

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 417 of 2005**

- Kanhaiyalal, S/o Ramadhar Sahu, aged 25 years, R/o Tundri, P.S. Bilaigarh, District Raipur, C.G.

----Appellant**Versus**

- State of Chhattisgarh, Through District Magistrate, Raipur, C.G.

---- Respondent

For Appellant	Shri Sachin Singh Rajput, Advocate.
For Respondent/State	Shri Anand Verma, Dy. G.A.

Hon'ble Shri Justice Gautam Chourdiya**Judgment****29.06.2020**

1. The matter is heard through Video Conferencing.
2. Challenge in this appeal is to the judgment of conviction and order of sentence dated 23.04.2005 passed by the Special Judge, Raipur, C.G. in Special Sessions Trial No.136/03, whereby the appellant stands convicted for the offence under Section 3 (1) (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth 'the Act of 1989') and sentenced to undergo rigorous imprisonment for 6 months and fine of Rs.1,000/-, in default of payment of fine amount to undergo additional rigorous imprisonment for 2 months.
3. Case of the prosecution in brief is that on the date of incident i.e. 09.08.2003 at about 5 pm, when prosecutrix, aged about 15

years, a member of Scheduled Caste, was washing her hands and feet at the pond situated behind her home, at that time, accused/appellant reached there with an intent to outrage her modesty and to humiliate her, caught hold of her breast and hands. The said incident was seen by Jitendra, Vinod, Sakhan and other witnesses. Then, she went to the police station along with Khageshwar and lodged written report Ex.P-1 against the accused/appellant. On the basis of written report Ex.P-1, FIR Ex.P-2 was registered against the accused/appellant in police station Bhilaigarh under Crime No.164/03. During investigation, caste certificate Ex.P-5 of prosecutrix was seized. Spot Map Ex.P-3 was prepared and accused/appellant was arrested on 17.08.2003 vide Ex.P-6. Statements of the witnesses were recorded. After completion of investigation, charge sheet was filed against the appellant under Section 354 of Indian Penal Code and under Section 3 (1) (xi) of the Act. The trial Court framed the charges under Section 354 of Indian Penal Code and under Section 3 (1) (xi) of the Act against the appellant which were denied by him and he prayed for trial.

4. So as to hold the accused/appellant guilty, the prosecution examined as many as 9 witnesses i.e. PW-1 Prosecutrix, PW-2 Khageshwar, PW-3 Rajmani, PW-4 Sakhan Sahu, PW-5 Vinod, PW-6 Jitendra, PW-7 Parvati, PW-8 Chatrapal Sahu and PW-9 S.L. Kanwar. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the incriminating circumstances appearing against him in the prosecution case,

pleaded innocence and false implication. However, no witness was examined by him in his defence.

5. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in para-2 of this judgment.
6. Learned counsel for the appellant submits that in this case no independent witness has supported the prosecution case. There are material contradictions and omissions in the statements of the prosecutrix PW-1 and other witnesses. No cogent evidence is available on record against the appellant. He further submits that in this case prosecution has utterly failed to prove the caste of the prosecutrix whether she belongs to the Scheduled Caste or Scheduled Tribe. He further submits that the caste certificate Ex.P-5 of the prosecutrix was not issued by the competent authorized authority. Therefore, the impugned judgment of conviction and order of sentence deserves to be set aside and the appellant be acquitted of the aforesaid charges.

Alternatively, he submits that if this Court ultimately comes to the conclusion that the appellant is guilty of the said offence, considering the fact that the incident took place around 17 years ago, the age of the appellant at the relevant time was 25 years and he has no criminal antecedent, he has already remained in jail for 8 days, the accused be sentenced to the period already undergone by him.

7. 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.

8. Heard learned counsel for the parties and perused the material available on record.
9. PW-1 Prosecutrix specifically and categorically stated in her deposition that on 09.08.2003 at about 5 pm, when she was washing her hands and feet at the pond situated behind her home, accused/appellant reached there with an intent to outrage her modesty and to humiliate her & caught hold of her hands. At that time, Jitendra, Vinod and Sakhan were present there. Then, she went to the police station and lodged FIR against the accused/appellant.
10. PW-3 Khageshwar, PW-4 Rajmani, PW-5 Sakhan Sahu, PW-5 Vinod, PW-6 Jitendra and PW-7 Parvati all have duly supported the evidence of prosecutrix.
11. PW-8 Chatrapal Sahu, village Sarpanch, prepared and proved the caste certificate of prosecutrix Ex.P-5. He states that only on the request of family members of the prosecutrix, he gave that certificate.
12. PW-9 S.L Kanwar, SDOP, prepared the spot map Ex.P-3, recorded the statements of the witnesses and duly proved the same and also proved the arrest memo Ex.P-6.
13. On a minute examination of the above evidence, it is clear that on the date of incident i.e. 09.08.2003, the appellant had caught the

prosecutrix with an intent to outrage her modesty, caught her breast and hands. The prosecutrix has remained firm during her cross-examination and her statement is also supported by PW-3 Khageshwar, PW-4 Rajmani, PW-5 Sakhan Sahu, PW-5 Vinod, PW-6 Jitendra and PW-7 Parvati.

14. Learned counsel for the appellant submits that due to previous enmity with the prosecutrix regarding purchase of clothes, she has falsely implicated the appellant. However, no evidence has been adduced by the defence to substantiate the plea of previous enmity. There is no such complaint or evidence showing previous enmity between the appellant and prosecutrix. Therefore, the argument of learned counsel for the appellant in this regard has no substance and is hereby rejected.

