

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRA No. 688 of 2007**

Order reserved on 01.10.2020

Judgment pronounced on 03.11.2020

Parmeshwar Ram, S/o Late Shri Pancham Ram, age about 39 years, R/o Village Khadgawan, Police Station Surajpur, District – Surguja (CG)

--- Appellant

**Versus**

State of Chhattisgarh, through the Station House Officer, Police Station Surajpur, District Surguja, C.G.

--- Respondent

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| For Appellant  | : Mr. Ashok Kumar Shukla, Advocate. |
| For Respondent | : Mr. Sameer Sharma, Dy. GA.        |

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**Hon'ble Smt. Justice Vimla Singh Kapoor**

**C.A.V. Judgment**

It is alleged that on 08.10.2006 in the noon hours, when the prosecutrix was alone in her house, the accused-appellant herein came there and asked as to where her family members were. When the prosecutrix told the accused-appellant that her husband had gone to his work-place, he caught hold of her right hand and tried to drag her inside the room saying that on earlier occasion she has not reached near the pond even after being called by him. When accused-appellant told the prosecutrix not to leave him on that day, she somehow managed to wriggle out of his clutches, and went to took shelter in another room by bolting the door from inside. Even thereafter, the accused-appellant kept waiting outside by smoking *Bidi* and when the prosecutrix did not open the door for some time, he left the place. Thereafter, on hearing the call of daughter of her neighbor Pannalal she opened the door and that her sister-in-law namely Phool Kunwar (PW-4) had seen the accused-appellant running away. She has expressed her apprehension that had she

not managed to come out of the clutches of accused-appellant he would have outraged her modesty on that very day. The report further says that after her husband Tuleshwar (PW-2) got back home in the evening, the matter was disclosed to him and thereafter written report (Ex-P/2) was given in the concerned out-post on the basis of which FIR (Ex-P/7) came to be recorded on 10.10.2006, for the offence under Sections 454 and 354 of the IPC. After completion of investigation, charge-sheet was filed against the accused-appellant under the same sections with an addition of the charge under Section 3 (1) (xi) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act (for brevity the “**Special Act**”) followed by framing of charges accordingly.

2. Learned Court below vide judgment impugned dated 26.07.2007 passed in Special S.T. No.13/2007 holding the accused-appellant guilty under Sections 454 IPC and 3(1)(xi) of the Special Act. Section 354 IPC being a corollary to the one under Section 3(1) (xi) of the Special Act, learned Court below did not record any finding on that point. While holding the accused-appellant guilty under the Special Act and the IPC, a sentence of six months R.I. has been imposed for each offence with imposition of fine of Rs.200/-, plus default stipulations. Hence this appeal.

3. Counsel for the accused/appellant submits that in spite of number of contradictions and omissions in the written report, FIR and the Court statement of the prosecutrix, learned Court below has committed a gross legal error in holding the accused-appellant guilty under the Special Act as also under Section 454 IPC. He submits that the accused-appellant at the time of commission of offence was not having any intention to dishonor or outraged the modesty of the

prosecutrix just because she belonged to Scheduled Caste category and the ingredients of the offence under Section 3(1)(xi) of the special act are not attracted to the case in hand. He submits that the findings recorded by the Court below being not based on the evidence collected by the prosecution could not be sustained, and therefore liable to be set aside in *toto*.

4. On the other hand, counsel for the respondent/State supporting the judgment impugned submits that the accused-appellant himself has admitted in his statement recorded under Section 313 of the Cr.P.C. that he already knew about the prosecutrix being a member of Scheduled Caste category and therefore, the finding recorded by the Court below holding the accused-appellant guilty under the Special Act cannot be said to be beyond the evidence available on record, and, therefore, no interference is required with a well reasoned finding by the Court below. So also he supports the conviction of the accused-appellant under Section 454 IPC on the ground that in the broad day light the accused-appellant barged into the house of the prosecutrix with an intention to outrage her modesty by exerting criminal force on her and therefore, his conviction under this Section also cannot be said to be unjustified.

