

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1191 of 2002**Judgment reserved on : 14/10/2020Judgment delivered on : 20/10/2020

- Shankar Kushwaha, S/o Motiram Kushwaha, aged about 36 years, R/o Parri, Police Station Surajpur, District Sarguja C.G.)

---- Appellant

Versus

- State of Chhattisgarh Through Police Station Aajaak, Ambikapur, Sarguja C.G.)

---- Respondent

For Appellant	:	Shri J.K. Shastri, Advocate
For Respondent/State	:	Shri Sameer Sharma, Deputy Government Advocate

Hon'ble Shri Justice Gautam Chourdiya**C.A.V. Judgment**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 10.10.2002 passed by the Special Judge, Special Court, Ambikapur, Sarguja (C.G.) (Constituted under the Scheduled Castes and the Scheduled Tribes {Prevention of Atrocities) Act, 1989) in Special Sessions Case No. 50 of 2000, whereby appellant- Shankar Kushwaha stands convicted under Section 354 of IPC for using criminal force to the prosecutrix (PW-1) with intent to outrage her modesty and sentenced to fine of Rs.500/-, in default of payment of fine to undergo rigorous imprisonment for 15 days.
2. Case of the prosecution in brief is that the prosecutrix (PW-1) is a resident of Village Parri, P.S. Surajpur, District Sarguja and she belongs to scheduled tribe community. On the date of incident i.e. 03.11.1998 at about 18 hours, when the prosecutrix came out from her house for washing utensils in courtyard, the accused/appellant came there calling the name of her

husband Uma Shankar, then she told the appellant that her husband was not and he had gone to Bilaspur. Thereafter, the appellant caught hold of her hand, pulled her towards the dark side and tried to outrage her modesty. When the prosecutrix shouted and resisted, her brother-in-law Shiv Shanker (*dewar*) came there and he gave 2-3 slap to the appellant, then appellant left her hand and fled from there. At that time her another brother-in-law Devdhari Singh reached there. During the course of catching the appellant, she sustained injury on her right wrist because her bangles were broken. The prosecutrix narrated the incident to Chandul Ram (PW-4) and other villagers and thereafter, she went alongwith Shiv Shankar, Devdhari Singh and Chadul Ram to the Police Station and lodged F.I.R. (Ex.-P/1) within two hours of the incident against the accused/appellant on the same day which was registered under Section 354 of IPC and Section 3 (1) (xi) of the Special Act in Police Station Surajpur under Crime No. 166/98.

3. The prosecutrix (PW-1) was medically examined by PW-7 Dr. K.N. Sharma 03.11.1998 and he gave his report Ex.P/5. As per MLC report (Ex.-P/5), Doctor found one abrasion in size of $\frac{1}{2}$ inch x $\frac{1}{4}$ inch over right wrist of the prosecutrix and opined that the injury was simple in nature, caused by hard & blunt object, duration within six hours before the examination and the injury will heal within five days, if no complication arises.
4. During investigation, spot map (Ex.-P/3) was prepared and accused/appellant was arrested on 18.11.1998 vide Ex.-P/4. Statements of witnesses were recorded by the Investigating Officer. After completion of investigation, charge-sheet was filed against the accused/appellant under Section 354 of IPC and Section 3 (1) (xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'Special Act'). As the prosecutrix belongs to scheduled tribe community, looking to the nature of offence, the Special Court framed the

charge under Section 3 (1) (xi) of the Special 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 seven witnesses i.e. PW-1 Prosecutrix, PW-2 Shivshankar, PW-3 Devdhaari, PW-4 Chandul Ram, PW-5 Maheshwar Singh, PW-6 K.R. Kamre and PW-7 Dr. K.N. Sharma. Statement of the accused/appellant was also recorded under Section 313 Cr.P.C. in which he denied the incriminating circumstances appearing against him in the prosecution case. Appellant stated that Chandul and the family members of the prosecutrix have made a complaint against him of embezzlement to Co-operative Officer and the said complaint was found false, therefore, he has been falsely implicated in this case. Appellants examined two defence witnesses namely Purushottam Singh as DW-1 and Jugal Ram as DW-2 in his support.
6. After appreciation of the evidence available on record, the learned Special Judge, Ambikapur, Surguja (C.G.) by the impugned judgment, while acquitting the accused/appellant of the charge under Section 3 (1) (xi) of the Special Act, convicted and sentenced him as mentioned in para- 1 of this judgment, hence this appeal.
7. Learned counsel for the appellant submits that prior to the incident Chandul Ram was Sarpanch of the village and was removed since a no confidence motion was carried against him and at that time the Excise Department raided the house of the prosecutrix on suspicion on the complaint made by the appellant, therefore, the appellant has been falsely implicated by Chandul Ram and the family members of the prosecutrix. He further submits that no any independent witness has supported the prosecution case. He submits that the injury was found over the right wrist of the prosecutrix, it may be caused when the prosecutrix kept her child on her lap and her bangles would have broken. He also submits that so far as conviction under

Section 354 of IPC is concerned, on the same set of evidence, the Special Court has acquitted the appellant of the charge under Section 3 (1) (xi) of the Special Act. Therefore, in these circumstances, the offence under Section 354 of IPC is not made out against the appellant and the same deserves to be set aside and he be acquitted of the said charge.

