
(2011) 04 CHH CK 0051
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 1167 of 1996

Shyam Lal

APPELLANT

Vs

State of M.P. (Now State of Chhattisgarh)

RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Penal Code, 1860 (IPC) — Section 354, 356

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)

Citation : (2011) 4 CGLJ 98 : (2011) 3 Crimes 257

Hon'ble Judges : Pritinker Diwaker, J

Bench : Division Bench

Judgement

Pritinker Diwaker, J.—This appeal is directed against the judgment and order dated 4.7.1996 passed by Special Judge, Raipur in Special Case No. 284/1996 convicting the accused/Appellant for the offence punishable u/s 3(1)(XI) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act (for short the "Act") and sentencing him to undergo rigorous imprisonment for one year and pay fine of Rs. 700, in default of payment of fine to further undergo simple imprisonment for three months.

2. Facts of the case in brief are that on 16.1.1996 at about 11.45 p.m. FIR Ex. PI was lodged by the prosecutrix (PW1) a married lady aged about 45 years alleging that on that day at about 8.30 p.m. when she was sleeping in her house and that her husband had not returned from his workplace, accused/Appellant came there, sat on her bed and pulled out her sari with an intention to outrage her modesty. It is alleged that due to her sari being pulled out by the accused/Appellant she had become naked. Thereafter, allegedly she came out of her house in the naked condition and started shouting for help on hearing which her neighbours namely Sukhram (PW2) and Krishna Bai (PW3) came there and she covered herself with the Lungi given to her by Sukhram (PW2) and then the report was lodged. Based on this FIR, the offence u/s 354 Indian Penal Code was

registered against the accused/Appellant and after completion of investigation challan was filed by the police on 22.3.1996 for the offences under Sections 354 and 456 Indian Penal Code and 3(1)(XI) of the Act. The Court below however framed the charge against the Appellant only u/s 3(1)(XI) of the Act.

3. So as to hold the accused/Appellant guilty, prosecution has examined 6 witnesses in support of its case. Statement of the accused/Appellant was also recorded u/s 313 of the Code of Criminal Procedure in which he denied the charges levelled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, the trial Court has convicted and sentenced the accused/Appellant as mentioned above in paragraph No. 1 of this judgment.

5. Counsel for the accused/Appellant submits that there is no documentary evidence available on record to show the caste of the prosecutrix and that caste of the prosecutrix has been disputed by the Appellant. He further submits that even otherwise, before marriage the prosecutrix was Lohar by caste and merely that she married a person belonging to Gond community, her social status would not change and she remains Lohar by caste.

6. On the other hand, counsel for the Respondent/State supports the judgment impugned and submits that conviction of the Appellant is strictly in accordance with law. However, she does not dispute that there is no documentary evidence to show the caste of the prosecutrix. She submits that even if the provisions of Section 3(1)(XI) of the Act are not attracted to the case in hand, the Appellant would very much be convicted u/s 354 Indian Penal Code.

7. Prosecutrix (PW1) has stated in her evidence that by caste she is Loharin but the caste of her husband Jailal is Gond. She has stated that the Appellant is Lohar by caste. Describing the incident it is alleged by the prosecutrix that on the date of incident, the Appellant had come to her house, started talking to her with bad intention on which she told him that he being the son of her sister was like her son also. She has further stated that the accused/Appellant had asked her for sexual favour and when she refused for that, he pulled out her clothes as a result of which she had become naked. Thereafter, giving a jolt to him, she came out of her house and started shouting for help on hearing which her neighbours Shukhram (PW2) and Krishna Bai (PW3) came there to whom she narrated the entire incident. Then, according to this witness, Sukhram and Ors. made her wear the clothes and asked the accused/Appellant as to why he had done like that. Statement of this witness is duly supported by Sukhram (PW2) and Krishna Bai (PW3) who have stated that upon hearing the cries of the prosecutrix, they reached the spot and seeing her in a naked condition, clothes were given to her and at that time the accused/Appellant was also standing there. Fagnu Ram (PW4) has also supported the case of the prosecution and stated that upon hearing the cries of the prosecutrix, he came out of his house, saw the prosecutrix in a naked condition and the lungi was given to her by Sukhram

(PW2) and Krishna Bai (PW3) to cover herself. Ramu (PW-5) is the witness to the seizure of articles made under Ex. P2. This witness has stated that by caste the Appellant is lohar and earlier the prosecutrix was loharin by caste but subsequently she married one Gond. S.L. Dhoulpuria (PW6) is the investigating officer who has fully supported the case of the prosecution.

8. Minute examination of the evidence on record makes it clear that the accused/Appellant had entered the house of the prosecutrix and outraged her modesty. Statement of the prosecutrix is duly supported by other witnesses as well. To convict the accused under this special provision the prosecution is required to produce the relevant documents showing the caste of the prosecutrix which is sine qua non for doing so. Admittedly, in this case no document has been filed by the prosecution to establish the caste of the prosecutrix that too when her caste has been disputed by the accused/Appellant. Furthermore, as per the case of the prosecution, prior to marriage the prosecutrix was Lohar by caste which comes in the category of OBC and merely her marrying a Gond her social status would not change and her caste would remain unchanged. The record also does not spell out even a single instance on the basis of which it can be said that the Appellant did the act alleged against him with an intention to insult or humiliate the prosecutrix just because she belonged to the scheduled caste community.

9. Thus in view of the aforesaid factual position, this Court is of the considered opinion that the conviction of the accused/Appellant under this special provision is not sustainable in the eye of law. However, as the Appellant had entered the house of the prosecutrix and outraged her modesty, of course he is liable to be convicted u/s 354 Indian Penal Code.

10. Consequently, the appeal is partly allowed. Conviction of the Appellant u/s 3(1)(XI) of the Act is hereby set aside. However, the Appellant is convicted u/s 354 Indian Penal Code.

11. Considering the fact that the incident had taken place in the year 1996 and that the Appellant has already remained in jail for four months and twenty days, this Court is of the considered opinion that no useful purpose would be served in again sending him to jail and it would be in the interest of justice if he is sentenced to the period already undergone by him subject to enhancement of the amount of fine.

12. Keeping all these things in mind, the Appellant is sentenced to the period already undergone by him. However, the fine amount imposed by the Court below is enhanced to Rs. 3,700 out of which Rs. 3,000 would be payable to the prosecutrix. Let the enhanced sum be deposited in the Court below within a period of six months failing which the Appellant shall be liable to remain in jail for a period of one month.