

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 313 of 2003**

- Tomeshwar Prasad, S/o Dashrath Ram Rajwade, aged about 32 years, Occupation- Government Servant, Resident of Pathakpur, P.S. Jainagar, District Surguja, C.G.

----Appellant**Versus**

- The State of Chhattisgarh, Through P.S. AJAK, Ambikapur, District Surguja, C.G.

---- Respondent

For Appellant	Shri Manoj Mishra, Advocate.
For Respondent	Shri Rahim Ubwani, Panel Lawyer.

Hon'ble Shri Justice Gautam Chourdiya
Order on Board

17/11/2021

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 27.02.2003 passed by the Special Judge, Special Court Ambikapur, Surguja constituted under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Ambikapur, Surguja, C.G. in Special S.T. No.45/2000 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') read with Section 354 of Indian Penal Code and sentenced to undergo rigorous imprisonment for one year and fine of Rs.1,000/-, in default of payment of fine amount to undergo additional rigorous imprisonment for one month.

2. Case of the prosecution in brief is that on the date of incident i.e. 14.04.2000 at about 01:30 pm at village Bilaspur, P.S. Batoli, prosecutrix, a member of Tribal Community, was drying clothes outside her home. At that time, accused/appellant called her and when she went there, appellant with an intent to outrage her modesty and to humiliate her, caught hold of her hands, took her to his home, pushed her on bed, removed her clothes, gagged her mouth and pressed her breasts. When prosecutrix's aunt called her, appellant hearing her voice, left the prosecutrix and ran away from there. Thereafter, she (prosecutrix) narrated the incident to her aunt and also to her relatives. Then, on the next day i.e. 15.04.2000, she along with her relatives went to the police station and lodged FIR Ex.P-1 against the accused/appellant.
3. During investigation, Spot Map Ex.P-3 was prepared, accused/appellant was arrested on 26.04.2000 vide Ex.P-4 and statements of the witnesses were recorded. After completion of investigation, charge sheet was filed against the appellant under Sections 342, 376, 511 of Indian Penal Code and Section 3 (1) (xi) of the Act. The trial Court framed the charge under Sections 366A, 376 read with Section 511 of Indian Penal Code and 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 8 witnesses i.e. PW-1 Prosecutrix, PW-2 Smt. Gayatri Devi, PW-3 Shivnath, PW-4 Dr. Azad Bhagat, PW-5 K.R. Kamre, PW-6 Smt. Surji Bai, PW-7 Ramdev Yadav and PW-8 S.N. Tripathi. Statement of the accused/appellant 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. In his defence, he examined himself as DW-2 and also examined two defence witnesses i.e. DW-1 Barnabas Ekka and DW-3 Uma Shankar Pandey.

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-1 of this judgment.
6. Learned counsel for the appellant submits that during the pendency of this appeal, the appellant and prosecutrix have settled their dispute amicably. The prosecutrix does not want to further pursue any action against the appellant. The prosecutrix and appellant belong to the same town and prosecutrix does not carry any further grudge against the appellant. In this regard, the prosecutrix has executed a declaration in the notarized affidavit sworn before Public Notary, Bilaspur wherein she has categorically stated that she has settled her dispute with the appellant and does not have any interest in conviction of appellant in the instant case. Copy of the affidavit dated 07.10.2021 is filed herewith as Annexure-D-1. Subsequently, the prosecutrix and the appellant have filed an application (I.A. No.01/2021) under Section 320(2), (5) read with Section 482 of Cr.P.C. without any coercion and pressure. Therefore, the application may be allowed and the offence may be compounded.
7. Counsel for the State has duly assisted the Court.

8. Heard learned counsel for the parties and perused the material available on record.
9. So far as the offence alleged under Section 3 (1) (xi) of the Act of 1989 is concerned, in this case only PW-1 Prosecutrix stated in her deposition that she belongs to the Tribal Community. Though her caste certificate has been produced before the trial Court but it has not been proved in accordance with law by the prosecution. Prosecutrix has also not stated anything in her deposition that on the basis of her caste, 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.
10. 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.”

11. From the record, it is seen that though the caste certificate of the prosecutrix has been produced before the trial Court but the said certificate has not been proved nor any other evidence adduced by the prosecution regarding her caste. Therefore, the caste of prosecutrix is not proved by the prosecution as per the requirement of law. Thus, keeping in view the over all evidence on record and the judgment in the matter of *Dabloo alias Shahjad* (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. However, his conviction under Section 354 of Indian Penal Code being based on the material available on record is hereby affirmed.
12. It is not in dispute that the offence under Section 354 of Indian of Penal Code was compoundable prior to amendment in the year 2009 and the incident took place in the year 2000. In the present case, an application under Section 320 (2), (5) read with Section 482 of Cr.P.C. for compounding the offence has already been moved by both the parties and the statements of both the parties have also been recorded in this regard before the Additional Registrar (J) of this Court pursuant to the order dated 08.10.2021 by this Court. In her statement before the Additional Registrar (J) as also in her affidavit the prosecutrix has stated that she is compromising the matter without any pressure and of her own free will, therefore, there is no legal impediment in allowing the parties to compromise and

consequently compounding the aforesaid offence. Accordingly, the application under Section 320 (2), (5) read with Section 482 of Cr.P.C. filed by the parties is hereby allowed and consequently, the appellant is acquitted of the charge under Section 354 of Indian Penal Code.

13. It has been submitted by counsel for the appellant that the appellant is the Government Servant and if he is acquitted of the charge on the basis of compromise, it may affect his career in Government Service.

14. It is made clear that the acquittal of the appellant of the charge under Section 354 of Indian Penal Code on the basis of compromise between the parties, shall not affect the service prospects of the appellant.

15. In view of above, the appeal stands allowed. 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.

16. Records of the Courts below be sent back along with copy of this order for necessary compliance.

Sd/-
Gautam Chourdiya
Judge