

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 166 of 2018

Judgment Reserved on : 15/03/2021

Judgment Delivered on : 10/05/2021

1. Ramchandra Kewat S/o Nanduram Kewat, Aged About 47 Years, Caste Kewat, R/o Village Dhanaura, Police Station Marwahi, District Bilaspur (C.G.).

---- Appellant

Versus

1. State Of Chhattisgarh, Through The Station House Officer, Police Station Marwahi, District Bilaspur.

---- Respondent

For Appellant : Mr. Bharat Rajput, Advocate.

For Respondent/State : Dr. (Ms.) Veena Nair, Dy. Advocate General.

Hon'ble Justice Shri Gautam Chourdiya

CAV Judgment

- 1) This appeal is filed under section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 24/08/2017 passed by Special Judge, SC/ST(PA) Act, 1989, District Bilaspur (C.G.) in Special Criminal Case No. 11/2017; whereby the appellant Ramchandra Kewat stands convicted and sentenced as under:-

Conviction	Sentence
U/s. 457 of Indian Penal Code (in short "IPC")	R.I. for 3 years and fine of Rs. 2,000/- in default of fine additional R.I. for 10 days.
U/s. 354 of IPC	R.I. for 3 years and fine of Rs. 2,000/- in default of fine additional R.I. for 10 days.
U/s. 323 of IPC	R.I. for 6 months and fine of Rs. 1,000/- in default of fine additional R.I. for 5 days.

U/s. 3 (1)(b-i)(b-ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short “SCST Act”)	R.I. for 3 years and fine of Rs. 2,000/- in default of fine additional R.I. for 10 days.
U/s. 3(2)(va) of the SC/ST Act.	R.I. for 3 years and fine of Rs. 2,000/- in default of fine additional R.I. for 10 days.
(All the sentences were directed to run concurrently)	

2) Case of the prosecution, in brief, is that on the date of incident on 05/11/2016 at village Dhanora the prosecutrix, aged about 30 years, was sleeping in her home alongwith her children. At about 1 AM in the night, she woke up to attend the call of nature and after attending the same, while she was in her courtyard, the accused appellant entered her home by committing house trespass at night, caught hold of her, pressed her mouth and in order to outrage her modesty, removed her sari and petticoat, and threw her on the ground. The prosecutrix kicked the appellant and raised hue and cry for help. Hearing the same, her daughter Roshni reached there and pulled the appellant. However, the accused fled from the place of occurrence. Thereafter, her neighbours Tihauru Gond, Bhawan Gond and her mother Sonabai and father Baldev reached the place of occurrence, and she informed them about the incident. On the same day FIR is lodged vide Ex. P-2 by victim/complainant. During investigation, spot map was prepared vide Ex. P-1, caste certificate of the prosecutrix was seized vide Ex. P-5 and the prosecutrix was medically examined by PW-4 Dr. Harshvardhan Mehar vide Ex. P-6 who noticed abrasion on lower lip of size 3cm x 5 cm, pain on back of neck and back of chest. Statements of the witnesses were recorded and after completion of the investigation charge sheet was filed against the appellant/accused for offence under Section 456, 354 & 323 of IPC and under Sections 3 (1)(11)(12) of the SCST Act.

- 3) The Trial Court framed charges against the accused/appellant under Sections 457, 354 & 323 of I.P.C. and under Sections 3 (1) (b-i)(b-ii) & 3(2)(va) of the SC/ST Act. The accused/appellant denied the charges and prayed for trial.
- 4) The prosecution in support of its case examined as many as 10 witnesses namely PW-01 Baldev, PW-02 Roshni, PW-03 Prosecutrix, PW-04 Dr. Harshwardhan (Medical Officer), PW-05 Sunita Nag (Sub Inspector), PW-06 Sona Bai (Mother of Prosecutrix), PW-07 Narendra Kumar Betal (SDO O/o Police), PW-08 J.K. Verma (Assistant Sub Inspector), PW-09 Bhawan Singh and PW-10 Shankar Dayal Mishra (Tehsildar). The statement of the accused was also recorded under section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication. No defence witness was examined by the accused in his defence.
- 5) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused appellant as mentioned in para 1 of this judgment.
- 6) Learned counsel for the appellant submits that the Trial Court has not properly appreciated the overall evidence available on record. He submits that the appellant has been falsely implicated in this case due to previous enmity with complainant and their family and no any independent witness supported the prosecution case. There are certain contradictions and omissions in the statements of the prosecution witnesses. Therefore, the appellant deserves to be acquitted of the charge leveled against him.
- 7) On the other hand learned counsel for the respondent/State supporting the impugned judgment submits that the Trial Court considering the overall evidence available on record has rightly convicted and sentenced the appellant by the impugned judgment which calls for no interference by this Court.

