

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 03/12/2019

Delivered on 06/01/2020

CRA No. 431 of 2011

Laxminarayan Patel, S/o- Tikaram Patel, Aged about- 42 years,
R/o- Mandar, Police Station- Dharsiva, District- Raipur(C.G.)

---- Appellant

Versus

State of Chhattisgarh, through Police Station Dharsiva, District-
Raipur (C.G.)

---- Respondent

For appellant : Mr. Anil Singh Rajput, Advocate
For State : Mr. Ishwar Jaiswal, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against the judgment dated 4th June, 2011 passed by Special Judge constituted under Scheduled Caste/Scheduled Tribe (Prevention of Atrocity) Act 1989, Bilaspur (C.G.), in Special Sessions Trial No. 36/2010 wherein the said Court convicted the appellant for charge under Sections 456 and 354 of Indian Penal Code, 1860 and sentenced him to undergo R.I. for six months and fine of Rs. 1000/-, R.I. for 6 months and fine of Rs. 1000/- respectively with default stipulations.
2. In the present case, prosecutrix is (PW-1) as per version of prosecution, on 23rd April, 2010 in the night at about 11.00 pm when prosecutrix is sleeping in her house. The appellant entered into the said house and caught hands of the complainant, on her shouting the other family members wakened and caught the accuse/appellant and ousted the

appellant. Matter was reported and appellant was charge-sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits as under:-

- (i) The trial Court has overlooked the material contradictions and omissions of the prosecution witnesses.
- (ii) The independent witnesses namely Bharatnath (PW-4) is not supporting the version of the prosecution.
- (iii) The trial Court has not evaluated the case properly, therefore, order passed by the trial Court is liable to be set aside.

4. On the other hand, learned State counsel submits that finding of the trial Court is based on proper marshaling of the evidence and same is not liable to be interfered with invoking jurisdiction of appeal.

5. Prosecutrix (PW-1) deposed before the trial Court that on date of incident she was sleeping in her house and the accused/appellant entered in her house and caught her. After shouting by the prosecutrix other family members came to the room of prosecutrix and there accused/appellant was caught by the family members, thereafter matter was reported to the Police. Version of this witness is supported by Pawan Baghel (PW-2) who is husband of the prosecutrix. Version of the both witnesses is unrebutted during cross examination and it is further supported by the FIR i.e. Ex.P-1. In FIR name of the appellant mentioned as culprit and act of the assault by the appellant is also mentioned. There is nothing on record that disbelief on complainant or on other witnesses.

6. Illegal house trespass and assault for outraging the modesty of the prosecutrix is punishable under Sections 456 and 354 of IPC. The Trial Court convicted the appellant and same is hereby affirmed.
7. Jail sentence is not compulsory for offence under Section 354 of IPC at the time of incident i.e. 23rd April, 2010. The appellant has suffered jail term of 5 days, his jail sentence awarded by the trial Court is reduced to the period already undergone by him. However, fine amount imposed by the trial Court shall remain intact.
8. With this modification, the appeal is partly allowed.

Sd/-

(Ram Prasanna Sharma)
Judge