

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 164 of 2007**

- Roshan Prasad, Son of Murli Ram Upadhyay, aged about 32 years, Resident of Khateli, Police Station Bahri, District Sidhi (M.P.), Presently residing at Charauda Police Station Dharsiwa, District Raipur, C.G.

----Appellant**Versus**

- State of Chhattisgarh, Through, District Magistrate, Raipur, District Raipur, C.G.

---- Respondent

For Appellant

Smt. Indira Tripathi, Advocate.

For Respondent/State

Shri H.S. Ahluwalia, Deputy A.G.

Hon'ble Shri Justice Gautam Chourdiya**Judgment****18-06-2020**

1. The matter is heard through Video Conferencing.
2. Challenge in this appeal is to the judgment of conviction and order of sentence dated 20.02.2007 passed by the Special Judge, Special Court Raipur, C.G. in Special S.T. No.33/2005, whereby the appellant stands convicted for the offence under Section 354 of Indian Penal Code read with 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 simple imprisonment for six months and fine of Rs.2,000/-, in default of payment of fine amount to undergo additional simple imprisonment for 15 days.
3. Case of the prosecution in brief is that on the date of incident i.e.

25.04.2004 at about 19:30 pm at village Charoda Basti, P.S. Dharsiva, prosecutrix, aged about 12 years, a member of Scheduled Caste, was alone in her brother's home. At that time, accused/appellant came to her kitchen and asked her 'how to cook the pumpkin vegetable'. Then, prosecutrix told him that she does not know how to cook the said vegetable but on the continuous request of appellant, she went to his home and was ready to cook the vegetable. After some time, appellant with an intent to outrage the modesty of the prosecutrix and to humiliate her, caught hold of her breast and tried to kiss her. At the same time, she came out of his clutches, ran away from there and came back to her home. Thereafter, she narrated the incident to PW-4 Sushila Verma (neighbour of the prosecutrix) and also to her brother PW-3 Ramesh Kumar Ratre. Then, she went to the police station along with her brother and lodged FIR Ex.P-2 against the accused/appellant on the same day which was registered in police station Dharsiva as Crime No.125/04. Prosecutrix was medically examined by PW-1 Dr. Supreeti Sharma vide Ex.P-1 wherein she noticed no injury on the person of the prosecutrix.

4. During investigation, Caste Certificate Ex.P-4 was seized from PW-3 Ramesh Kumar Ratre (Brother of the prosecutrix). Spot Map Ex.P-5 was prepared by PW-7 G.S. Bamra, IO and accused/appellant was arrested on 26.04.2004 vide Ex.P-6. 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.

5. So as to hold the accused/appellant guilty, the prosecution examined as many as 7 witnesses i.e. PW-1 Dr. Supreeti Sharma, PW-2 Prosecutrix, PW-3 Ramesh Kumar Ratre, PW-4 Sushila Verma, PW-5 Laxman Prasad, PW-6 Ramkumar and PW-7 G.S. Bamra, I.O. 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. In his defence, the appellant stated that the prosecutrix is stating against him at the instance of her brother Ramesh Kumar Ratre, who had dispute with him and his wife in connection with electricity bill and other trivial issues. He further states that whenever his wife goes to her parental home, he has his meal at hotel, and that he treats the prosecutrix as his younger sister and cannot even think of doing any such act with the prosecutrix as alleged by her. However, no witness was examined by him in his defence.
6. 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.
7. 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-2 and her brother PW-3 Ramesh Kumar Ratre. No cogent evidence is available on record against the appellant. PW-4

Sushila Verma was also not the eye-witness of the incident and no injury was found on the body of the prosecutrix. She submits that in this case whether the prosecutrix belongs to Scheduled Caste or Schedule Tribe is not proved by the prosecution as neither the author of the Caste Certificate Ex.P-3 was examined before the Court nor any evidence was adduced by the prosecutrix PW-2 or his brother PW-3 Ramesh Kumar Ratre regarding their caste. She further submits that PW-7 G.S. Bamra, Investigating Officer, is examined in this case but no opportunity of cross-examination was given to the defence, therefore, the statement of this witness has no legal value. She further submits that prosecutrix herself admitted in para 6 of her statement that she met her lawyer before making the statement and she also admitted in para 4 of her deposition that accused/appellant used to treat her as his sister prior to incident. So, due to previous enmity between the appellant and brother of the prosecutrix, he has been falsely implicated in this case. 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, she 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 32 years and he has no criminal antecedent, he has already remained in jail for 3 days, therefore, in these circumstances, the accused be sentenced to the period already undergone by him.