5. Heard counsel for the parties and perused the material available on record.

6. If the conduct of the prosecutrix is seen right from the beginning, there appear to be a number of contradictions and omissions in the written report, FIR and also the deposition made by her in the Court. From the FIR registered on the basis of written

report, it is apparent that on the date of incident at about 12 noon when she was alone in her house, the accused-appellant came there inquired about her family members and after coming to know that she was alone and her husband had gone to his work place, he caught hold of her right hand and tried to drag her inside the room saying that she had not contacted him in spite of being called by him to meet near the pond. She further stated that when the accused-appellant showed his resolve not to leave her this time, she somehow got rid of him and went in an another room by bolting the door from inside. Even the accused-appellant kept sitting outside for 10-15 minutes smoking *bidi* and eventually when the prosecutrix neither came out nor opened the door, the accused-appellant got disappointed and left the house. Now, if the evidence of the prosecutrix is turned over, it emerges that while deposing in the Court she stated that she know the aforementioned acts of the accused-appellant and he also asked to put off her clothes. This thing the prosecutrix has not stated either in the written report or in the FIR. Secondly, from the evidence of the prosecutrix it appears that after her husband returned home, the report was lodged in the evening. However, if the testimony of her husband is taken into consideration, it appears that her husband had returned to home for taking lunch at about 12.30 p.m. and after that again went back to his work-place. This appears to be quite unnatural on the part of the husband to go to his work-place even after coming to know the humiliation of his wife at the hands of the accused-appellant instead of contemplating to put the criminal law in motion against him. Kumari Prabha (PW-3) and Phool Kunwar (PW-4) have not supported the case of the prosecution and turned hostile. Not only

this, Phool Kunwar (PW-4) has also not stated anything about the accused-appellant getting out of the house of the prosecutrix as was informed by her to the police and also to her husband. ASI (PW-6) has also stated in his evidence that the prosecutrix at no point of time informed him that accused-appellant had asked her to remove her clothes. Likewise, the Investigating Officer (PW-7) has also stated so by adding that since the prosecutrix had not make any disclosure about her disrobement the same was not reduced to writing. Likewise, at one place, the prosecutrix has stated that while being dragged by the accused-appellant she suffered certain injuries on her back, also gets falsified by the Investigating Officer who has clearly stated that the prosecutrix did never ever disclose any such thing to him during investigation.

7. Of course, the caste certificate (Ex-P/1) produced by the prosecution demonstrates that the prosecutrix being *Chamar* was a member of scheduled caste community, but it does not mean that the accused-appellant had barged into the house of the prosecutrix with an intention to dishonor or outrage her modesty simply for the reason that she belonged to the special category. The appellant appears to have done the said act simply because the prosecutrix was a woman and not that she belonged to a member of particular category. Another relevant point which appears to be necessary for disposal of this appeal is that according to the prosecutrix herself, adjacent to her house the house of Pannalal and Supari Lal exist, but not even a single person from those houses came to rescue the prosecutrix, even after hearing her cries as has been stated by herself. All this leads to the conclusion that the prosecutrix for the reasons best known to her has refrained to speak the truth before

the Court. From the glaring contradictions and omissions in the FIR, Court statement and the written report, the veracity of her version becomes doubtful, and the benefit of such conduct of the prosecutrix has to go to the accused-appellant.

8. In aforesaid view of the factual discussion, this Court is of the opinion that the finding recorded by the Court below are not in consonance with the evidence collected by the prosecution and being so they cannot be allowed to stand. The judgment impugned is hereby set aside by allowing the appeal. As the accused-appellant is already reported to be on bail, no order regarding his being set free is required to be passed.

9. Appeal allowed as above.

Sd/-  
(Vimla Singh Kapoor)  
Judge