- 8) Heard counsel for the parties and perused the material available on record.
- 9) It is not disputed by both the counsel that prosecutrix belongs to the ST community and caste certificate Ex. P-4 is proved by PW-10 Tehsildar Shankar Dayal Mishr and that document is seized vide Ex. P-5. PW-01 Baldev (father of the prosecutrix), PW-02 Roshni (daughter of the prosecutrix) and PW-03 prosecutrix have stated in their deposition that they belong to ST (Gond) community, the accused belongs to Kewat community and that the prosecutrix and the appellant are known to each other. Thus, from the unrebutted oral and documentary evidence, it stands proved beyond all reasonable doubt that the prosecutrix belongs to ST community whereas the appellant does not belong to SC or ST community.
- 10) PW-03 prosecutrix stated in her deposition when she was at her home alongwith her daughters, at about 1 AM in the night she came out from her room for attending the call of nature, after attending the call of nature while she was in her courtyard, the accused appellant caught hold of her from behind, press her mouth and neck, threw her on the ground, and with intent to outrage her modesty tried to remove her sari and petticoat. When she raised hue and cry for help, her daughter Roshni came to her rescue, pulled the appellant from behind, she (prosecutrix) kicked the appellant and then he fled from there. Hearing the commotion, her neighbours and parents also reached there. She lodged FIR Ex. P-2, during investigation spot map Ex. P-1 was prepared and her caste certificate Ex. P-4 was seized vide Ex. P-5
- 11) PW-02 Roshni and PW-6 Sonabai, daughter and mother of the prosecutrix respectively, have also supported the version of the prosecutrix by stating that upon hearing the hue and cry of the prosecutrix when they went to the spot, they saw the appellant there trying to outrage her modesty. These witnesses also

remained firm in their cross-examination. There is no reason to disbelieve the evidence of PW-03 prosecutrix, PW-02 Roshni and PW-06 Sona Bai.

- 12) Evidence of the prosecutrix is also corroborated by PW-04 Dr. Harshwardhan Mehar who examined her medically and found 3 cm x 5 cm abrasion on her lower lip and pain on her neck and chest vide Ex. P-6.
- 13) It is true that one independent witness PW-09 Bhawan Singh has turned hostile and not supported the prosecution case but looking to the entire evidence of prosecutrix (PW-03), PW-02 Roshni, PW-06 Sona Bai and prompt FIR (Ex.P/2) lodged by the prosecutrix, there is no major contradiction and omission in the evidence of these witnesses, spot map (Ex.P/1) is proved, this Court is of the opinion that the prosecution has successfully proved the guilt of the appellant of committing house trespass at night in order to outrage the modesty of the prosecutrix, who is a member of scheduled tribe community, and while doing so, he caused simple hurt to her by using criminal force. Therefore, in the given facts and circumstances of the case and the nature and quality of evidence adduced by the prosecution, the finding of guilt recorded by the trial Court being just and proper needs no interference by this Court.
- 14) In the result, the appeal being without any substance is liable to be dismissed and is, accordingly **dismissed**. As per report dated 29/06/2020 submitted by Jail Superintendent, Central Jail, Bilaspur, the appellant having completed the entire jail sentence has been released from jail on 19/10/2019. Therefore, there is no requirement of passing any order in respect of arrest, surrender etc. of the appellant.

-Sd/-
(Gautam Chourdiya)
Judge