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Court : Madhya Pradesh

Decided On : Apr-18-2009

Reported in : 2009(4)MPHT296

Judge : Arun Mishra, J.

Appellant : Dayaram

Respondent : State of Madhya Pradesh

Disposition : Appeal allowed

Judgement :

Arun Mishra, J.

1. The appeal has been preferred by the accused Dayaram aggrieved by judgment dated 5.8.1999 passed by Sessions Judge, Tikamgarh, in Special case No. 52/98 thereby he has been convicted for commission of offence under Section 354 of IPC and sentenced to six months RI & fine of Rs. 3,000/-, in default of payment of fine to undergo further two months' RI. He has also been convicted for offence under Section 3(1)(xi) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989 and sentenced to six months RI & fine of Rs. 3,000/-, in default of payment of fine to undergo further two months' RI. Both the sentences were ordered to run concurrently.

2. As per the prosecution case on 28.8.1998 the complainant Durgiya is Kumhar by caste, she was coming back to the house after selling earthen pots. When she reached near the house of accused, he caught hold of her and pressed her breast, he wanted to take her in nearby room, she raised hue & cry, Harichand, Ramvagas, Rajjan and other persons came to the spot. On the next day at P.S.Jeron the report was lodged. The offence was registered.

3. The accused abjured the guilt and contended that he has been falsely implicated in the case. He lent certain money to the husband of complainant Durgiya. On making the demand the case was filed. Aggrieved by conviction & sentence imposed by the trial court the appeal has been preferred.

4. Shri J.A. Shah, learned Counsel for the accused-appellant, has submitted that in the instant case the version of complainant Durgiya cannot be said to be reliable. None of the independent witnesses in whose presence the incident had taken place namely Harichand, Ramvagas & Rajjan etc. had not been examined in the instant case. Even the husband of complainant has not stated what kind of misbehaviour was actually meted out to the complainant. The medical examination was not done inspite of the fact that complainant had stated that she had suffered bleeding injury in the wrist. There is nothing on record to indicate that the offence took place owing to the fact that the complainant Durgiya belonged to scheduled caste, the commission of offence itself has not been established. Consequently the appellant is entitled to be acquitted.

5. Shri S.K. Rai, learned Govt. Advocate for respondent- State, has supported the judgment.

6. I have gone through the evidence on record. There is absolutely nothing on record to indicate that the aforesaid offence has taken place due to the fact that complainant belonged to the scheduled caste. Even otherwise, from the version of complainant Durgiya the commission of offence itself has not been established. It is improbable that such an offence under Section 354 of IPC would be committed in presence of several persons like Harishchand, Manoj, Ramvagas, Rajjan & Goli etc. whose presence was stated to be on the well of Sobran situated at 40-50 steps away from the place where alleged misbehaviour was actually meted out as

deposed by complainant Durgiya in paragraph-5 of her deposition. When the large number of persons were present at 40-50 steps away, it was improbable that accused would have committed the aforesaid offence in presence of large number of persons, by catching hold of breast and touching her cheeks. None of the aforesaid independent witnesses have been examined in order to corroborate the version of the complainant. It was necessary to examine the aforesaid witnesses whose presence was stated by the complainant Durgiya, due to non examination of the independent witnesses adverse inference has to be drawn against the prosecution. The complainant has further stated that there was bleeding from her hand but no medical examination was performed, in case there was such a bleeding caused to the complainant, medical examination would have definitely conducted. She has stated in para-8 of her deposition that along with her husband she went to the house of Sarpanch on the date of incident. Her husband Gokal (PW-2) has contradicted the version of complainant. Gokal (PW-2) has stated that he was aware that Sarpanch was not in the house, as such they did not go to the house of Sarpanch on the date of incident, beside Gokal (PW-2), husband of complainant Durgiya, has not corroborated the version of prosecutrix, he has not stated that what kind of misbehaviour was actually meted out, in examination-in-chief he has stated that what kind of misbehaviour was actually meted out, was not informed to him, he was told that Dayaram caught hold of his wife. In the defence Vijay Singh (DW-1) has been examined, who has stated that accused had lent loan of Rs. 2,000/- to Gokal (PW-2), the husband of complainant. The accused had demanded the money, the amount was not paid and false report was lodged. In view of the evidence on record of complainant Durgiya and her husband Gokal which is not corroborated by independent witnesses, report was lodged after deliberation and consideration next day, I do not find that offence has been established beyond periphery of doubt against the appellant.

7. Resultantly, the appeal is allowed. The accused-appellant is entitled to be acquitted in the case. The judgment of conviction & sentence for offence under Section 354 of IPC & under Section 3(1)(xi) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989 is hereby set aside. The appellant is acquitted of the aforesaid charges. He is stated to be on bail, his bail bonds stands discharged.

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