

(2018) 09 CHH CK 0417

Chhattisgarh High Court

Case No: Criminal Misc. Petition No. 1119 Of 2016

Kamla Das

APPELLANT

Vs

Janmajay Nayak And Ors

RESPONDENT

Date of Decision: Sept. 27, 2018

Acts Referred:

- Indian Penal Code, 1860 - Section 294, 350, 354, 506
- Code Of Criminal Procedure, 1973 - Section 161, 378(4)
- Scheduled Castes & Scheduled Tribes (Prevention Of Atrocities) Act, 1989 - Section 3(1)(xi)

Hon'ble Judges: Ram Prasanna Sharma, J

Bench: Single Bench

Advocate: Shikhar Sharma, K. Tripti Rao

Final Decision: Dismissed

Judgement

Ram Prasanna Sharma, J

1. Heard on application for grant of leave to appeal under Section 378(4) of CrPC.

2. This appeal has been preferred against judgment of acquittal dated 29.7.2016 passed by Special Judge under the Scheduled Castes and the

Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act 1989')/Sessions Judge, Mahasamund (CG) in Special Criminal Case

No.08/2015 wherein the said Court acquitted the respondent for commission of offence under Sections 294, 506 Part-II and 354 of the Indian Penal

Code and under Section 3(1)(xi) of the Act, 1989.

3. In the present case, though complainant/prosecutrix was alleged to be a member of Scheduled Caste, but no official witness has been examined to

prove her caste and also to prove whether the said caste is included under the category of Scheduled Caste. Some oral evidence is adduced by the prosecution for establishing the caste of the complainant but the same is not sufficient to establish her actual caste and therefore, it was not established that the complainant/prosecutrix is a member of Scheduled Caste.

4. Charges under Section 354 IPC and under Section 3(1)(xi) of the Act 1989 are having common ingredients of assault or use of criminal force against any woman intending to outrage or knowing it to be likely that thereby her modesty will be outraged.

5. Prosecutrix (PW-1) and Ku. Priyanka (PW-4) are the witnesses of the incident, but they have not stated before the trial Court that any assault or criminal force is used against the complainant. Force is defined under Section 349 and Criminal Force is defined under Section 350 IPC which may be read as under:

349. Force.--A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described.

First -- By his own bodily power.

Secondly --By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

Thirdly -- By inducing any animal to move, to change its motion, or to cease to move.

350. Criminal force.--Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

6. From the definition of force and criminal force it is essential that there must be motion or cessation of motion in the body of the victim. But from the evidence it is not established that the respondent caused any motion or cessation of motion in the body of the victim. In absence of any basic ingredients of the offence, charges under Section 354 IPC and Section 3(1)(xi) of the Act 1989 is not established.

7. For commission of offence under Section 294 IPC, the word used must be obscene and obscene words are those words which related to morality or sexuality of the victim. The prosecutrix deposed some abusive words which are alleged to be uttered by the respondent but the same is not positive for test of obscene words. Looking to the statement of the prosecutrix and Priyanka (PW-4) it appears that they have exaggerated their version as what is stated before the investigating officer recorded under Section 161 CrPC and no explanation was given for exaggeration for their version. The trial Court opined that offence under Section 294 IPC is not established and this Court has no reason to substitute a contrary finding. Offence under Section 506 Part-II IPC is established only when a person giving threat is determined to execute the threat on the spot. Mere words are not sufficient to establish the offence because words are mere enrage state of mind and it cannot be held that the respondent was determined to execute any threat. When the words were mere fury without substance the trial Court recorded the finding of acquittal and this Court has not reason to disturb the finding recorded by the trial Court. This is not a case where the respondent should be summoned for full consideration.

8. Accordingly, the application for leave to appeal is rejected. Consequently, the CrMP stands dismissed.