

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1024 of 2007

- Baluraj Baniya, S/o Lolwa @ Durga Prasad, aged about 26 years, R/o Village – Gadhbira, P.S. Lundra, District – Surguja, (C.G.).

---- Appellant

Versus

- State of Chhattisgarh Through P.S. - Lundra, District – Surguja, (C.G.).

---- Respondent

For Appellant : Shri D.N. Prajapati and Shri Vishnu Muni,
Advocates.

For State/Respondent : Shri Priyanshu Gupta, Panel Lawyer.

Hon'ble Shri Justice Arvind Singh Chandel
Judgment on Board

03/03/2021

1. This appeal has been preferred against the impugned judgment dated 27/10/2007 passed in Special Sessions Case No.49/2007 by the Special Sessions Court, Constituted under The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Surguja (Ambikapur) (C.G.) wherein appellant has been convicted and sentenced as under :

<u>Conviction</u>	<u>Sentence</u>
U/s 3(1)(xi) of SC/ST (Prevention of Atrocities) Act, 1989	R.I. for 6 months & fine amount of Rs.200/- with default stipulations.

2. Brief facts of the prosecution case are that on 10/8/2006 at about 22:00 PM, when prosecutrix (PW-1) was sleeping at her house, appellant knocked the door of the prosecutrix and asked for water. It is alleged that when prosecutrix gave him water, then appellant caught hold her waist and tried to cover her face. When the prosecutrix screamed, then one Chandradeep reached at the spot and appellant ran away. Matter was reported by the prosecutrix and on the basis of the said, offence was registered. Statement of prosecutrix and other witnesses were recorded under Section 161 of Cr.P.C. After completion of the investigation, a charge-sheet was filed. To prove the guilt of the accused/appellant, prosecution has examined as many as 4 witnesses. No defence witness has been examined. Statement of appellant under Section 313 of the Cr.P.C. was recorded, wherein accused/appellant has pleaded innocence and false implication.
3. After completion of trial, the trial Court has convicted and sentenced the appellant as mentioned in paragraph 1 of this judgment. Hence, this appeal.
4. Learned Counsel appearing on behalf of the appellant submits that appellant is innocent and is falsely implicated in the present case. They further submit that trial Court has wrongly convicted the appellant without there being sufficient and clinching evidence against him. They further submit that material witness Chandradeep has not been examined by the prosecution, thus, prosecution story is doubtful and not reliable. Entire story narrated by the prosecution is unnatural, therefore, statement of the prosecutrix is not reliable. Hence, conviction of the appellant is not sustainable.

5. Per contra, learned Counsel appearing for the State supports the impugned judgment and submits that sentence awarded by the trial Court is just and proper and requires no interference.
6. I have heard learned Counsel appearing for the parties, perused the record minutely. There is no dispute on the points that prosecutrix (PW-1) belongs to scheduled caste, appellant is 10-15 years younger than prosecutrix (PW-1) and he does not belong to scheduled castes or scheduled tribes. With regard to the alleged incident, prosecutrix (PW-1) has deposed that on the date of incident, at about 10:00 PM, when she was sleeping in her house, appellant knocked the door, on being enquired by prosecutrix (PW-1), appellant told his name, then appellant asked for water to drink. When she served water in *lota* to the appellant, he caught hold her waist, then prosecutrix (PW-1) pulled hair of the appellant and slapped him. When prosecutrix (PW-1) screamed, then the appellant tried to put cloth in her mouth. During the said quarrel, prosecutrix (PW-1) bit the finger of the appellant. On hearing the screaming, one Chandradeep reached at the spot and the appellant ran away from there. Prosecutrix (PW-1) narrated the entire story to Chandradeep, thereafter, she lodged a report vide Ex.P-1 in the police station. Prosecutrix in her statement has admitted the fact that the appellant is about 20 years younger than her. She further admitted the fact that prior to this alleged incident, appellant caused his cattle graze all the maize crop of prosecutrix and destroyed the same. Due to that prosecutrix tied three oxen of the appellant and asked for compensation. But appellant did not give any compensation and used filthy language against her. According to this witness, one Chandradeep saw the appellant when he tried to run away from the

spot but he has not been examined by the prosecution.

7. On a minute examination of statement of the prosecutrix (PW-1), it appears that entire story narrated by her is suspicious because from the admissions made by her, it is well-established that appellant is 15-20 years younger than prosecutrix and there was previous dispute between both of them. Prosecutrix, despite knowing the fact that there was previous enmity between her and the appellant, she opened the door at night when the appellant knocked her door for drinking water. This statement given by the prosecutrix appears to be suspicious. Also, one eye-witness of the case namely Chandradeep has not been examined by the prosecution. Thus, without corroborating the statement of prosecutrix to any witness, trial Court has convicted and sentenced the appellant. Looking to the evidence available on record, in my considered view, appellant is entitled to get benefit of doubt. Thus, conviction of the appellant made by the trial Court is not sustainable.
8. Consequently, the appeal is allowed. The conviction and sentence of the appellant is set aside and he is acquitted of the charge framed against him under Section U/s 3(1)(xi) of SC/ST (Prevention of Atrocities) Act, 1989.
9. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge