

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 817 of 2009**

- Mukesh Kumar S/o Shri Brijendra Kumar, aged about 20 years, R/o Village Nagpur, P.S. Mandendragarh, Distt.- Korea (C.G.).

---- Appellant**Versus**

- State Of Chhattisgarh Through P. S. Mandndragarh, Distt.- Korea (C.G.).

---- Respondent

For Appellant	: Shri D. N. Prajpati, 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 29.10.2009, passed by Session Judge/Special Judge (S. C./S. T. Act), Koriya, Baikunthpur in Special Sessions Trial No. 16 / 2008, convicting the accused/appellant under Section 354, 451 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 451 of the Indian Penal Code	R. I. For 3 months and fine of Rs. 200/-
02.	Under Section 3 (1) (XI) of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989	R. I. For 6 months and fine of Rs. 300/-
		In default of payment of total fine amount of Rs. 5,00/- the appellant shall suffer additional S. I. For one month.

All sentences were ordered to run concurrently.

3. Brief case of prosecution is that on 11.07.2008 at about 3.00 pm, accused/appellant entered the house of prosecutrix, who belongs to Scheduled Caste community, while she was all alone and tried to outrage her modesty, as a consequence, the prosecutrix cried for help and immediately thereafter she narrated entire incident to her father who was working in the field. When the father of the prosecutrix enquired from the appellant about the incident, the appellant started quarreling with him hearing the commotion Rameshwar and Jagdev also came there and the prosecutrix informed them about the incident. Soon after the incident at 4.00 O' clock the prosecutrix lodged report at Police Station, Manendragarh which was registered under zero numbered for the offence punishable under Sections 451, 354 of IPC and Section 3(1) (xi) of the SC/ST Act vide Ex.P/2. Thereafter numbered FIR Ex. P/4 was registered under crime No. 187/2008 for the said offence on the same day of incident i.e. on 11.07.2008 at 17.30. During investigation, caste certificate of the prosecutrix was seized from her father vide Ex. P/3. Caste certificate of the prosecutrix is exhibited as article 1. Spot map (Ex.P-5) was prepared and

accused/appellant has been arrested on 12.07.2008 vide Ex.P-6.

4. After recording the statement of the witnesses and completing the formalities of the investigation charge sheet was filed against the accused/appellant under Sections 451 & 354 of IPC and Section 3(1) (xi) of the SC/ST Act. The trial Court framed charge under Sections 451 & 354 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 8 witnesses namely- Jagdev (PW-1), Dr. Varsha Singh (PW-2), prosecutrix (PW-3), Ramprasad (PW-4), J. L. R. Paikra (PW-5), K. P. Chauhan (PW-6), Ibrahim Mohammad Qureshi (PW-7) & Rajeshwar Singh (PW-08). 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, no defence witness has 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 there was a land dispute between the appellant and family of prosecutrix and due to which he has been falsely implicated in this case. He submits that there is no independent witnesses examined to support the case of the prosecution and MLC report has not supported the case of the prosecution. He lastly 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 levelled against him. Alternatively he submits that if the Court confirms conviction of the appellant under Sections 451 & 354 of IPC, considering the fact that the accused was 20 years of age on the time of incident, the incident, the incident took place around 12 years back, there is no criminal antecedents, and the provisions of Probation of Offender Act, the accused/appellant 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 committed house tress-pass in the house of the prosecutrix and 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 complainant belongs to Scheduled Caste community or not on the basis of material available on record.

11. The prosecutrix (PW-03) herself has stated in paragraph 5 of her deposition that she belongs to Schedule Caste community. J. L.R. Paikra (PW-5), Retired Tahsildar has also proved that the prosecutrix belongs to the Scheduled caste community as he had issued Caste Certificate (Article 1) to the prosecutrix showing that she belongs to Scheduled Caste community. Ramprasad (PW04), father of the prosecutrix has also proved the aforesaid fact in his statement. Thus,

in view of the aforesaid statements, it can safely be held the prosecutrix belongs to the Scheduled Caste.

12. Prosecutrix (PW03) has categorically stated in her examination in-chief that on the date of incident while she was all alone in her house the appellant entered her house, enquired about her father and other family members. When she told the appellant that all of them have gone out, the appellant caught hold of her and tried to outrage her modesty. Somehow she managed to ran away from there and reached to her father who was working in the field and informed him about the incident when her father asked appellant about the incident, the appellant threatened to kill him with *Farsha* (battle Axe). Hearing the commotion Rameshwar and Jagdev also reached there and then she informed them about the incident as well. 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. Father of the prosecutrix (PW04) has also supported the evidence of the prosecutrix and stated that after coming to know about the incident from the prosecutrix when he was coming back towards his house, he found the appellant on the way. When he enquired from the appellant about the incident he threatened to kill him with *Farsha* (battle Axe). Hearing *hue & cry* her neighbor Rameshwar & Jagdev also reached there to whom the prosecutrix narrated the incident.

14. Jagdev (PW01), the independent witness has also supported the evidence of the prosecutrix and her father.

15. Dr. Varsha Singh (PW02) has medically examined the prosecutrix on 12.07.2008 vide Ex. P/1 where she did not notice any injury on the person of the prosecutrix.

16. K. P. Chauhan (PW06) was registered FIR Ex. P/2 and sent the prosecutrix for medical examination. He has also proved FIR Ex.P/4.

17. Rajeshwar Singh (PW08), SDOP conducted the investigation and has supported the prosecution case.

18. Looking to the unrebutted evidence of prosecutrix (PW03) which finds due corroboration from oral evidence of father of the prosecutrix (PW04), Jagdev (PW01), the promptly lodged FIR, it stands proved beyond all reasonable doubt that it is the accused/appellant who committed house tress-pass in the house of the prosecutrix while she was all alone on the date of incident and tried to outrage her modesty.

19. 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.

20 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.”

21. 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.”

22. In the present case from perusal of the evidence on record it is seen that the prosecutrix as well as her father has nowhere stated in their 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. Rather it has come on record that there was some land dispute between the parties and in the past quarrel had taken place between the appellant and father of the prosecutrix. 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.

23. On the basis of aforesaid discussion this Court is of the opinion that appellant is liable to be convicted under Section 451 and 354 of IPC.

24. 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 2008 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 12 years ago, that at the time of incident accused/appellant was a young offender of 20 years and at present he must be 32 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 451 & 354 of IPC and while maintaining the fine amount as awarded by the trial Court with default stipulation under Section 451 of IPC, fine of Rs.3000/- is imposed on him with default stipulations under Section 354 of IPC.

25. In the result the appeal is allowed in part. While maintaining conviction of the appellant under Section 451 of IPC, his conviction under Section 3(1)(xi) of SC/ST Act is altered to Section 354 of IPC. The appellant is sentenced to the period already undergone by him. The fine amount of Rs. 200/- under Section 451 of IPC with default stipulations as imposed by the trial Court shall remain intact. However, the appellant is further directed to pay fine of Rs. 3,000/- under Section 354 of IPC or else he shall had to suffer additional RI for 3 months. The fine amount already deposited by the appellant, if any under Section 3 (1) (xi) of the SC/ST Act shall be adjusted accordingly.

26. Out of the total fine amount being deposited by the appellant, a sum of Rs. 2,000/- shall be payable to the prosedcutrix 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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