

**Chhatar Singh Vs. the State of M.P.**

**Chhatar Singh Vs. the State of M.P.**

**SooperKanoon Citation :** [sooperkanoon.com/1047755](http://sooperkanoon.com/1047755)

**Court :** Madhya Pradesh

**Decided On :** Jul-31-2012

**Appellant :** Chhatar Singh

**Respondent :** The State of M.P.

**Advocate for Pet/Ap. :** Shri. Narendra Nikhare

**Judgement :**

1 Criminal Appeal No.1459/1996 HIGH COURT OF MADHYA PRADESH  
JABALPUR Criminal Appeal No.1459/1996 Chhatar Singh Vs. State of Madhya Pradesh ----- Present :

Hon'ble Shri Justice N.K. Gupta.

----- Name of  
counsel for the parties: Shri Narendra Nikhare, counsel for the appellant. Shri Ajay  
Tamrakar, Panel Lawyer the respondent/State.  
-----

## JUDGMENT

(Passed on 31st day of July, 2012) The appellant has preferred this appeal against the judgment dated 21.8.1996 passed by the Special Judge (SC/ST Prevention of Atrocities, Act) Raisen in Special Case No.320/1996, whereby the appellant was convicted for the offence punishable under Section 3(1)(xi) of SC/ST (Prevention of Atrocities) Act (hereinafter referred to as 'the Special Act') and sentenced for six months S.I. with fine of `300/-. In default of payment of fine, he was to undergo for

one month's S.I.

2. Prosecution's case in short is that on 31.3.1994 at about 6:00 p.m. in the evening, the prosecutrix (PW-3) was cleaning the wheat in front of her house situated at village Bamhori, District Raisen then, the appellant came there and 2 Criminal Appeal No.1459/1996 held her from the back. Thereafter, the prosecutrix got herself escape and started running then the appellant kicked his leg on her abdomen. The prosecutrix went to the house of her sister-in-law Kalabai (PW-5) then, the appellant chased her and held the hand of Kalabai with bad intention and tried to take her inside the room but ultimately, the prosecutrix and her sister-in-law left the spot and they went to the field and informed father of the prosecutrix. An information was given to the Mukaddam Umrao Singh and Kotwar of the village. Thereafter, the prosecutrix had lodged an FIR Ex.P/2 at Police Station, Raisen and a case was registered. After an appropriate investigation, a charge sheet was filed before the trial Court.

3. The appellant abjured his guilt. He did not take any specific plea but he has stated that he was falsely implicated in the matter because he had lodged a report against Kallu and therefore a false case was created by Kallu. In defence, one Ghasiram (DW-1) was examined.

4. After considering the evidence adduced by both the parties, learned Special Judge, Raisen convicted and sentenced the appellant as mentioned above.

5. I have heard the learned counsel for both the parties at length. 3 Criminal Appeal No.1459/1996 6. Learned counsel for the appellant has submitted that case was registered in the year 1996 and investigation was done by a Head Constable, whereas according to the Rule 7 of SC/ST (Prevention of Atrocities) Rules (hereinafter referred to as 'the Rules'), the investigation was to be done by an officer having rank not below than D.S.P. The violation of Rules 7 is fatal and therefore, the appellant cannot be convicted for the offence punishable under Section 3(1)(xi) of the Special Act. It is also submitted that the appellant has faced the trial and appeal for the last 16 years and therefore, it is prayed that he may not be sent to the jail again.

7. On the other hand, learned Panel Lawyer for the State has submitted that the judgment passed by the trial Court appears to be correct and no any change is required in the judgment.

8. After considering the submissions made by learned counsel for the parties and looking to the facts and circumstances of the case, it is to be considered that as to whether the investigation had not been done by the D.S.P. or equivalent and then what would be effect?. whether the appellant can be convicted for the offence punishable under Section 3(1)(xi) of the Special Act and; whether the sentence can be reduced. 4 Criminal Appeal No.1459/1996 9. In the present case, it is apparent that the investigation had been done by a Head Constable, whereas according to the Provisions of Rule 7 of the Rules, the investigation was to be done by a Superior Officer or equivalent to D.S.P. Learned counsel for the appellant has placed his reliance upon the judgment of the Single Bench of this Court in case of Bharat Singh and another Vs. State of M.P.

. [2006(4) M.P.L.J.), in which it is observed that if the Provision of Rule 7 is violated then, the accused cannot be convicted for an offence under the Special Act but the accused can be convicted for an equivalent of the offence of IPC because for IPC offences, there is no bar that the investigation cannot be done by an inferior officer of the police in place of the D.S.P. In the present case, since the investigation was done by a Head Constable, therefore, it is violative to the Provision of Rule 7 of the Rules and therefore, the appellant cannot be convicted for the offence punishable under Section 3(1)(xi) of the Special Act. However, the offence punishable under Section 354 of IPC is an inferior offence of same nature, therefore, without framing the fresh charge, the appellant can be convicted for the offence punishable under Section 354 of IPC in the light of the Provision of Section 222 of Cr.P.C. Under such circumstances, it is to be seen that whether the offence 5 Criminal Appeal No.1459/1996 punishable under Section 354 of IPC is made out against the appellant or not?.