8. On the other hand, supporting the impugned judgment, learned counsel for the State submits that conviction and sentence of the accused/appellant are 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-1 Prosecutrix specifically and categorically has stated in her deposition that on the date of incident i.e. 03.11.1998 at about 06-07 pm, the appellant came in her house and asked about her husband, then she told him that her husband has gone to village. She has further stated that on this, he told her to eat meals and he would come back soon. When she came out from the house in the courtyard for washing utensils, the appellant again came there and caught hold of her hand with an intent to outrage her modesty. When she shouted, her brother-in-law Shivshankar (PW-2 - *dewar*) and Devdhaari (PW-3 – *jeth*) reached there and seeing them the appellant fled from there. PW-1 has also stated that when the appellant had caught hold of her hand, her bangles were broken and she sustained injury over her right hand. Then she went alongwith Chandul, Devdhaari & Shivshankar to police station and lodged F.I.R. Ex.-P/1 against the accused/appellant on the same day and the police sent her for medical examination to Surajpur Hospital. In cross-examination, PW-1 remained firm in her court evidence and there is no any major contradiction and omission in the statement of the prosecutrix (PW-1) as compared to the contents of F.I.R. (Ex.-P/1) and her case diary

statement.

- 11.** PW-2 Shivshankar and PW-3 Devdhaari have duly supported the statement of prosecutrix (PW-1). They (PW-2 & PW-3) heard the hue and cry of the prosecutrix (PW-1) and reached there and also saw the appellant fleeing from house of the prosecutrix. They stated that the prosecutrix informed them that the appellant had caught hold of her hand with an intent to outrage her modesty.
- 12.** PW-5 Maheshwar Singh, Assistant Sub-Inspector, has lodged report as told by the prosecutrix and sent the prosecutrix for medical examination to Community Health Centre, Surajpur vide Ex.-P/2.
- 13.** PW- 6 K.R. Kamre, Deputy Superintendent of Police, prepared the spot map Ex.-P/3, arrested the accused/appellant vide Ex.-P/4 and recorded the statements of the witnesses and duly proved the same.
- 14.** PW-7 Dr. K.N. Sharma who examined the prosecutrix (PW-1) and gave his MLC report Ex.-P/5, found one abrasion over right wrist of the prosecutrix as mentioned in para-3 of this judgment and he has duly proved Ex.-P/5.
- 15.** It has also been argued by learned counsel for the appellant that prior to the incident, PW-4 Chandul Ram was the village Sarpanch and on account of complaint made by the appellant against PW-4, he (PW-4) was removed from the post of Sarpanch and further on the complaint of the appellant, the house of the prosecutrix was raided by the Excise Department, therefore, the appellant has been falsely implicated by Chandul Ram and the family members of the prosecutrix. As per evidence of PW-4 Chandul Ram, he has only stated that on the date of incident, he heard the commotion at the house of the prosecutrix, at that time he was in his field (*Khaliyan*) and saw the appellant coming from the side of the house of prosecutrix. But, PW-4 has not given any suggestion that he was removed from the post of Sarpanch on account of complaint made by the appellant against him. PW-4

has not supported the prosecution case and he has been declared hostile by the prosecution. Likewise, no suggestion was given to the prosecutrix by the defence that the appellant has been falsely implicated as raid was made in the house of the prosecutrix on the complaint of the appellant.

16. It has also been argued that on the same set of evidence, the appellant has already been acquitted of the charge under Section 3 (1) (xi) of the Special Act by the Special Court, but there is no rule of law that in such an eventuality, on the same set of evidence, the accused would also be acquitted of the charge under Section 354 of IPC. Therefore, the argument advanced by the learned counsel for the appellant is not acceptable and is thus rejected.

17. DW-1 Purushottam Singh and DW-2 Jugal Ram have stated that prior to the incident Chandul Ram (PW-4) was the village Sarpanch and the appellant was the Secretary of the Panchayat. The appellant made a complaint against Chadul Ram during the tenure of Sarpanch that he (PW-4) had committed embezzlement in respect of mid-day meals, labour payment and the work of panchayat and therefore, on account of the said complaint, PW-4 was removed from the post of Sarpanch and the appellant remained on the post of Secretary of the panchayat. Therefore, PW-4 considered the appellant responsible for removing him from the post of Sarpanch.

18. On a minute examination of the above evidence, it is clear that on the date of incident i.e. 03.11.1998, the appellant had caught the prosecutrix (PW-1) and used criminal force against the prosecutrix with an intention to outrage her modesty. When the appellant caught hold of the prosecutrix's hand, her bangles were broken and she sustained injury over her right hand and the prosecutrix has remained firm during her cross-examination. Thus, considering the facts and circumstances of the case and the manner in which the offence took place as stated by the prosecutrix which has been

duly corroborated by the evidence of PW-2 Shivshankar, PW-3 Devdhaari, prompt F.I.R. (Ex.-P/1) lodged by the prosecutrix and MLC report (Ex.-P/5) which is duly proved by PW-7 Dr. K.N. Sharma. The evidence of defence witnesses (DW-1 & DW-2) does not inspire confidence of the Court that the appellant has been falsely implicated in the crime in question because on his complaint PW-4 Chandul Ram was removed from the post of Sarpanch of village. This Court is of the opinion that based on the material available on record, the prosecution has successfully proved its case beyond all reasonable doubt and the Special Court has rightly convicted the appellant under Section 354 of IPC and has taken a lenient view while sentencing him of fine only which need no interference by this Court.

19. In the result, the appeal filed on behalf of appellant Shankar Kushwaha being bereft of any substance is liable to be and is, accordingly, dismissed. As per order-sheet dated 27.06.2000 of the Special Court, the appellant was arrested on 18.11.1998 and released on bail on 19.11.1998. If the fine amount of Rs.500/- is not deposited by the appellant, the same shall be deposited by him failing which he shall be liable to remain in jail for a period of 15 days as directed by the Special Court.

Sd/-
(Gautam Chourdiya)
Judge