

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 191 of 2009

Dhanesh Kumar Dhivar, S/o Nand Kumar Dhivar, aged about 22 years, R/o Bharenga, Police Station- Abhanpur, District- Raipur (C.G.)

---- Appellant

Versus

The State of Chhattisgarh, Through: The Police Station- Abhanpur, District- Raipur (C.G.)

---- Respondent

For Appellant : Ms. Sareena Khan, Advocate.

For State/respondent : Mr. Aman Kesharwani, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

JUDGMENT ON BOARD

23/01/2020

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 25.02.2009 passed by Special Judge, [Special Court under Schedule Caste and Schedule Tribe (Prevention of Atrocities), Act, 1989] (for short "the Act, 1989"), Raipur (C.G.) in Special Session Trial No. 50/2008, wherein the said court convicted the appellant for commission of offence under Section 354 of IPC, 1860 read with Section 3(1)(xi) of the Act, 1989 and sentenced to undergo R.I. for 1 year and fine of Rs. 6000/- with further default stipulations.
2. In the present case, prosecutrix is PW-1. As per version of the prosecution, on 03.03.2008 at about 8:00 p.m. in night while the prosecutrix was in the house and went to throw garbage,

the appellant came in courtyard of her house and caught hold her hand and asked her to move with him with intention to outrage her modesty. On her shout, her mother-in-law namely Phuteniya Bai (PW-2) came there then the appellant flee away from the spot. The matter was reported, the appellant was charge-sheeted and after completion of trial, the trial court convicted as mentioned above.

3. Learned counsel for the appellant submits as under:-
 - (i) Statement of the prosecutrix that her bangles were broken and she sustained crush on her hand is not supported by medical report.
 - (ii) There is material contradiction and omission in the statement of the prosecutrix and other witnesses and independent witnesses have not supported version of the prosecution.
 - (iii) Nothing is done on the basis of caste, therefore, the finding arrived at by the trial court is liable to be set aside.
4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.
5. I have heard learned counsel for the parties and perused the record.
6. From statement of the prosecutrix (PW-1), her mother-in-law Phuteniya Bai (PW-2) & Maheshram Baghel (PW-3), it is

established that the appellant caught hold hand of the prosecutrix and asked her to move with him. On cries of the prosecutrix, her mother-in-law came out and thereafter, the appellant flee away. Version of this witness is un-rebutted during searching cross-examination and nothing could be elicited in favour of the defence.

7. There is nothing on record that anything is done against the prosecutrix on the basis of caste. It is a case on the basis of sex and the incident took place because the prosecutrix is opposite sex of the appellant, therefore, the charge that the offence is committed on the basis of caste is not established. After reassessing the entire evidence, it is established that the appellant tried to outrage modesty of the prosecutrix, therefore, the act of the appellant falls within mischief of Section 354 of IPC, 1860 and his conviction is hereby affirmed. As the charge under Section 3(1)(xi) of the Act, 1989 is not established, the appellant is acquitted of the said charge. His conviction and sentence for the said charge is hereby set aside.
8. In the present case, date of offence is 03.03.2008. On the date of incident, the jail sentence was not compulsory for the offence under Section 354 of IPC. The appellant has suffered jail sentence of 8 days during investigation/ trial. This Court is of the opinion that the ends of justice would be met if the appellant is sentenced to the jail sentence of the period already undergone by him. Accordingly, his sentence is

reduced to the period already undergone by him. However, the fine amount of Rs. 6000/- shall remain intact.

9. With these modifications, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge

Arun