

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.297 of 2005**

Dinesh Kumar, S/o. Narayan Mahant, aged about 22 years,
R/o. Village Bansula, PS Jaijaipur, Distt. Janjgir Champa
(CG)

---- Appellant

Versus

State Of Chhattisgarh

---- Respondent

Appellant Dinesh Kumar is present with his counsel Shri Manoj
Mishra, Advocate
For the Respondent/State :Smt. Shubha Shrivastava, Panel
Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****22.01.2020**

1. The appeal is preferred against judgment dated 18.3.2005 passed by Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act 1989 (for short 'the Act 1989'), Bilaspur (CG) in Special Criminal Case No.102/2004 wherein the said Court convicted the appellant for the commission of offence under Section 354 and 324 of the Indian Penal Code, 1860 and under Section 3(1)(xi) of the Act 1989 and sentenced him to undergo rigorous imprisonment for 06 months; RI for 06 months and RI for 06 months and to pay fine of Rs.500/- respectively with default stipulation.

2. In the present case, prosecutrix is PW-3. As per the version of the prosecution, on the date of incident, i.e. 30.3.2004

at 18.30 hours, the prosecutrix was going to take a bucket of water from public hand pump in front of her house, at that time, the appellant came there, caught hold the prosecutrix and thereafter bitten her upper lip with teeth. The matter was reported and investigated, the appellant was charge sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits as under:

(i) There is no evidence to establish the charge under Section 3(1)(xi) of the Act, 1989.

(ii) Testimony of the prosecutrix and other witnesses are contradictory in nature, but the same is overlooked by the trial Court, therefore, finding of the trial Court is liable to be set aside.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered with while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the judgment impugned.

6. The prosecutrix deposed before the trial Court that the appellant reached to the spot of water tap and caught hold her and thereafter bitten her upper lip. Version of this witness is supported by version of Durpati Bai (PW-4), Guharam Kurre (PW-5) and again it is supported by Dr. KL Uraon (PW-2) who

examined the prosecutrix and found injury on her upper lip which was simple in nature.

7. No one deposed before the trial Court that any act was committed on the basis of the caste. The act is voluntary in nature and it is on the basis of sex, therefore, it cannot be held that the act is committed on the basis of the caste. Charge under Section 3(1)(xi) of the Act 1989 is not established.

8. From the entire evidence, it is established that the appellant caught hold the prosecutrix and caused bite injury on her upper lip. The act of the appellant falls within mischief under Sections 354 & 324 IPC for which the trial Court has convicted him. After reassessing the entire evidence, this Court is of the opinion that the arguments advanced on behalf of the appellant is not sustainable and the finding of the trial Court is hereby affirmed

9. The appellant is acquitted of the charges under Section 3(1)(xi) of the Act, 1989 and his conviction for the offence under Sections 354 & 324 IPC by the trial Court is hereby affirmed. At the time of the commission of offence, jail sentence was not compulsory for offence under Sections 354 & 324 IPC. The appellant suffered jail term of 05 days during investigation. In view of this fact, this Court is of the view that ends of justice would be met if the jail sentence awarded to the appellant for the commission of offence under Sections 354 & 324 IPC is reduced to the period already undergone by him. However, he is fined to

pay Rs.500/-for the offence under Section 324 IPC. If he has paid Rs.500/- for the offence under Section 3(1)(xi) of the Act, 1989, the same shall be treated as fine for offence under Section 324 IPC.

10. With these modifications, the appeal is allowed in part.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**

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