

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1274 of 2002

Order reserved on 16.07.2020

Judgment pronounced on 24 .09 .2020

Vidyadhar Dewangan, S/o Laxman Dewangan, age 40 years, R/o Village Bamhani, PS Nagar Naar, Tahsil Jagdalpur, District Bastar (CG) --- **Appellant**

Versus

State of Chhattisgarh, through Police of SC/ST (AJK), Jagdalpur, District Bastar (CG) --- **Respondent**

For Appellant : Mr. R. N. Jha, Advocate.

For Respondent : Mr. Anand Verma, Dy. GA.

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Judgment

It is alleged that on 06.08.2002 at about 8 PM when the prosecutrix (PW-1) was returning home after answering the call of nature, the accused/appellant reached there, caught hold of her hands and expressed his desire to commit forcible sexual intercourse with her. She however somehow got rid of the accused/appellant and went home straight. Since at the relevant time her husband was not present in the house, the incident was not disclosed by her to anyone but as soon as her husband Kamluram (PW-2) returned home, she narrated the act of the accused/appellant to him. It is further alleged that on the next day husband of the prosecutrix went to the accused/appellant to make an enquiry as to how he had tried to outrage the modesty of his wife but instead of listening to him, the accused/appellant manhandled him and subjected him to beating with the help of slippers. It is also alleged that when the prosecutrix told the accused/appellant of making the incident public, he left her and ran away from the spot. Subsequently, on 08.08.2002 FIR (Ex.P-9) came to be lodged by the

prosecutrix herself, on the basis of which offences under Sections 354, 355 & 323 IPC coupled with Section 3 (1) (xi) & 3 (1) (x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act (for brevity the “**Special Act**”) were registered against the accused/appellant. Both PW-1 and PW-2 were subjected to medical examination, and after completion of investigation charge-sheet was filed against the accused/appellant under the same sections for which FIR was reduced to writing. Charge was however, framed against the accused under Sections 354, 323 IPC and Section 3 (1) (xi) of the Special Act.

2. By the judgment impugned dated 25.11.2002 passed by the Special Judge (SC/ST), Bastar at Jagdalpur the accused/appellant has been convicted under Sections 354 and 323 IPC coupled with 3 (1) (xi) of the Special Act and sentenced to undergo RI for 1 year and 6 months with fine of Rs.1000/- under Section 354; RI for 6 months with fine of Rs.500 under Section 323 IPC and RI for 1 year and 6 months with fine of Rs.1000/- under the Special Act, plus default stipulations.

3. Counsel for the accused/appellant submits that even if the entire case of the prosecutrix is taken as it is, the offence alleged against the accused/appellant either under the Indian Penal Code or the Special Act are not made out against the accused/appellant. He submits that in fact the husband of the prosecutrix (PW-2) had gone to the house of the accused/appellant making a demand for mutton and when the same was not fulfilled by the accused/appellant, he got a false report lodged through his wife in an absolutely fabricated case. He submits that evidence of PW-1 and PW-2 contains number of exaggerations which render the case of the prosecution doubtful.

As regards the offence under the Special Act, it is contended by the counsel for the accused/appellant that of course the prosecutrix hails from the the Scheduled Tribe category but there is not even an iota of evidence to show that the appellant put her honour at stake merely for the reason that she belonged to the said reserved category. He further submits that looking to the contradictions and omissions in the evidence of the witnesses in particular PW-1 and PW-2, the accused/appellant is entitled for acquittal by setting aside the judgment impugned.

4. On the other hand, counsel for the respondent/State supporting the judgment impugned vehemently argues that there is ample evidence to show the involvement of the accused/appellant in crime in question by trying to outrage the modesty of the prosecutrix who belongs to Scheduled Tribe category while she was returning after answering the call of nature and therefore, there is no room for any interference with the well written judgment.

