

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 606 of 2001

Sheshman Yadav, S/o Buchul Yadav, aged about 25 years,
Occupation- Agriculture, R/o Govindpur, P.S. Batauli, District-
Surguja (C.G.)

---- Appellant

Versus

State of Chhattisgarh

---- Respondent

For Appellant : Ms. Preeti Jha, Advocate.

For State/respondent : Mr. Ishwar Jaiswal, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

JUDGMENT ON BOARD

31/01/2020

1. Mr. Suresh Tandan, Advocate has been engaged for arguing the case on behalf of the appellant. Despite repeated calls, he has not appeared when the case is called for hearing, therefore, Ms. Preeti Jha, Advocate, who is present in the Court has been appointed as *Amicus Curiae* to argue the case on behalf of the appellant.
2. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 06.07.2001 passed by Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act, 1989] (for short "the Act, 1989"), Surguja (Ambikapur) in Special Criminal Case No. 63/2000, wherein the said court convicted the appellant for commission of offence under Section 3(1)(xi) of the Act, 1989

and sentenced to undergo R.I. for 1 year and fine of Rs. 3000/- with further default stipulations.

3. In the present case, prosecutrix is PW-1. As per version of the prosecution, on 20.02.1999 at about 2:00 p.m. when the prosecutrix was at her home, the appellant came there and asked about some books and when she went inside, the appellant caught hold her and tried to outrage her modesty. The matter was reported, the appellant was charge-sheeted for commission of offence under Section 354 of IPC, 1860 and in alternate Section 3(1)(xi) of the Act, 1989 and after completion of trial, the trial court convicted as mentioned above.
4. Learned counsel for the appellant submits as under:-
 - (i) The case is not based on caste and the evidence adduced by the prosecution side is contrary in nature which is not liable to be acted upon.
 - (ii) The trial court has not evaluated the evidence properly, therefore, the finding arrived at by the trial court is liable to be set aside.
5. 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.

6. I have heard learned counsel for the parties and perused the record.
7. The prosecutrix (PW-1) deposed before the trial court the appellant came to her home and demanded some books of Hindi & Maths, when she entered into house for taking books, the appellant caught hold her and tried to outrage her modesty. Version of this witness is unrebutted during cross-examination. It is further supported by version of Raju (PW-2). Though Vijay Kujur (DW-1) deposed before the trial court that there was theft in house of the prosecutrix and she suspected the appellant, therefore, demanded Rs. 7000/- from the appellant that is why the appellant was roped in false charge, but version of this witness is not substantiated by any supportive evidence, therefore, the same is not liable to be acted upon.
8. From the entire evidence, it is clear that the offence is not committed on the basis of caste. It is committed because the prosecutrix is of opposite sex of the appellant, therefore, it is a case based on sex not based on caste. In view of the above, charge under Section 3(1)(xi) of the Act, 1989 is not established. The act of the appellant falls within mischief of Section 354 of IPC, 1860. Accordingly, conviction and Sentence of the appellant for commission of offence under Section 3(1)(xi) of the Act, 1989 is set aside and the appellant is now convicted for commission of offence under Section 354 of IPC, 1860.

9. At the time of incident, jail sentence was not compulsory for offence under Section 354 of IPC, 1860. The appellant has suffered jail sentence of 2 days. Considering the facts and circumstances of the case, 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 imposed by the trial court for offence under Section 3(1)(xi) of the Act, 1989 shall be treated as fine amount for offence under Section 354 of IPC, 1860.
10. With these modifications, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge