
(2009) 10 MP CK 0046
In the Madhya Pradesh High Court

Rambhagat @ Ram Bharose Yadav and Another	APPELLANT
Vs	
The State of Madhya Pradesh	RESPONDENT

Date of Decision : 30-10-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 34, 354
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)

Citation : (2009) 10 MP CK 0046

Hon'ble Judges : Sushma Shrivastava, J

Bench : Single Bench

Judgement

Sushma Shrivastava, J.—Appellants have preferred this appeal challenging their conviction and order of sentence passed by Special Judge, Mandla in Special Case No. 125/98, decided on 12.01.2000.

2. Appellants have been convicted u/s 323 of IPC for causing simple hurt to Shambhu Prasad and sentenced to pay fine of Rs. 700/- each, in default simple imprisonment for three months. Appellant No. 1 has been further convicted u/s 354 of IPC and Section 3(1)(xi) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "Act") and sentenced to rigorous imprisonment for six months each for the respective offences and also sentenced to pay a fine of Rs. 200/- for the offence u/s 3(1) (xi) of the Act by the impugned judgment.

3. According to prosecution, on 26.8.98 about 5:30 in the evening, prosecutrix, a member of Scheduled Caste, had gone to answer the call of nature on the riverside of the field near village Marvari. When the prosecutrix was sitting for easing herself, appellant Rambhagat came there; prosecutrix then got up, but appellant Rambhagat caught hold of her hands with intent to outrage her modesty and also tried to pull her sari. Upon hue and cry, her nephew Ganesh noticed the incident and called the husband of the prosecutrix. When Shambhu Prasad, the husband of the prosecutrix came there and inquired about the

incident from appellant Rambhagat, he began assaulting him. By that time, the other appellant, the father of appellant No. 1, also came there and caught hold of the neck of Shambhu Prasad and thereby both the appellants caused hurt to him. The matter was reported to the Police. On the basis of report lodged by prosecutrix next day, an offence was registered against the appellants and was investigated. Injured Shambhu Prasad was sent for medical examination. After due investigation, appellants were prosecuted u/s 354, 323/34 of IPC and Section 3(1)(xi) of the Act and were put to trial before Special Court, Mandla.

4. Appellant No. 1 was charged u/s 354, 323 of IPC and Section 3(1)(x) and (xi) of the Act, whereas appellant No. 2 was charged only u/s 323 of IPC and Section 3(1)(x) of the Act.

5. Appellants abjured the guilt and pleaded false implication due to enmity.

6. Learned Special Judge, after trial and upon appreciation of the evidence adduced in the case, acquitted the appellants of the charges u/s 3(1)(x) of the Act, but found them guilty u/s 323 of IPC, also found appellant No. 1 guilty for committing offence u/s 354 and 3(1)(xi) of the Act, convicted and sentenced them as aforesaid by the impugned judgment, which has been challenged in this appeal.

7. Appeal is preferred inter alia on the ground that the trial court erroneously convicted the appellants without there being any cogent and reliable evidence against them and without considering that there was delay in lodging the FIR and the entire story was an after thought.

8. Learned Counsel for the State, on the other hand, justified and supported the conviction of the appellant.

9. Perused the evidence on record. Prosecutrix (P.W-1) deposed in her evidence that at the relevant time, when she had gone for latrine near the river side and sitting on the ground, appellant Rambhagat came there; when she got up, appellant Rambhagat caught hold of her hands and tried to pull her sari. When she shouted for help, her nephew Ganesh heard her voice and called her husband Shambhu Prasad.

10. Shambhu Prasad (P.W-2), the husband of the prosecutrix admittedly did not witness the alleged incident of indecent assault on his wife. Ganesh Prasad (P.W-4), the nephew of the prosecutrix, though identified both the appellants during his evidence, merely deposed that on hearing the voice of the prosecutrix, he noticed that a boy was holding her hand; he did not name the appellant No. 1 as the person, who caught hold of the hands of the prosecutrix. If the incident of the indecent assault by appellant No. 1 on the prosecutrix was true, her nephew Ganesh Prasad (P.W-4) would also have specifically seen and named him. Moreover, Ganesh Prasad (P.W-4) also never stated in his evidence that he had seen appellant No. 1 or the boy, pulling sari of the prosecutrix, as deposed by her.

11. In view of the aforesaid facts, the evidence of the prosecutrix (P.W-1) about

the indecent assault on her by appellant No. 1 becomes doubtful. There has been a suggestion in her cross-examination that she had gone for latrine in the field of appellant, which was objected to by appellant No. 1 resulting in his false implication. Though the prosecutrix (P.W-1) denied the aforesaid suggestion, but Uttamlal Jhariya (P.W-3) admitted in her cross-examination that near the place of occurrence there is a field of appellant Rambhagat. The FIR of the incident was also lodged by the prosecutrix (P.W-1) next day evening; therefore, the possibility of twisting the facts and lodging a report with embellishment and coloured version after deliberation and consultation, cannot be ruled out.

12. In the wake of aforesaid, the charges u/s 354 of IPC and 3(1)(xi) of the Act against appellant No. 1 could not be said to have been proved beyond reasonable doubt. His conviction u/s 354 of IPC and Section 3(1)(xi) of the Act, therefore, deserve to be set aside.

13. However, there is ample evidence against the appellants that they caused hurt to Shambhu Prasad (P.W-2), the husband of the prosecutrix. Besides the evidence of Shambhu Prasad (P.W-2) himself and his wife (P.W.-1), there is corroborative medical evidence of Dr. S. Saalvar (P.W-6) as also of Uttamlal (P.W-3) in this behalf that hurt was caused to Shambhu Prasad (P.W-2) by the appellants.

14. In view of the evidence as available on record against the appellants, their conviction u/s 323 of IPC for causing hurt to Shambhu Prasad, deserves to be affirmed. However, the mere sentence of fine of Rs. 700/- imposed on them u/s 323 of IPC does not call for any interference in the facts and circumstances of the case.

15. Consequently, the appeal is partly allowed. The conviction of the appellant No. 1 and sentence passed on him u/s 354 of IPC and Section 3(1)(xi) of the Act are hereby set aside. The conviction of both the appellants and sentence passed on them u/s 323 of IPC are hereby affirmed.

Appeal is accordingly disposed of.