
(2012) 09 UK CK 0006

In the Uttarakhand High Court

Case No : Criminal Appeal No. 1531 of 2001 (Old No. 2015 of 1999)

Nigrodh

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 11-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 320, 374
Penal Code, 1860 (IPC) — Section 354, 376
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(xi)

Citation : (2012) 3 UC 1896

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : Rajendra Singh and Mr. Tanuj Semwal, for the Appellant; Vinod Sharma, D.A.G., for the Respondent

Judgement

Prafulla C. Pant, J.—This appeal, preferred u/s 374 of Code of Criminal Procedure, 1973, is directed against judgment and order dated 03.08.1999, passed by 2nd Additional Sessions Judge, Haridwar, in Sessions Trial No. 303 of 1996, whereby said court has convicted the accused/appellant Nigrodh u/s 354 of I.P.C., and sentenced him to rigorous imprisonment for a period of one year. The trial court has further convicted accused/appellant Nigrodh u/s 3(1)(xi) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and sentenced him to rigorous imprisonment for a period of six months and directed to pay fine of Rs. 1000/-. Heard learned counsel for the parties, and perused the lower court record.

2. Prosecution story, in brief, is that on 11.12.1995, at about 5.00 p.m. PW 1 Nirmala Devi had gone to ease herself out in the open field of Vishambhar Gujjar. Accused/appellant Nigrodh came there and molested her. She told about the incident to PW 4 Pratap Singh (husband of Nirmala Devi), who lodged First Information Report (Ex. A1) at Police Station Bhagwanpur. On the basis of said report, Crime No. 151 of 1995 was registered, and after investigation, PW 6 Sub

Inspector Daya Ram Arya submitted charge sheet (Ex. A7) against the accused/appellant Nigrodh for his trial in respect of offence punishable u/s 376 of I.P.C., and one punishable u/s 3(1)(xi) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The court concerned, after hearing the parties, framed charge of offence punishable u/s 376 of I.P.C., and one punishable u/s 3(1)(xi) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, against the accused/appellant Nigrodh, to which, he pleaded not guilty and claimed to be tried. On this, the prosecution got examined PW 1 Nirmala Devi, PW 2 Dr. Ranjana Lumba, PW 3 Sandeep, PW 4 Pratap Singh, PW 5 Sub Inspector S.P. Bishnoi and PW 6 Sub Inspector Daya Ram Arya. The oral and documentary evidence was put to the accused u/s 313 of Cr.P.C., in reply to which, the accused stated that he has been falsely implicated in the case. He further told that he only stopped Nirmala Devi (PW 1) from defecating in open field. In defence DW 1 Prabhashi was got examined. After hearing the parties, the trial court has opined that no offence punishable u/s 376 of I.P.C., is found proved on the record. However, it was found that the offence punishable u/s 354 of I.P.C., is made out. The trial court further found the offence punishable u/s 3(1)(xi) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, has also been proved. Accordingly, the accused/ appellant Nigrodh was convicted and sentenced under said provisions.

3. Learned counsel for the appellant, and learned counsel for the complainant stated before this Court during the hearing of this appeal that PW 1 Nirmala Devi and accused/appellant Nigrodh have entered in to the compromise. Attention of this Court is drawn to the affidavit filed with the Compromise Application No. 1071 of 2012.

4. The offence punishable u/s 354 of I.P.C., is compoundable with the permission of the Court u/s 320 of Cr.P.C.

5. Nirmala Devi (PW 1) identified by her counsel Mr. Tanuj Semwal, Advocate, is present in the Court and she told this Court that she does not want to prosecute the accused/appellant Nigrodh.

6. Therefore, the accused/appellant Nigrodh is entitled to be acquitted from the charge of offence punishable u/s 354 of I.P.C., as the offence is compoundable with the permission of the Court.

7. As far as, the offence punishable u/s 3(1)(xi) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is concerned, neither it was mentioned in the First Information Report, as to what was the caste of accused/appellant, nor it is stated in the statement of PW 1 Nirmala Devi that the accused/appellant was not a member of Scheduled Caste. In the circumstances, unless it is shown that accused/appellant was not a member of Scheduled Caste, it cannot be said that the ingredients of the offence punishable u/s 3(1)(xi) of the said Act, are attracted. Therefore, the conviction and sentence recorded by the trial court on this count is liable to be set aside. Accordingly, the

appeal is allowed. The impugned judgment and order dated 03.08.1999, passed by 2nd Additional Sessions Judge, Haridwar, in Sessions Trial No. 303 of 1996, recording the conviction and sentence against accused/appellant Nigrodh, u/s 354 of I.P.C., and u/s 3(1)(xi) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is hereby set aside. Accused/appellant Nigrodh stands acquitted from the charge. The non-bailable warrants issued against him are hereby recalled (Warrant Recall Application No. 3672 of 2012 and Compromise Application No. 1071 of 2012 stand disposed of). Lower court record be sent back.