

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 230 of 2011

Arwind Kumar Bargah @ Munna, S/o- Budhram, Aged about- 23 years, R/o- Majharpara, Kasra, Police Station Patna, District- Korea (C.G.) **---- Appellant**

Versus

State of Chhattisgarh, through: Station House Officer, Police Stationm, Patna, District- Korea(C.G.) **---- Respondent**

Appellant Arvind Kumar Bargah @ Munna is present in person along with his counsel Mr. Anil Gulati, Advocate

For State/respondent : Mr. Smita Jha, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board

15/01/2020

1. This appeal is preferred against the judgment dated 04.03.2011, passed by learned Special Judge, constituted under Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 Korea, Baikunthpur (C.G.), in Special Sessions Case No. 25/2007, wherein the said Court convicted the appellant for charge under Section 452 of Indian Penal Code, 1860 and under Section 3(1)(11) of the Act, 1989, and sentenced him to undergo R.I. for 3 years and fine of Rs. 500/-, R.I. for 3 years and fine of Rs. 500/- with default stipulations.
2. In the present case, prosecutrix is (PW-1). As per version of the prosecution on 2nd of May 2007, the husband of the prosecutrix went outside to perform his duty and at that time the appellant came inside the home of the prosecutrix when she was all alone in her home, thereafter, the appellant asked her to bring the water and also demanded match box for the

purpose of smoke when the prosecutrix brought the match box the appellant came from behind and tried to outrage her modesty. Thereafter, matter was reported, investigated, charge-sheeted and Court convicted the appellant as mentioned above.

3. Learned counsel on behalf of appellants submits that conduct of the prosecutrix is not trust worthy and independent witnesses have not supported her version. The trial Court has overlooked the contradiction and omission in the statement of the prosecutrix and other witnesses. The ingredient of Section 452 of IPC and Section 3(1)(11) of the Act, 1989 is not established in the present case, therefore, finding of the trial Court is liable to be set aside.
4. On the other hand, learned State counsel submits that finding of the trial Court is based on proper marshaling of the evidence and same is not liable to be interfered with invoking jurisdiction of appeal.
5. The question for consideration of this Court is whether the appellant after preparation for assault entered into the house of the prosecutrix. No one deposed before the trial Court that any act was done before commission of offence which may be termed as preparation. It is the prior stage of commission of offence, but no evidence was collected as to how the appellant prepared before commission of offence. The evidence laid by the prosecution is only regarding commission

of offence and same is not about preparation of offence.

Therefore, charge under Section 452 of IPC is not established.

6. From the evidence of the prosecutrix (PW-1), the appellant tried to outrage her modesty and looking to her entire evidence, it is established that act is done on the basis of sexual intention and not on the basis of caste. No one deposed before the trial Court that anything was done against her on the basis of caste. The appellant was charge-sheeted for offence under Section 354 and alternative Section 3(1)(11) of the Act, 1989. The charge was leveled against the appellant in alternate, either for Section 354 of IPC or for offence under Section 3(1)(11) of the Act, 1989. As the charge is not established to be committed on the basis of caste, therefore, charge under Section 3(1)(11) of the Act, 1989 is also not established. The only charge which is established against the appellant is offence under Section 354 of IPC, 1860.

7. Accordingly, appellant is acquitted of the charge under Section 452 of IPC, 1860 and 3(1)(11) of SC/ST Act, 1989 and his conviction for the said offence is hereby set aside. Appellant is convicted for offence under Section 354 of IPC, 1860. The date of offence was 2nd May, 2007 on the date of offence, jail sentence was not compulsory for offence under Section 354 of IPC. The appellant has suffered jail term for 5 days, therefore, his sentence is reduced to the period already undergone by him. However, the fine amount imposed by the trial Court on

appellant for offence under Section 3(1)(11) of the Act, 1989
shall be treated as fine under Section 354 of IPC.

8. With this modification, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge

N.Mohle