8. 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.

9. Heard learned counsel for the parties and perused the material available on record
10. PW-2 Prosecutrix stated in her deposition that on the date of incident she was alone in her brother's home. At that time, appellant came to her kitchen and asked her 'how to cook the pumpkin vegetable'. Then, she told him that she does not know how to cook the said vegetable but on the continuous request of appellant, she went to his home and was ready to cook the vegetable. Then, appellant with an intent to outrage the modesty of the prosecutrix and to humiliate her, caught hold of her breast and tried to kiss her. At the same time, she came out of his clutches, ran away from there and came back to her home. Thereafter, she narrated the incident to PW-4 Sushila Verma (neighbour of the prosecutrix) and also to her brother PW-3 Ramesh Kumar Ratre. Then, she went to the police station along with her brother and lodged FIR Ex.P-2 against the accused/appellant.
11. PW-3 Ramesh Kumar Ratre, Brother of the prosecutrix has stated that the prosecutrix told him about the incident on the same day when he returned from his duty.
12. PW-4 Sushila Verma, neighbour of the prosecutrix has also stated that the prosecutrix had told her that the appellant had caught her and outraged her modesty. This witness has supported the prosecution case.
13. On a minute examination of the above evidence, it is clear that the

appellant had caught the prosecutrix in kitchen with an intent to outrage her modesty, caught her breast and also tried to kiss. The prosecutrix has remained firm during her cross-examination and her statement is also supported by PW-3 Ramesh Kumar Ratre and PW-4 Sushila Verma.

14. It is true that no physical injury was found on the body of the prosecutrix as per Ex.P-1 but for the purpose of committing offence under Section 354 of IPC, injury on the body of the prosecutrix is not necessary. Also, FIR Ex.P-2 was lodged against the appellant and proved by the prosecutrix. There is no reason to disbelieve the statements of the prosecutrix, PW-3 Ramesh Kumar Ratre and PW-4 Sushila Verma.

15. From the above, the offence alleged under Section 354 of the Indian Penal Code is proved against the appellant and, therefore, he has rightly been convicted thereunder by the trial Court.

16. So far as the offence alleged under Section 3 (1) (xi) of the Act of 1989 is concerned, learned counsel for the appellant submits that the prosecutrix has not stated anything about her caste in her statement whether she belongs to the Scheduled Caste or Scheduled Tribe. It is true that PW-2 Prosecutrix, PW-3 Ramesh Kumar Ratre and PW-4 Sushila Verma all are examined but they have not stated that prosecutrix belongs to the Scheduled Caste or Scheduled Tribe.

17. PW-6 Ram Kumar is the colleague of PW-3 Ramesh Kumar Ratre. He only stated that police had seized the Caste Certificate Ex.P-3 as per seizure memo Ex.P-4 but neither author of that document was produced before the Court nor any prosecution witnesses stated

regarding her caste that prosecutrix and her brother belong to the Scheduled Caste or Scheduled Tribe community. Accused/appellant has also pleaded ignorance in reply to question No.1 in his statement under Section 313 Cr.P.C. regarding the caste of the prosecutrix. There is no other evidence adduced by the prosecution except the seizure memo Ex.P-4 and author of that certificate was also not examined before the Court.

18. PW-7 G.S. Bamra, Investigating Officer, was not cross-examined because at that time he was not present in the Court. Therefore, the evidence of this witness has no legal value.

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 in whose presence that document was prepared or executed. 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 the conviction imposed upon him under Section 354 of the Indian Penal Code is affirmed.

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 32 years of age and at present he must be 48 years of age, the fact that he has already remained in jail for 3 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 the fine of Rs.2,000/- imposed by the trial Court is enhanced to Rs.5,000/- and likewise the compensation amount of Rs.1,000/- payable to the prosecutrix is also enhanced to Rs.3,000/-. If the fine amount is not deposited by the accused/appellant within three months from today, he shall have to suffer additional simple imprisonment for 15 days.

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, the fine amount of Rs.2,000/- imposed by the trial Court is enhanced to Rs.5,000/-. In default of payment of fine within three months from today, the appellant shall have to undergo additional simple imprisonment for 15 days. Out of the total fine of Rs.5,000/-, a sum of Rs.3,000/- shall be payable to the prosecutrix as compensation by the trial Court after due verification. The fine amount deposited by the appellant and the compensation amount already paid to the prosecutrix 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