

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 597 of 2006**

- Ram Anup @ Gudda @ Ram Anjore Yadav, S/o Ramadhar Yadav, Aged About 27 years, R/o Village- Tekari (Kunda), P.S. Mandir Hasoud, District- Raipur (C.G.).

---- Appellant**Versus**

- State of Chhattisgarh through the District Magistrate, District- Raipur (C.G.).

---- Respondent

For Appellant - Mr. Shivendu Pandya, Advocates.
For Respondent - Mr. Ishwar Jaiswal, P.L.

Hon'bel Smt. Justice Rajani Dubey
Judgment On Board

02/09/2021

01. This appeal arises out of the judgment of conviction and order of sentence dated 21.07.2006 passed by the learned Special Judge [The Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989] (Presided over by Shri B.L. Tidke) Raipur, District- Raipur (C.G.), in the Special Sessions Trial No. 93/2004 whereby, the trial court convicted the appellant is as under:-

S.No.	Conviction	Sentence
1.	Under Section 3 (1) (XI) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989	R.I. for six months & to pay fine of Rs.5000/-. In default of payment of fine additional R.I. for one month

02. Brief facts of the case are that, on 20.04.2004, at about 9.00 AM, when the prosecutrix was alone in her house and her husband had gone to school for voting, at that time, appellant came for milking the cow. It is alleged that as the cow was not milking, the accused/appellant tied the calf and was coming from the cattle shed, pressed the left breast of the prosecutrix who was standing there and ran away from there. It is alleged that the accused/appellant knowing very well that the prosecutrix belongs to the Scheduled Caste community, tried to outrage her modesty. Thereafter, FIR (Ex.P/1) was lodged against the appellant under Section 3 (1) (XI) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989. Spot-map was prepared vide Ext. P/2 and Caste Certificate of the prosecutrix (PW-1) was seized vide seizure memo (Ex. P/3). After investigation, charge-sheet was filed against the appellant under Section 3(1)(XI) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989.

03. So as to hold the accused/appellant guilty, the prosecution has examined as many as 6 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the charges levelled against him in the prosecution case & pleaded his innocence and false implication in the case.

04. The trial court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellant as mentioned in para 1 of this judgment.

05. Learned counsel for the appellant submits that the impugned

judgment passed by the learned Special Judge is bad, illegal, perverse and contrary to law applicable to the facts and circumstances and evidence available on record. Learned trial court erred in holding that the appellant has committed offence punishable under Section 3 (1)(XI) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989. The impugned judgment passed by the learned court below is based on surmises and conjectures. The learned court below has utterly failed to appreciate the evidence in its proper and right perspective. He further submits that the prosecutrix has filed the compromise application under Section 320(2) of Cr.P.C., but the learned court below rejected the same on the ground that the said offence is not compoundable. It is submitted that the independent prosecution witness Balla (PW-5) has not supported the prosecution case and turned hostile. There are material omissions and contradictions in the 161 Cr.P.C. statement of the prosecutrix and her husband and the trial court has not appreciated the same. Cross-examination of Balla (P.W.-5) does not support the impugned judgment of conviction and sentence U/s 3(1)(XI) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989, the offence punishable under the Act is not at all made out against the appellant. Prosecution has failed to prove its case beyond reasonable doubt. He further submits that learned trial court has not appreciated the evidence on record in its proper perspective, which has resulted in a great miscarriage of justice. He further placed reliance in the cases of **Mafidar Vs. State of M.P. (CRA No. 981/1996, decided on 25.01.2011)** judgment passed by the High Court **reported in 2011(2)**

C.G.L.J. 212 and Chhedilal Vs. State of M.P. (Now C.G.) (CRA No. 1524/1994, decided on 31.10.2011) judgment passed by the High Court **reported in 2012(2) C.G.L.J. 6**. Lastly, he submits that even if the entire prosecution case is taken as it is, at best the offence under Section 354 of IPC is made out against the accused/appellant and the appellant has remained in jail for 3 days.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same.

07. I have heard learned counsel for the parties and perused the material available on record.

08. A bare reading of the evidence adduced by the prosecution makes it clear that the prosecution has failed to prove the caste of the prosecutrix. The caste certificate of the prosecutrix has not been proved by competent authority which creates doubt.

09. The caste certificate (Ext. P/3) of the prosecutrix was issued by the Sarpanch, Gram Panchayat, Tekari (Kunda) but he has not appeared before the trial Court. Prosecution did not file any caste certificate of the prosecutrix issued by the competent authority, and thus has failed to prove the caste of the prosecutrix and the provisions under Section 3(1)(XI) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989 does not attract in the present case.

10. The only question which arises for consideration by this Court is

as to what offence has been committed by the accused/appellant. Prosecutrix has stated in her examination-in-chief that appellant tried to outrage her modesty, therefore, the act of appellant would fall under Section 354 of IPC.

11. Appellant has already remained in jail for about 3 days & the incident had taken place in the year 2006, no useful purpose would be served in sending him to jail, this Court is of the opinion that, in the peculiar facts and circumstances of the case, ends of justice would be served if the sentence imposed on the appellant is reduced to the period already undergone by him.

12. Accordingly, accused/appellant is convicted under Section 354 of IPC instead of Section 3(1)(XI) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989, and he is sentenced to the period already undergone by him. The appellant is reported to be on bail. His bail bonds shall stand discharged.

13. The criminal appeal is thus allowed in part.

Sd/-
(Rajani Dubey)
JUDGE