

Atul B. Mistri Vs State Of Chhattisgarh

Court: Chhattisgarh High Court

Date of Decision: Aug. 1, 2019

Acts Referred: Indian Penal Code, 1860 " Section 354, 506B

Scheduled Castes And The Scheduled Tribes (Prevention Of Atrocities) Act, 1989 " Section 3(1)(x), 3(1)(xi)

Code Of Criminal Procedure, 1973 " Section 437A

Hon'ble Judges: Sharad Kumar Gupta, J

Bench: Single Bench

Advocate: Y.C. Sharma, Vinod Tekam

Final Decision: Partly Allowed

Judgement

Offence u/S.,RI for,Fine Rs., "In default of payment of

fine

354, IPC",1 and ½ years,"1,000/-",RI for 4 months

3(1)(xi), SCST Act",2 years,"1,500/-",RI for 6 months

14.06.2016 it was observed that so far as the conviction of the appellants under Section 3(2)(V) of the Act is concerned, in the present case, there is",,,

no evidence at all to the effect that appellants had committed the offence on the ground that the deceased belonged to Scheduled Caste Category. In,,,

the absence of such ingredients merely because the deceased happens to be a member of Scheduled Caste Category, automatically the offence under",,,

Section 3(2)(V) of the Act is not made out against the appellants.,,,

16. The Division Bench of this Court in its decision dated 14- 12-2017 passed in Cr.A. No. 304/2007 in the matter of Devchand Patel and Others v.,,,

State of Chhattisgarh observed that so far as conviction under Section 3(2)(V) of the Act, 1989 is concerned, since it has already been held that the",,,

appellants have not committed any offence as against the deceased, the question of their conviction under this Section does not arise. Even otherwise",,,

this is not a case of the prosecution that as the deceased belonged to a particular caste, he was subjected to beat, rather it has been established from",,,

the evidence that it was the deceased who being at fault was beaten by the villagers, which unfortunately resulted in his death. Therefore, the accused",,,

are acquitted of this charge also.,,,

17. The Hon'ble Supreme Court in *Dinesh @ Buddha v. State of Rajasthan* {2006 (3) SCC771} in para-15 has held as under: "" 15. Sine qua non for",,,

application of Section 3(2)(v) is that an offence must have been committed against a person on the ground that such person is a member of Scheduled,,,

Castes and Scheduled Tribes. In the instant case no evidence has been led to establish this requirement. It is not case of the prosecution that the rape,,,

was committed on the victim since she was a member of Scheduled Caste. In the absence of evidence to that effect, Section 3(2)(v) has no",,,

application. Had Section 3(2)(v) of the Atrocities Act been applicable then by operation of law, the sentence would have been imprisonment for life",,,

and fine. """,,,

18. From the aforesaid judicial precedents laid down by this Court in the matter of *Bhalchand Tiwari @ Bhola, Bhikhar and Others*, and *Devchand*",,,

Patel and Others and by the Hon'ble Supreme Court in the matter of *Dinesh @ Buddha* (supra), this Court finds that to attract the provisions of SCST",,,

Act it is not sufficient that prosecutrix was either member of scheduled caste or scheduled tribe. The essential element for applicability of SCST Act,,,

is that accused had committed offence only this ground that she was either member of scheduled caste or scheduled tribe. In the case in hand, there is",,,

no such evidence on record on the strength of which it can be said that the appellant had committed said offence allegedly merely on the ground that,,,

the prosecutrix was a member of the Scheduled Tribe.,,,

19. After appreciation of the evidence this Court finds that the prosecution has succeeded to prove beyond reasonable doubt the charge punishable,,,

under Section 354 of the IPC, but failed to prove beyond reasonable doubt the charge punishable under section 3(1)(xi) of the SCST Act, 1989 against",,,

the appellant. Thus, this Court affirms the conviction of the appellant under Section 354 of the IPC and sets aside the conviction and sentence of the",,,

appellant punishable under section 3(1)(xi) of the SCST Act.,,,

20. Appellant is acquitted from the charge punishable under Section 3(1)(xi) of the SCST Act extending him benefit of doubt. The fine amount as,,,

awarded by the trial Court for said offence, if already deposited by the appellant, the same be refunded to him after the expiration of prescribed period",,,

of the further legal remedy available to the parties.,,,

21. So far as sentence is concerned for the offence punishable under Section 354 IPC, the appellant remained in jail since 29.08.2002 to 03.09.2002.",,,

Near about 17 years have passed from the date of incident. At the time of incident, he was aged about 33 years, now he is about 50 years old. Now",,,

he is in mainstream of society. Sending him to jail would disturb him as well as his family members' life. At the time of the incident, no minimum jail",,,

sentence was provided for the offence punishable under Section 354 of IPC. Hence, no useful purpose would be served if he is sent to jail after 17" ,,,

years of the incident. Looking to these circumstances and observation made by Hon'ble Supreme Court in the matter of Manjappa -v- State of ,,,

Karnataka [(2007) 6 SCC 231] this Court is of the opinion that cause of justice would be sub-served, if RI for one and half year for the offence" ,,,

punishable under Section 354, IPC is reduced to the sentence for the period already undergone by him and fine amount be suitably enhanced." ,,,

22. Consequently, the appeal is partly allowed. The sentence of the appellant under Section 354, IPC for one and half year is reduced to the period" ,,,

already undergone by him and fine amount of Rs. 1000/- is enhanced to Rs. 25,000/- (Rupees twenty five thousands only), in default of payment of" ,,,

fine, to further undergo additional RI for four months." ,,,

23. The appellant is granted two months' time from the date of this order for depositing the fine amount. The fine amount deposited earlier by the ,,,

appellant shall be adjusted in the fine amount of Rs. 25,000/-." ,,,

24. After the prescribed period of legal remedy available to the parties, Rs. 20,000/- (Rupees twenty thousands only) out of the fine amount of Rs." ,,,

25,000/-, if deposited, be given to the prosecutrix as compensation." ,,,

25. Accordingly, the appeal is partly allowed." ,,,

26. The appellant is reported to be on bail. His bail bonds stands cancelled subject to the provisions of Section 437-A, Cr.P.C." ,,,