

Santosh Kumar Dwivedi Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Sep-26-2013

Appellant : Santosh Kumar Dwivedi

Respondent : The State of M.P.

Advocate for Pet/Ap. : Shri. B.J.Chourasiya

Judgement :

Criminal Appeal No.2194/1996 26.09.2013 Shri B.J.Chourasiya, learned counsel for the appellant.

Shri C.K.Mishra, Govt.

Advocate for the respondent/ State.

Heard finally.

This appeal has been preferred under Section 374(2) of the Code of Criminal Procedure being aggrieved by the judgment dated 15.11.1996 passed by Special Judge [SC/ST (Prevention of Atrocities)].Act,1989 (hereinafter referred to as 'the Act').Chhatarpur in Special Case.

No.12/1996, whereby the appellant has been convicted under Section 3(1)(xi) of the Act and sentenced to R.I.for 1 year with fine of Rs.1,000/-, in default of payment of fine, he has to suffer further R.I.for one month.

Facts in short, are that on 01.01.1996, at about 5 P.M., prosecutrix had gone with her friend to pluck gram leaves in the field of Jhandu Shukla.

It is alleged that appellant came there and became naked and used criminal force on prosecutrix with the intention to outrage her modesty.

Prosecutrix came back to her house and narrated the incident to her parents.

A report was lodged at P.S.Laundi, district Chhatarpur against the appellant.

Appellant has been arrested.

After usual investigation, appellant has been charge sheeted before Special Judge, Chhatarpur.

Special Judge framed the charge under Section 3(1)(xi) of the Act against the appellant.

Appellant abjured the guilt and pleaded false implication.

After appreciation of the evidence on record, the Special Judge convicted and sentenced the appellant as mentioned hereinabove.

Hence, this appeal.

Learned counsel for the appellant submitted that the prosecution has failed to prove the special fact that prosecutrix belonging to Scheduled Caste or Scheduled Tribe community.

He further submitted that no caste certificate in regard to the aforesaid fact has been filed by the prosecution.

Only father of the prosecutrix stated that he belonged to Khangar caste, but appellant has not provided any opportunity to explain this fact in his cross-examination under Section 313 of Cr.P.C. In these circumstances, the trial Court has committed an illegality in recording the conviction under Section 3(1)(11) of the Act.

Learned counsel appearing for respondent/State has supported the conviction and sentence recorded by the trial Court.

I have perused the statements of prosecutrix (P.W.-1).her friend Rajkumari (P.W.-3).her mother Rajkumari (P.W.-8) and her father Jugla (P.W.-2).The prosecutrix stated that appellant came there and he became naked and caught hold of the hands of the prosecutrix and twisted it.

This fact duly supported by Rajkumari (P.W.-3) that appellant came there and became naked and caught hold of the hands of the prosecutrix and tried to outrage her modesty.

It is proved on record that appellant used the criminal force against prosecutrix to outrage her modesty.

Thus, offence under Section 354 of I.P.C.is duly proved against the appellant.

However, there is no caste certificate produced by the prosecution in the record and the father of prosecutrix stated that they belonged to Khangar caste.

Khangar caste comes under Scheduled Caste or Scheduled Tribe has not been proved on record.

Further, the trial Court has not given any opportunity to the appellant to explain the aforesaid fact under Section 313 of Cr.P.C.Therefore, this fact cannot be used against the appellant.

In these circumstances, the trial Court has committed an illegality in recording the conviction against the appellant under Section 3(1)(xi) of the Act.

In the result, the conviction recorded against the appellant under Section 3(1)(xi) of the Act is liable to be set aside.

Accordingly, appellant is acquitted from the aforesaid charge.

Instead appellant is convicted under Section 354 of I.P.C.As far as sentence is concerned, the incident was took place in the year 1996 and 17 years have

already elapsed by now and no fruitful purpose would be served by again sending the appellant to the jail after such a long period, therefore in my opinion, it would be in the interest of justice, if the appellant is sentenced to the period already undergone by him with fine.

Consequently, the appeal is partly allowed.

The appellant is acquitted from the charge under Section 3(1) (xi) of the Act.

However, he is convicted under Section 354 of I.P.C. and sentenced to the period already undergone by him with fine of Rs.1,000/-, which had already been deposited.

The appellant is on bail.

His bail bonds and surety bonds stand discharged.

Record of the trial Court be sent back along with a copy of this order for compliance and necessary action.

C.C.as per rules.

(G.S.Solanki) JUDGE gn

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