

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1312 of 2003**

- Ataulah @ Patel, S/o. Id Mohammed, Aged 40 years, Caste Musalman, R/o. Saitangar toli, PS Jashpur, District Jashpur, CG

---- **Appellant****Versus**

- State Of Chhattisgarh, through SHO Jashpur, district Jashpur CG

---- **Respondent**

For Appellant	: Shri A.K.Prasad, Advocate
For Respondent/State	: Ms. Shubha Shrivastava, PL

Hon'ble Smt. Justice Rajani Dubey**Order On Board by Virtual Hearing****23/08/2021**

This appeal arises out of the judgment and order dated 11.12.2003 passed by Special Judge (SC/ST Prevention of Atrocities Act) Jashpur in Special Criminal Case No. 04/2003 convicting the accused/appellant under Section 354 IPC and sentencing him to undergo RI for two years with fine of Rs. 2,000/- with default stipulation.

2. As per prosecution case, FIR Ex.P-6 was lodged by prosecutrix (PW-1) a minor, aged about 12 years alleging that on 14.08.2000, her sister and brother-in-law (*jijaji*) came to her house. After sometime, her brother-in-law asked the prosecutrix that "let's go for a walk and took her to a shop where he bought some sweet (*rasgulla*) for her and

bought fried grams for himself. Thereafter, he went along with one person to consume liquor. She has stated that at that time it was 7.00 p.m. After consuming liquor, while they were returning, on the way, her brother-in-law tried to caught hold of her hand and made an attempt to outrage her modesty. Based on this FIR, offence under Section 354 IPC and 3(1)(xi) of the SC/ST (Prevention of Atrocities Act) was registered against the appellant. After filing of the charge sheet, trial judge has framed charge under Section 354 IPC and Section 3 (1)(xi) of the SC/ST (Prevention of Atrocities) Act.

3. So as to hold the accused/appellant guilty, the prosecution has examined 10 witnesses. Statement of the accused was also recorded under Section 313 of the Cr.P.C. in which he denied the charges leveled against him and pleaded his innocence and false implication in the case.

4. By the judgment impugned the Court below has acquitted the appellant under Section 3(1)(xi) of the SC/ST (Prevention of Atrocities Act) but has convicted and sentenced him under Section 354 IPC as mentioned above. Hence this appeal.

5. Contention of counsel for the appellant is that the appellant is not pressing this appeal on merits and would confine his argument to sentence part thereof only. He submits that the appellant has remained in jail for about 7 months and 2 days and the incident occurred about 20 years back, no useful purpose would be served in sending him to jail.

6. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the conviction of the appellant is in accordance with law.

7. Prosecutrix (PW-01) has categorically stated that on the date of incident when she had gone with the accused/appellant for a walk, on the way, he consumed liquor and thereafter, taking advantage of her loneliness, with an intention to outrage her modesty caught hold of her hand and forcibly removed her clothes. In cross-examination she remained firm. Almost similar statement has been made by Lalbahadur (PW-4), P.G.Joseph (PW-5) and Prasann Ram(PW-6). Prashant Thakur (PW-9) is the Investigating Officer who has done the investigation.

8. Close scrutiny of the evidence makes it clear that on the date of incident i.e. 14.08.2000 when the prosecutrix, a minor girl, had gone along with the appellant for walk on his request, taking the advantage of her loneliness he caught hold of her hand and made an attempt to outrage her modesty. There is no reason for this court to disbelieve the statement of the prosecutrix. The trial court was justified in convicting the appellant under Section 354 IPC.

9. Next question which arises for consideration before this Court is as to what would be the appropriate sentence to be imposed on the appellant. The incident had taken place about 20 years back, the appellant has already remained in jail for about 7 months and 2 days, is now an old man must be aged about 60 years, ends of justice would be

served if the sentence imposed on him is reduced to the period already undergone by him.

10. In the result, the appeal is partly allowed. Accused/appellant is reported to be on bail and therefore no further order is required. His bail bonds stand discharged.

Sd/-
(Rajani Dubey)
Judge