

(2012) 11 MP CK 0014
Madhya Pradesh High Court
Case No: Criminal Appeal No. 1335 of 1996

Tantu @ Mahendra Kumar

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision: Nov. 6, 2012**Acts Referred:**

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

Hon'ble Judges: N.K. Gupta, J**Bench:** Single Bench**Advocate:** Umesh Trivedi, for the Appellant; Ajay Tamrakar, Panel Lawyer for the State, for the Respondent**Final Decision:** Dismissed

Judgement

Hon'ble Shri Justice N.K. Gupta

1. The appellant has preferred this appeal against the judgment dated 3.8.1996 passed by the Special Judge, Mandla in Special Case No. 20/96, whereby the appellant was convicted for the offences punishable u/s 354 of IPC read with Section 3(1)(xi) of the SC/ST (Prevention of Atrocities), Act (hereinafter referred to as the "Special Act") and sentenced for six months" R.I. with fine of Rs. 500/- and in default of payment of fine, three months" R.I. The prosecution's case, in short is that, on 5.12.1993 at about 12:00 p.m. in the noon, when the prosecutrix (PW-2) was giving a bath to her child at her house situated at Chhoti Kheri (Police Station, Mandla), the appellant came to the spot and held the hand of the prosecutrix and snatched her. Thereafter, he tried to take her in the room but on her shouting, Sitabai (PW-5) came to the spot and therefore, the appellant ran away from the spot. The prosecutrix told about the incident to her husband Khuman Singh (PW-3) and thereafter, she went to the Police Station, Mandla and lodged an FIR Ex.P/2. After due investigation,

a charge sheet was filed before the C.J.M. Mandla, who committed the case to the Special Court.

2. The appellant abjured his guilt. He did not take any specific plea in the matter, but he has stated that he was falsely implicated in the matter due to enmity. In defence, one Devraj (DW-1) was examined to show that some quarrel took place between the appellant and husband of the prosecutrix in past.

3. The learned Special Judge, after considering the evidence adduced by both the parties, convicted him for the offences punishable u/s 354 of IPC read with Section 3(1)(xi) of the Special Act and sentenced as mentioned above.

4. I have heard the learned counsel for the parties.

5. The learned counsel for the appellant has submitted that the no caste certificate of the prosecutrix was proved and therefore, it is not proved that she was a member of the Scheduled Caste. Sitabai (PW-5) was the relative of the prosecutrix, has turned hostile. She did not support the version of the prosecutrix. Under such circumstances, it is apparent that the appellant was falsely implicated in the matter due to enmity between Khuman Singh and the appellant. In the alternate, it is submitted that the appellant was a youth of 24 years of age at the time of the incident. He was the first offender and he remained in the custody for 17 days and therefore, where he has faced the trial and appeal for last 16 years, it is prayed that he may not be sent to the jail again.

6. On the other hand, the learned Panel Lawyer has submitted that the conviction as well as the sentence directed by the trial Court appears to be correct and therefore, no interference may be drawn in the appeal.

7. After considering the submissions made by the learned counsel for the parties and looking at the facts and circumstances of the case, it is to be considered as to whether the appeal filed by the appellant can be accepted? And whether the sentence directed against him can be reduced?

8. The prosecutrix (PW-2) has stated that she was a Katiya by caste but Khuman Singh (PW-3) did not say anything about his caste but he has stated that "Katiya" is a caste, which comes in the Scheduled Caste. No any certificate is submitted by the police or by the prosecutrix in the case to show that the prosecutrix was of a particular caste and therefore, she was a member of the Scheduled Caste. In the cases of the Special Act, it is essential for the complainant side to prove the caste of the prosecutrix and therefore, a certificate issued by the appropriate authority is to be proved, otherwise anyone can claim that she was a member of the Scheduled Caste or Scheduled Tribe. Under such circumstances, the prosecutrix could not prove that she was of a Scheduled Caste. Hence, the appellant could not be convicted for the offence punishable u/s 3(1)(xi) of the Special Act.

