught hold of the prosecutrix's hand and dragged her into a room with an intention to outrage her modesty. Thereafter, the prosecutrix started shouting for help on hearing which her friend Kamla, Vijay and Gulam Rasul came there and seeing them, the appellant fled away from there by abusing the prosecutrix in the name of her caste. The incident was witnessed by Kamla (PW-3), Vijay and Gulam Rasul (DW-1). Based on this FIR (Ex.-P/1), the offence under Section 354 of IPC and Section 3(1) (xi) of Special Act was registered against the accused/appellant.

3. During investigation, the prosecutrix (PW-2) was sent for medical examination to Maharani Hospital, Jagdalpur. Spot map was prepared vide Ex.-P/2. The accused/appellant was arrested on 17.07.2002 at about 15:10 hours vide arrest memo Ex.-P/3. Case diary statements of the witnesses were recorded by the police.
4. After completion of investigation, charge-sheet was filed by the police for the offence under Sections 354 & 456 of IPC and Section 3(1)(xi) of the Special Act. While framing the charge, the Special Judge, Bastar at Jagdalpur (C.G.) framed the charge against the accused/appellant under Section 354 of IPC and Sections 3(1)(xi) & 3(1)(x) of the Special Act.
5. So as to hold the accused/appellant guilty, the prosecution examined 04 witnesses namely A.K. Toppo (PW-1), prosecutrix (PW-2), Kamla (PW-3) and D.R.S. Uikey (PW-4) 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. The accused/appellant examined one Gulam Rasul as DW-1 in support of his defence.
6. After appreciation of the evidence available on record, the learned Special

Judge, Bastar at Jagdalpur (C.G.) by the impugned judgment, while acquitting the appellant of the charge under Section 3(1)(x) of the Special Act, convicted and sentenced the accused/Appellant as mentioned in para- 1 of this judgment, hence this appeal.

7. Learned counsel for the appellant submits that the prosecution has failed to prove that the prosecutrix belongs to scheduled tribes community, nor the original caste-certificate of the prosecutrix was produced, nor any evidence has been adduced by the prosecution to prove the caste of the prosecutrix. It is also submitted that there was no any intention to commit offence by the appellant on the ground that the prosecutrix belongs to scheduled tribe community, even the prosecutrix herself has admitted in her deposition that she was not aware of the caste of the accused/appellant and she does not know whether the appellant was aware of her caste or not. It is further submitted that as per evidence of PW-1 A.K. Toppo, he has stated in his deposition that he issued caste certificate in favour of the prosecutrix and a photocopy of which is Ex.-D/1, but he is not in a position to state that the said document Ex.-D/1 is correct or not, hence, the Ex.-D/1 is not a primary document and it is a secondary document which is not admissible unless it is proved as per the Evidence Act. The appellant has been falsely implicated in this case, the appellant was not present at the time on incident on the place of occurrence and that fact is also supported by Gulam Rasul (DW-1) as he has stated in the court that on the date of incident, the appellant had not gone to the house of the prosecutrx, therefore, the Special Court has wrongly convicted and sentenced the appellant for the above offence. Alternatively, it is submitted that at the time of incident, the appellant was 26 years of age, a young offender, he has no criminal antecedent and no case for the offence under Section 3(1)(xi) of the Special Act has been proved by the prosecution, therefore, looking to the age of the appellant at the time of incident, the fact that he has remained in jail for six days, he may be given

benefit of Probation of Offender Act and may be sentenced to the period already undergone by him.

8. On the other hand, learned counsel for the State supports the impugned judgment and submits that definitely, no original caste-certificate has been produced before the Special Court, but the prosecutrix belongs to scheduled tribe community. He also submits that as per statements/evidence of the prosecutrix (PW-2) and Kamla (PW-3), conviction of the appellant awarded by the Special Court is strictly in accordance with law, which needs no interference by this Court.
9. Heard learned counsel for the parties and also perused the records of the Special Court.
10. So far as caste of the prosecutrix is concerned, PW-1 A.K. Toppo, who issued the caste-certificate in favour of the prosecutrix, has admitted that he has not produced the original caste certificate of the prosecutrix and the caste certificate of the prosecutrix annexed with the record is photocopy (Ex.-D/1) of the same. He has admitted in para-4 of his deposition that he is unable to state whether Ex.-D/1 caste certificate produced before the Special Court is correct or not. Looking to the caste certificate (Ex.-D/1), it is the photocopy of the same and no any permission was taken by the prosecution to prove it as secondary evidence, Ex.-D/1 is not the true copy of the original caste certificate. Therefore, no any certificate regarding caste of the prosecutrix was proved by the prosecution as required under the law.
11. PW-2 prosecutrix has stated in paras-1, 2, 3 & 4 of her deposition that she belongs to Bhatra Adiwasi. She also stated that on the fateful day at about 12:00 noon, she was at the door of her home, the appellant came there, caught hold of her hand started dragging her and took her towards the T.V. room, at that time, her friend Kamla (PW-3) and her maternal uncle were also there. She cried for help, then her maternal uncle came. Her maternal uncle asked the appellant as to why he has caught her, then the appellant