10. The prosecutrix (PW-3), Kallu (PW-1), Bhuri Bai (PW-4) and Kala Bai (PW-5) were examined as eyewitnesses. It was alleged against the appellant that firstly he held the prosecutrix from her back and pressed her breasts and when she ran

away and went to the house of her sister-in-law Kalabai then, the appellant went to the house of Kalabai and also held the hands of Kalabai, but Kalabai did not support the prosecution story. She has refused that anything was done by the appellant with her. However, Kalabai was not declared hostile and therefore, her testimony is binding to the prosecution. Under such circumstances, it is apparent that the appellant had not done anything to the witness Kalabai.

11. The alleged incident took place in two parts. Firstly with the prosecutrix and secondly, with the witness Kalabai, the second prosecutrix. Kalabai was not the eyewitness for the first instance, whereas she and the prosecutrix were the witnesses of the second instance but looking to her evidence, it appears that no second part of the incident took place but, it is proved that the appellant chased the prosecutrix upto the house of Kalabai. 6 Criminal Appeal No.1459/1996 12. The defence witness Ghasiram (DW-1) has stated that the appellant was moving in the village by enjoying a festival of Holy and he had not done anything with the prosecutrix but it is possible that such incident could not have happened before the witness Ghasiram hence, he cannot be said to be a witness of the incident in such a manner. If someone is not present at the time of incident, then he can say nothing about the incident. Under such circumstances, the evidence adduced by the defence with the help of Ghasiram has no value.

13. The prosecutrix (PW-3) has stated that at the time of incident, she was cleaning the wheat and some children namely Bhuri, Santosh and Khema were playing there. Bhuribai (PW-4) was examined before the trial Court, who support the prosecutrix but in her cross-examination, she has accepted that she was plying at place, where she could not see the courtyard of her house and therefore, she did not say about the incident. When she went to the spot after hearing a hue and cry, she found that the appellant was present and her sister-in-law Kalabai was also present. Looking to the evidence of Bhuribai, it appears that after hearing hue and cry, she directly went to the house of Kalabai, but she did not hear hue and cry of the prosecutrix (PW-3). The prosecutrix had never stated that Kallu was an eyewitness. Presence of 7 Criminal Appeal No.1459/1996 the Kallu is nowhere mentioned in the FIR Ex.P/2 and therefore, testimony of Kallu cannot be relied upon. Kallu has stated that initially, the appellant held the hand of the prosecutrix

and thereafter, the appellant thrown her utensils in the house and thereafter, he went to the house of Kalabai and the appellant told that both the prosecutrix to be his wives. The narration given by the witness Kallu is quite away from the factual position as stated by the prosecutrix. Under such circumstances, it would be apparent that Kallu had not seen anything and if he was present then he could have saved the prosecutrix from the appellant and it was not required for the prosecutrix to run away upto the house of Kalabai.

14. However, there is no enmity suggested to the prosecutrix as to why she is telling against the appellant. The prosecutrix after the incident, which took place with her, went to the house of Kalabai and thereafter, she went to the field to inform her father. Thereafter, her father went to inform the Kotawar and Mukddam of the village and ultimately, an FIR was lodged against the appellant at Police Station, Raisen within three hours. Under such circumstances, it cannot be said that the FIR is belated. There is no reason for the prosecutrix to tell a false hood against the appellant. Her testimony is duly confirmed by the timely FIR Ex.P/2 and therefore, the testimony of the 8 Criminal Appeal No.1459/1996 prosecutrix is believable and it is proved beyond doubt that the appellant held her hand and pressed her breast with bad intention, therefore, it is proved that he used a criminal force to outrage the modesty of the prosecutrix and hence, the offence punishable under Section 354 of IPC is squarely made out against the appellant.

15. So far as the sentence is concerned, there is no limitation of minimum sentence for the offence punishable under Section 354 of IPC. The appellant was a major person. There is no reason by which he may be given any advantage of the probation. However, he was 22 years of age at the time of incident and he has faced the trial and appeal for last 16 years. Under such circumstances, it is not a fit case in which the appellant may be sent to the jail and therefore, it would be proper to impose some fine upon the appellant for the offence punishable under Section 354 of IPC.

16. On the basis of aforesaid discussion, the appeal filed by the appellant is hereby partly allowed. The conviction as well as the sentence directed by the trial Court for the offence punishable under Section 3(1)(xi) of the Special Act is hereby

set aside. The appellant is acquitted from the charges of said offence but he is convicted for the offence punishable under Section 354 of IPC under the same charge. However, a fine of `2500/- is imposed upon the appellant for the offence 9 Criminal Appeal No.1459/1996 punishable under Section 354 of IPC. A fine of `500/-, which was deposited by him before the trial Court, shall be adjusted in the present fine amount. The appellant is directed to deposit the remaining fine amount within two months from today failing which he shall undergo for six months R.I. If he deposits the fine amount then a sum of `2,000/- be given to the prosecutrix D/o Phool Singh by way of a compensation.

17. At present, the presence of the appellant is no more required and therefore, it is directed that his bail bonds shall stand discharged.

18. Copy of the judgment be sent to the trial Court for information and compliance.  
(N.K. GUPTA) JUDGE 31 07.2012 pnkj

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**