

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 168 of 2007**

- Sonu @ Dushyant Kashyap, S/o Ravi Kashyap, aged 19 years
R/o Village Konargarh P. S. Pamgarh Distt. Janjgir Champa
(C.G.).

---- Appellant

Versus

- State Of Chhattisgarh Through District Magistrate, Janjgir-
Champa (C.G.).

---- Respondent

For Appellant	: Shri Ravindra Agrawal, Advocate
For Respondent/State	: Shri Rahul Jha, G. A.

Hon'ble Shri Gautam Chourdiya, J
Judgment On Board

29/10/2020

1. The matter is heard through Video Conferencing.
2. This appeal arises out of the judgment of conviction and order of sentence dated 2.02.2007, passed by Session Judge/Special Judge, Janjgir- Champa, in Sessions Trial No. 05/2006, convicting the accused/appellant under Section 354 of the Indian Penal Code and Section 3 (1) (xi) of the Scheduled Caste and the Scheduled Tribe (Prevention of Atrocities) Act (henceforth "SC/ST Act") and sentenced as under:

S. No.	Conviction	Sentences
1.	Under Section 354 of the Indian Penal Code	R. I. For 1 year 06 months and fine of Rs. 1000/- in default of payment of fine further R.I. for three months.
02.	Under Section 3 (1) (Xi) of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989	R. I. For 2 years and fine of Rs. 2000/- in default of payment of fine further R. I. For 6 months

All sentences were ordered to run concurrently.

3. Brief case of prosecution is that on 07.08.2006 at about 11.00 am, accused/appellant Sonu @ Dushyant and other one juvenile- V (J) tried to outrage modesty of prosecutrix. It is alleged that when the prosecutrix was going to shop, near the house of Balmukund Pandey, the accused persons caught hold of her hands, at that time Pushpa Kumari and her mother came there and asked “why you are teasing the girl” on which they said “we are not telling you anything, you go”. Thereafter, they caught hold of her hands and pulled her towards the Well, at that time one neighbour of the prosecutrix namely- Chhotelal came there and seeing him (Chhotelal) they left her hand and thereafter Chhotelal dropped the prosecutrix at her house. On the next day of incident the prosecutrix lodged report at Police Station, Pamgarh, on the basis of which report FIR Ex. P/6 was registered under crime No. 307/2006 for the offence punishable under Section 354/34 of IPC and Section 3 (1) (xi) of Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989. During investigation, caste certificate (Ex.P/1) of the prosecutrix was seized from her father vide Ex. P/4. Spot map (Ex.P-3) and MLC report Ex. P.2 were prepared and

accused/appellant was arrested on 11.08.2006 vide Ex.P-5. At the time of incident another accused person V was juvenile. Therefore the case against him was filed before Juvenile Justice Board.

4. After recording the statements of the witnesses and completing the formalities of the investigation charge sheet was filed against the accused/appellant under Sections 354, 509 and 34 of IPC and Section 3(1) (xi) of the SC/ST Act. The trial Court framed charge under Section 354 read with Section 34 of the IPC and Section 3(1) (xi) of the SC/ST Act. Accused denied the charges framed against him and prayed for trial.

5. So as to hold the accused/appellant guilty, the prosecution examined as many as 7 witnesses namely- Chandrakanta Dhruv (PW-1), Dr. D. C. Choudhari (PW-2), Ramesh Pandey (PW-3), Prosecutrix (PW-4), Ku. Pushpa (PW-5), Chhotelal (PW-6) & R. L. Bada (PW-7). Statement of the accused was also recorded under Section 313 of the Cr.P.C., in which he denied the circumstances appearing against him. However, two defence witnesses namely- Dhanbai (DW01) & Rangnath (DW02) have been examined on behalf of the appellant.

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-2 of this judgment.

7. Learned counsel appearing for the accused/appellant submits that the appellant and family of prosecutrix were having good relation before the incident and he has been falsely implicated in this case. He submits that the prosecutrix has not received any injury and MLC

report has not supported the case of the prosecution. He further submits that there was no intention on the part of appellant to insult the prosecutrix on the basis of her caste, therefore, he may be acquitted of the charges leveled against him. Alternatively he submits that if the Court confirms conviction of the appellant under Section 354 of IPC, considering the fact that the accused was 19 years of age on the date of incident, the incident took place around 14 years back, there is no criminal antecedents and the provisions of Section 6 of the Probation of Offender Act imposing restrictions on imprisonment on the offender below 21 years of age, the appellant cannot be sentenced for imprisonment. However, since the appellant has already remained in jail for 8 days, in the facts & circumstances of the case, he may be sentenced to the period already undergone by him which comes to 8 days.

8. On the other hand, learned counsel for the State supporting the impugned judgment, submits that from the evidence available on record it is clearly proved that the appellant tried to outrage her modesty therefore, the judgment of the trial Court is not required to be interfered with.