abusing her by caste went away from there. She has further admitted in para-5 that she does not know the caste of the appellant and she has also admitted that she does not know whether the appellant knew her caste or not.

12. PW-3 Kamla is neighbour of the prosecutrix (PW-2). PW-3 has supported the evidence of the prosecutrix (PW-3). Therefore, no reason to disbelieve the statement/evidence of PW-3 and it is proved beyond all reasonable doubt by the prosecution that the appellant assaulted and used criminal force to outrage the modesty of the prosecutrix. The prosecutrix has lodged the prompt FIR and her statement is also corroborated by the FIR.

13. The appellant/accused examined Gulam Rasul as DW-1. DW-1 has stated that on the date of incident, the appellant had not come to the house of the prosecutrix. But DW-1 is not a reliable witness, looking the evidence of PW-3 who is an independent witness. Therefore, the prosecution has proved its case beyond all reasonable doubt for the offence under Section 354 of IPC against the appellant.

14. Minute examination of the evidence on record makes it clear that the accused/appellant had used criminal force against the prosecutrix with intent to outrage her modesty. Statement of the prosecutrix is duly supported by PW-3 Kamla as well. To convict the accused under the Special Act the prosecution is required to produce the relevant documents showing the caste of the prosecutrix which is sine qua non for doing so. Admittedly, in this case no original document (original caste certificate) has been filed by the prosecution to establish the caste of the prosecutrix that too when prosecutrix's caste was not known to the appellant as per evidence given by the prosecutrix. The record also does not spell out even a single instance on the basis of which it can be said that the appellant did the above act against the prosecutrix just because she belonged to the scheduled tribe community. Looking to the above discussion, the prosecution has failed to prove its case

beyond all reasonable doubt that the prosecutrix belongs to scheduled tribe community.

15. Thus, in view of the aforesaid factual and legal position, this Court is of the considered opinion that the conviction of the accused/appellant under Section 3(1)(xi) of the Special Act is not sustainable in the eye of law. However, as the appellant had entered the house of the prosecutrix with intent to outrage her modesty, of course he is liable to be convicted under Section 354 of IPC and the Special Court has rightly convicted and sentenced the appellant under Section 354 of IPC.

16. As regard the sentence, considering the facts and circumstances of the case, the fact that the appellant was a young offender of 26 years on the date of incident, he has no criminal antecedent, he remained in jail for six days and is on bail since 05.03.2003, the incident took place around 18 years back, keeping in view of the judgment of the Hon'ble Supreme Court in the matter of **George Pon Paul Vs. Kanagalet and Others, (2009) 13 SCC 478** wherein considering the fact that 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 in the present case also no useful purpose would be served in again sending the 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 subject to enhancement of the amount of fine from Rs.1,000/- to Rs.2,000/- with default stipulation under Section 354 of IPC.

17. In the result, the appeal is allowed in part. The conviction and sentence awarded to the appellant by the Special Court under Section 3(1)(xi) of the Special Act are set aside and he is acquitted of the said charge framed against him. While confirming the conviction of the appellant awarded by the Special Court under Section 354 of IPC, he is sentenced to the period already undergone by him. However, the fine amount Rs.1,000/- imposed by

the Special Court is enhanced to Rs.2,000/- out of which Rs.1,000/- would be payable to the prosecutrix. If the fine amount has already been deposited, it shall be adjusted accordingly. Let the enhanced sum be deposited in the Special Court failing which the appellant shall be liable to remain in jail for a period of six months. The appellant is reported to be on bail, therefore, his bail bonds shall remain in force of a period of six months from today in view of the provisions of Section 437-A of Cr.P.C.

Sd/-

(Gautam Chourdiya)
Judge

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