9. The prosecutrix (PW-2) has stated that the appellant came to the spot and held her hand and tried to take her inside the room. Sitabai (PW-5) sister-in-law of the prosecutrix has turned hostile and she did not support the prosecution's evidence. Khuman Singh (PW-3) has stated that when he came back to his house, his wife told about the incident and thereafter, he took the prosecutrix to the Police Station, where she had lodged an FIR Ex.P/2. FIR was lodged within three hours in the present matter. It was lodged when the witness Khuman Singh came to the house and after learning about the incident, he went with the prosecutrix to the Police Station and therefore, time taken in such a procedure appears to be reasonable and therefore, FIR was lodged within a reasonable time. The testimony of the prosecutrix and her husband is duly supported by an FIR.

10. The main defence of the appellant is that he was falsely implicated in the matter due to enmity. However, it is strange that nothing has been suggested to the prosecutrix about the enmity. On the contrary, some suggestions were given to the prosecutrix that the appellant was a regular visitor to her house and he was in habit to play with the child of the prosecutrix and that he did not hold the hands of the prosecutrix but he tried to play with the child. Looking to the suggestions given to the prosecutrix, it is apparent that the appellant has accepted his presence at the spot at the time of the incident. Khuman Singh (PW-3) was given some suggestions about the enmity but he did not accept. On the contrary, it was established that Khuman Singh and the appellant had a good relation in the past and the appellant was a regular visitor of his house. An omnibus suggestion was given about the money transaction between the witness Khuman Singh and the appellant, but no suggestion of definite amount was given to the witness Khuman Singh. Under such circumstances, the appellant could not prove any enmity with the witness Khuman Singh. The defence witness Devraj has stated in omnibus manner but he has stated that a quarrel took place between Khuman Singh and the appellant but no such suggestion was given to the witness Khuman Singh that a quarrel took place between him and the appellant and therefore, the evidence given by the witness Devraj appears to be an afterthought, which cannot be believed.

11. Under such circumstances, there was no enmity proved between the parties so that the prosecutrix could implicate the appellant falsely in the present matter. Hence, the prosecutrix is believable and her testimony is duly corroborated by the statement of her husband and the FIR Ex.P/2. It is proved beyond doubt that the appellant used a criminal force to outrage the modesty of the prosecutrix and he is guilty of the offence punishable u/s 354 of IPC.

12. So far as the sentence is concerned, it is true that the appellant was a youth of 24 years of age at the time of the incident. He has faced the trial and appeal for last 16 years. There is no minimum sentence directed for the offence punishable u/s 354 of IPC. He remained in the custody for 17 days. Looking to such circumstances, he may not be given the advantage of probation because he was above 21 years of age

and there is no other reason by which he can be enlarged on probation. However, looking to his overt act where he was the first offender, looking to his age and the harassment by which he has faced during the trial and appeal in attending the various Courts, it is a fit case in which the appellant is not required to be sent to the jail again. However, a heavy enhanced fine may be imposed upon him.

13. On the basis of aforesaid discussion, the appeal filed by the appellant is hereby partly allowed. The conviction and the sentence of the appellant for the offence punishable u/s 3(1)(xi) of the Special Act are hereby set aside. The appellant is acquitted from the charge of offence punishable u/s 3(1) (xi) of SC/ST (Prevention of Atrocities) Act, but his conviction for the offence punishable u/s 354 of IPC is maintained and his jail sentence is reduced to the period, which he has already undergone in the custody, whereas fine amount is enhanced from the sum of Rs. 500/- to the sum of Rs. 5,000/-. The appellant is directed to deposit the remaining fine amount before the trial Court within two months" from today. In default of payment of fine, he shall undergo for six months" R.I.

14. At present, the appellant is on bail. His presence is no more required before this Court and therefore, it is directed that his bail bonds etc. shall stand discharged. A copy of the judgment be sent to the trial Court alongwith its record for information and compliance.