9. I have heard learned counsel appearing for the parties and perused the material available on record including judgment impugned.

10. Firstly, this Court shall consider whether the prosecutrix belongs to Scheduled Caste community or not on the basis of material available on record.

11. The prosecutrix (PW-04) herself has stated in paragraph 1 of her deposition that she belongs to Scheduled Caste community.

Chandrakanta Dhruv (PW-1), Tahsildar has also proved that the prosecutrix belongs to the Scheduled caste community as she had issued Caste Certificate (Ex. P/1) to the prosecutrix mentioning that she belongs to Scheduled Caste community. Ku. Pushpa (PW05) has also proved the aforesaid fact in her statement. Thus, in view of the aforesaid statements, it can safely be held the prosecutrix belongs to the Scheduled Caste.

12. Prosecutrix (PW04) has categorically stated in her examination in-chief that on the date of incident while she was going to shop, the accused/appellant caught hold of her hands and tried to outrage her modesty. At that time one person- Chhotelal came there and saved her from the accused persons and he dropped her at her house. Thereafter, she informed her father about the incident. In her cross-examination she remained firm and reiterated as to the manner in which the incident took place. The defence could not illicit anything from her to make her evidence doubtful or untrustworthy. Therefore, there is no reason to disbelieve the evidence of the prosecutrix.

13. Ku. Pushpa (PW-5) has also supported the evidence of the prosecutrix and stated that when she and her mother were coming back from the field, at that time the present accused and another person were trying to pull her (Prosecutrix) by hair, when a neighbor of the prosecutrix came there and thereafter the accused persons fled from the place of occurrence.

14. Chhotelal (PW06), the independent witness has also supported the evidence of the prosecutrix and Ku. Pushpa (PW05)

15. Dr. D. C. Choudhari (PW02) has medically examined the

prosecutrix vide Ex. P/2 but he did not notice any injury on her body except that the prosecutrix was complaining pain in her both wrists.

16. R. L Bada (PW07) was registered the written report and sent the prosecutrix for medical examination. He has also proved FIR Ex.P/6.

17. Looking to the unrebutted evidence of prosecutrix (PW04) which find due corroboration from oral evidence of Ku. Pushpa (PW05), Chhotelal (PW06), the promptly lodged FIR, it stands proved beyond all reasonable doubt that it is the accused/appellant who, on the date of incident and tried to outrage her modesty.

18. As observed above, it has already been proved that the prosecutrix belongs to scheduled Caste community and admittedly the appellant was not a member of Scheduled Caste or Scheduled Tribe. Now this Court has to see whether the act of assault or using criminal force to the prosecutrix who is a member of Scheduled Caste, committed by the appellant makes him liable for conviction under Section 3 (1) (xi) of the SC/ST Act or Sections 354 of IPC.

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. In the present case from perusal of the evidence on record it is seen that the prosecutrix has nowhere stated in her entire deposition that the appellant used criminal force against the prosecutrix on the basis of her caste i.e. she being a member of scheduled caste. Therefore, in view of the nature and quality of evidence available in the present case and in light of the afore-cited judgment, ingredients necessary for attracting the offence under Section 3(1)(xi) of the SC/ST

Act are extremely missing in this case. Being so, the act committed by the appellant makes him liable for conviction under Section 354 of IPC and not 3(1) (xi) of the SC/ST Act.

22. On the basis of aforesaid discussion this Court is of the opinion that appellant is liable to be convicted under Section 354 of IPC.

23. 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 years 2006 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 14 years ago, that at the time of incident accused/appellant was a young offender of 19 years and at present he must be 33 years of age, the appellant has no criminal antecedent, the provisions of Section 6 of the Probation of Offender Act imposing restrictions on imprisonment of offender under 21 years of age, the fact that he has already remained in jail for 8 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 under Section 354 of IPC while enhancing the fine amount of Rs. 1,000/- awarded by the trial Court to Rs. 3,000/- with default stipulation

24. In the result the appeal is allowed in part. While maintaining conviction of the appellant under Section 354 of IPC, his conviction and sentence under Section 3(1)(xi) of SC/ST Act are set aside. The appellant is sentenced to the period already undergone by him. The fine amount of Rs. 1,000/- imposed by the trial Court under Section 354 of IPC is enhanced to Rs. 3,000/- or else he shall had to suffer additional RI for 4 months. The fine amount already deposited by the appellant, if any under Sections 354 & 3 (1) (xi) of the SC/ST Act shall be adjusted accordingly.

25. Out of the total fine amount being deposited by the appellant, a sum of Rs. 2,000/- shall be payable to the prosecutrix as compensation under Section 357 of Cr. P. C. by the trial Court after due verification.

The appellant is reported to be on bail, therefore, his bail bond shall remain in force for a period of six months from today in terms of provisions of Section 437A of Cr.P.C.

Sd/-

(Gautam Chourdiya)
Judge

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