

HIGH COURT OF MADHYA PRADESH,**PRINCIPAL SEAT, JABALPUR****SINGLE BENCH****PRESENT: HON'BLE JUSTICE SHRI N. K. GUPTA****CRIMINAL APPEAL NO.1181/1996**

Sheikh Musarraaf

Vs.

State of Madhya Pradesh

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For the appellant : Shri Zarar Khan, Advocate.**For the respondent:** Shri G. S. Thakur, Panel Lawyer.

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JUDGMENT

(Delivered on the 29th day of June, 2012)

The appellant has preferred this appeal against the judgment dated 2.7.1996, passed by Special Judge, SC/ST (Prevention of Atrocities) Act in Special Case No.303/1996 whereby appellant was convicted for offence punishable under Section 452 of I.P.C and inflicted with the sentence of rigorous imprisonment for one year with fine of Rs.200/-; in default of payment of fine he was to undergo additional rigorous imprisonment for one month.

2. The prosecution story in short is that on 31.3.1993 the prosecutrix (P.W.1) was all alone in her house. The appellant came to the house and demanded for a glass of water. The prosecutrix refused to provide water and therefore, the appellant kicked her and also showed a dagger and tried to outrage her

modesty. On shouting, the appellant ran away. The prosecutrix went to the Police Station Silwani and lodged an FIR before the Police Station. Police Silwani registered a case and sent her for her medico legal examination. After due investigation the charge sheet was filed before the Special Judge under SC/ST (Prevention of Atrocities) Act/Sessions Judge, Raisen which was transferred to the Special Judge after constitution of a post of Special Judge in the District.

3. The appellant abjured his guilt. He did not take any specific plea but, he has submitted that he was falsely implicated by the Police in the matter. No defence evidence was adduced by the appellant.

4. On considering the evidence adduced by the prosecution, learned Special Judge acquitted the appellant for offence punishable under Section 506-B, 354 of I.P.C and Section 3(1) (xi) of SC/ST (Prevention of Atrocities) Act but convicted the appellant for offence punishable under Section 452 of IPC and sentenced as mentioned above.

5. Since there was no representative appearing on behalf of the appellant therefore, Shri Zafar Khan, Advocate was appointed as a counsel to argue the matter from the side of the appellant from the panel of Legal Aid.

6. Heard learned counsel for the parties.

7. Learned counsel for the appellant submits that it is established that the appellant went inside the house without any weapon and therefore, no offence punishable under Section 452 of

I.P.C was constituted against the appellant. The prosecutrix was disbelieved and therefore, the appellant was acquitted from the charges of offence punishable under Sections 354 of I.P.C and Section 3(1)(xi) of SC/ST (Prevention of Atrocities) Act. Under such circumstances, no conviction for offence punishable under Section 452 of I.P.C can be directed. In alternate, it is also submitted that a harsh sentence was passed against the appellant whereas as per records he remained in the jail for a period from 1.4.1993 to 29.4.1993 i.e at least for four weeks and therefore, looking to the lesser grave offence, sentence may be reduced to the period he has already undergone in custody.

8. After considering the submissions made by learned counsel for the parties and looking to the evidence recorded by the trial Court it appears that most of the statement given by the prosecutrix was not believable. The prosecutrix had alleged that the appellant tried to outrage her modesty but, she has accepted before the trial Court that the appellant threw her on earth and nothing else has been done by the appellant. If the appellant had a dagger then he could have committed rape on her. No injury of the dagger was found on the prosecutrix. Under such circumstances, it cannot be said that appellant went inside the house with preparation to assault. Therefore, no offence punishable under Section 452 of I.P.C is made out. However, it is established that he gave a kick to the prosecutrix and therefore, he remained in the house of the prosecutrix for committing a crime. Hence offence punishable under Section 451 of I.P.C is

made out against the appellant. Under such circumstances, conviction of the appellant can be altered from Section 452 to 451 of I.P.C.

9. As far as the sentence is concerned looking to the overt act of the appellant, it is not so grave. He has faced the trial and appeal for last 18 years. He remained in the custody for four weeks. He has deposited the fine amount before the trial Court. Under such circumstances, it would be proper not to send him to jail again. His sentence may be reduced to the period for which he remained in the custody.

10. On the basis of the aforesaid discussion, the appeal filed by the appellant is hereby partly allowed. Conviction of the appellant for offence punishable under Section 452 of I.P.C. is hereby set aside but, he is convicted for offence punishable under Section 451 of I.P.C and sentenced for a period for which he has undergone in the custody. Fine of Rs.200/- is imposed upon the appellant for offence punishable under Section 451 of I.P.C. Since that amount is deposited before the trial Court and therefore, no further recovery is needed from the appellant.

11. Copy of the judgment be sent to the trial Court with its record for information and compliance.

(N.K.GUPTA)
JUDGE
29.6.2012