15. Thus, considering the facts and circumstances of the case and the manner in which the offence took place as stated by the prosecutrix which is duly corroborated by the evidence of PW-3 Khageshwar, PW-4 Rajmani, PW-5 Sakhan Sahu, PW-5 Vinod, PW-6 Jitendra and PW-7 Parvati, this Court is of the opinion that the prosecution has successfully proved its case under Section 354 of IPC against the appellant.

16. So far as the offence alleged under Section 3 (1) (xi) of the Act of 1989 is concerned, though caste certificate (Ex.P-5) was produced before the Court but PW-8 Chatrapal, who prepared that certificate, had no right to issue such certificates. Only on the request of family members of the prosecutrix, he issued that certificate which is not valid under the law. No other evidence was given by the

prosecutrix or any other witnesses that on the basis of caste of the prosecutrix, she was subjected to the assault by the appellant. Therefore, the main ingredients of the offence under Section 3 (1) (xi) of the Act were not proved by the prosecution.

17. In the matter of ***Dabloo alias Shahjad vs State of M.P., 2007 (1) M.P.L.J. Page 250***, the High Court of M.P. held as under:-

“Section 3 (1) (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is an aggravated offence under Section 354, Indian Penal Code. There was no evidence to show that the appellant used criminal force against the prosecutrix to degenerate her modesty only because she belonged to a particular caste or community, whereby there was no such circumstances to suggest that her modesty was intended or tried to degenerate simply because she belonged to a particular community. Thus, the ingredients under Section 3 (1) (xi) of the Act were not proved by the prosecution. But, from the evidence of prosecutrix and other witnesses it is clear that ample evidence was produced against the appellant to hold him guilty under Section 354, Indian Penal code, although on the date of incident the appellant caught hold of the prosecutrix and molested her with the knowledge that he will by doing such act is the intention or to outrage the modesty of the prosecutrix. Therefore, the conviction and sentence as awarded by the trial Court under Section 354, Indian Penal Code is maintained but conviction under Section 3 (1) (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is set aside.”

18. In the matter of ***Tarachand vs. State of M.P. (Now C.G.)*** reported in ***2015 (3) C.G.L.J. 327***, this Court held as under:-

“The Prosecution proved this fact that the appellant tried to

outrage modesty of the complainant (PW-1) by holding her hands which was protested and thereafter a call for help was made by the complainant – This act of the appellant is an offence defined under Section 354 of the IPC for which the trial Court also framed charge for the same – To part with, in view of this court, the prosecution not proved its case against the appellant under Section 451 of the IPC and S. 3(i)(xi) of the Act, 1989, on the other hand, the prosecution proved its case under Section 354 of the IPC against the appellant.”

19. From the record it is seen that caste certificate which was produced before the trial Court has no legal sanctity as PW-9 Chatrapal, who prepared that document was not the competent authority to issue that document. Therefore, the caste of prosecutrix was not proved by the Prosecution as per the requirement of law. Thus, keeping in view the over all evidence on record and the judgments in the matter of *Dabloo alias Shahjad vs State of M.P. & Tarachand vs. State of M.P. (Now C.G.)* (supra), conviction of the appellant under Section 3 (1) (xi) of the Act of 1989 is liable to be set aside and he is acquitted of the charge framed thereunder, but he is held guilty for the offence under Section 354 of IPC.

20. As regards the sentence under Section 354 of IPC, as per Criminal Law (Amendment) Act, 2013 which came into force with effect from 03.02.2013, the minimum sentence prescribed under Section 354 of IPC is one year and the maximum is 5 years with fine as well. However, the present incident took place in the year 2003 i.e. prior to the amendment and at that time the aforesaid offence was punishable with imprisonment of either description

for a term which may extend to two years or with fine, or with both. In the present case, considering the facts and circumstances of the case, the manner in which the incident occurred, the fact that the incident took place around 17 years ago, that at the time of incident accused/appellant was 25 years of age and at present he must be 42 years of age, the fact that he has already remained in jail for 8 days, keeping in view the judgment of Hon'ble Supreme Court in the matter of ***George Pon Paul vs. Kanagalet and Others, (2009) 13 SCC 478*** wherein considering the fact that the fine amount has been deposited and paid to the victim as also the long passage of time, the accused was sentenced to the period already undergone, this Court is of the opinion that no useful purpose would be served in sending the accused/appellant back to jail at this stage and the ends of justice would be served, if he is sentenced to the period already undergone by him and the fine of Rs.1,000/- imposed by the trial Court is enhanced to Rs.5,000/- and likewise the compensation amount of Rs.800/- payable to the prosecutrix is also enhanced to Rs.3,000/-. If the fine amount is not deposited by the accused/appellant, he shall have to suffer additional rigorous imprisonment for 3 months.

21. In the result, the appeal is allowed in part. While acquitting the appellant of the charge under Section 3 (1) (xi) of the Act, he is held guilty under Section 354 of IPC and is sentenced to the period already undergone by him. However, the fine amount of Rs.1,000/- imposed by the trial Court is enhanced to Rs.5,000/-. In

default of payment of fine, the appellant shall have to undergo additional rigorous imprisonment for 3 months. Out of the total fine of Rs.5,000/-, a sum of Rs.3,000/- shall be payable to the prosecutrix as compensation by the trial Court after due verification. The fine amount deposited by the appellant and the compensation amount already paid to the prosecutrix shall be adjusted accordingly.

22. The appellant is reported to be on bail, therefore, his bail bonds shall continue for a period of six months from today in view of provisions of Section 437-A of Cr.PC.

Sd/-
Gautam Chourdiya
Judge