5. Heard counsel for the parties and gone through the evidence of the witnesses with thoughtful consideration.

6. PW-1 (victim) to the unbecoming advances of the accused/appellant has categorically stated that on the date of incident at about 8 PM when she was getting back home after answering the call of nature, the accused/appellant reached there, caught hold of her arms and insisted for sexual favour from her. Her evidence further reveals that when she told the accused/appellant of making the matter public, he left the prosecutrix then and there and ran away therefrom. Since at the relevant time the husband (PW-2) was not present in the house, she did not make any disclosure of

incident to anyone but as soon as he returned home, the entire incident was narrated to him. Her evidence further discloses that on the next day the husband of the prosecutrix went to the accused/appellant to inquire about the things which he did with his wife but instead of paying any heed to his words, the accused/appellant slapped him with slippers. She however has tried to set the things straight while stating that when the accused/appellant caught hold of her hands she did not make any hue and cry. This honest gesture on the part of the prosecutrix while deposing in the Court indicates that she tried to stick to the truthfulness as a whole. Other reason of her not raising any hue and cry is that the accused/appellant had already left her unscathed as soon as she told him to make the matter public. She has stated that she was sent for medical examination and the bangles worn by her were seized by the police. The prosecutrix at the outset has stated that she belongs to 'Dhurwa' community which falls under the Scheduled Tribe category. Husband of the prosecutrix (PW-2) namely Kamluram has also stated almost the same things like PW-1. He has stated that after returning home from his work place, his wife apprised him of the act of the accused/appellant where he had caught hold of her arms and made an insistence of sexual favour from her. He has stated that when he had been to the house of the accused/appellant to know as to what made him outrage the modesty of his wife, instead of giving an ear to his words, he manhandled with him, giving slipper slaps. Both PW-1 and PW-2 have categorically denied the false implication of the accused/appellant at their instance. Smt. Neelawati (PW-3) is the witness who issued the caste certificate of the prosecutrix has stated

that the prosecutrix belongs to 'Dhurwa' community which falls under the Scheduled Tribe category. The certificate given by this witness is Ex.P-1. Vidya Bhatra (PW-4) has not supported the case of the prosecution. Dr. Govind Singh (PW-5) who medically examined the prosecutrix and also her husband (PW-2) has stated that he did not notice any external injury on their person. The reports given by this witness are Ex.P-3 and Ex.P-4. Investigating Officer (PW-6) and the Sub Inspector of Police (PW-7) have duly supported the case of the prosecution. Two defence witnesses have also been examined in support of the accused/appellant and both of them have stated that when the accused/appellant refused to give mutton to PW-2 demanded by him, he felt offended, but he was not subjected to any manhandling by the accused/appellant. They have further stated that PW-2 did not make any complaint to the accused/appellant of his alleged act of outraging the modesty of his wife.

7. In this view of the matter, from the evidence adduced by the prosecution one thing is quite clear that the accused/appellant tried to outrage the modesty of the prosecutrix while she was returning home after answering the call of nature and next day when her husband went to make a complaint to the house of the accused/appellant to know the sequence of events alleged by the prosecutrix, the accused/appellant slapped him with slippers. There is no reason as to why the prosecutrix would rope the accused/appellant in a false case particularly when no old dispute between the two has been projected by any of the witnesses examined by the prosecution. Thus the involvement of the accused/appellant under Sections 354 and 323 is clearly established

and being so his conviction under these sections does not suffer from any legal flaw warranting any interference by this Court.

8. As regards the conviction under the Special Act, the prosecution has not been able to prove that the accused/appellant assaulted or used any force upon the prosecutrix with an intent to dishonour or outrage her modesty mainly for the reason that she hails from the Scheduled Tribe category. The mere fact that the prosecutrix belongs to the Scheduled Tribe category is not enough for holding one guilty under Sections 3(1) (xi) of the Special Act. None of the witnesses has stated to the effect that the accused/appellant tried to outrage her modesty just to dishonour her for that reason. Being so, conviction of the accused/appellant under the Special Act is not justified and the same is therefore, set aside acquitting him of the said charge. Order accordingly.

9. In the result, the appeal is allowed in part, the accused/appellant is acquitted of the charge under Section 3 (1) (xii) of the Special Act but his conviction under Section 354 and 323 IPC is hereby maintained.

10. As regards sentence, in view of the submission made by counsel for the accused/appellant and the amendment carried out in Section 354 IPC in the year 2013, the accused can be sentenced either to imprisonment upto 2 years, or fine or both, this Court thinks it proper to impose the sentence of fine only. Accordingly, it is directed that the accused/appellant would pay a fine of Rs.1000/- in addition to the one imposed by the Court below which has been already paid by him. It is made clear that the fine amount paid by the accused/appellant shall go to the prosecutrix as compensation in

terms of Section 357 of the Code of Criminal Procedure. Order accordingly. The appellant to pay the fine amount of Rs.1000/- within a period of 6 months from the date of receipt of copy of this judgment or else this benefit would not be available to him.

11. Appeal is thus allowed in part in terms of what has been stated above.

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi/Ajay