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(3)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR M. P.

Cr.A. No. 2180 /1998

MEMO OF CRIMINAL APPEAL UNDER SECTION 374(2)  
OF THE CODE OF CRIMINAL PROCEDURE, 1973.

APPELLANT  
(ON BAIL)

: Mahendra Yadav  
S/o Ram Kishan Yadav  
aged 86 years  
R/o Chopda Colony Vishrampur  
P.S. Jaingad Distt.  
SARGUJA M. P.

15131

22.7.98

Advocate  
Rajesh Kumar

vs.

Rto. A. R.

RESPONDENT

: State of M.P. through  
P.S. Jainagar, Distt.  
SARGUJA (M. P.)



(19)

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**Criminal Appeal No.2180 of 1998**

**APPELLANT**

Mahendra Yadav

**Versus**

**RESPONDENT**

State of M.P. (Now C.G.)

(CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE Cr.P.C.)

None present for the appellant.

Ms Sangeeta Mishra, Panel lawyer for the State/respondent.

**(SB: Hon'ble Mr. T.P.Sharma, J.)**

**JUDGMENT**

(Passed on 30<sup>th</sup> April, 2014)

1. By this appeal under Section 374 (2) of the Cr.P.C. the appellant has challenged the legality and propriety of the judgment of conviction and order of sentence dated 3.9.98 passed by the Special Judge constituted under Atrocity, Ambikapur, in Special Case No.192/97, whereby after holding the appellant guilty for committing house trespass after preparation of causing hurt and insulted a woman, member of Scheduled Caste convicted him under Section 454 of the IPC and 3 (1) (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act, 1989 (for short 'the Act') and sentenced to undergo R.I. for one year and fine of Rs.500/-, in default of payment of fine to further S.I. for three months on each count.
2. As per case of the prosecution, on 8.3.93 at about 4 p.m. the prosecutrix (PW-1) (name not mentioned) was alone in her house, the appellant entered into her house, he pressed her breast and threatened her and thereafter fled from the spot. She went to the Police Station Vishrampur and lodged the report vide Ex.P/4. Spot map was prepared vide Ex.P/5. Broken pieces of bangles were seized vide Ex.P/6. She was examined by Dr.K.K.Tamrakar (PW-6) vide Ex.P/2 and noticed abrasion over right and left forearm.
3. Statements of the witnesses were recorded under Section 161 of the Cr.P.C. After completion of investigation, charge-sheet was filed before the Special Judge under Atrocities Act, Ambikapur.
4. In order to prove the guilt of the accused/appellant, the prosecution has examined as many as eleven witnesses. The accused was examined under

Section 313 of the Cr.P.C., in which he denied the circumstances appearing against him and claimed innocence and false implication in crime in question. He has examined defence witnesses Dayaprasad and Gopalprasad and has taken the defence of alibi.

5. After providing opportunity of hearing to the parties, learned trial Court convicted and sentenced the appellant as aforementioned.
6. I have heard learned counsel for the respondent, perused the judgment impugned and record of the trial Court.
7. This is an appeal of 1998. Counsel for the appellant is not present.
8. At the outset, as per evidences of the prosecutrix (PW-1), Ramanand (PW-2) and other prosecution witnesses, the appellant has not used criminal force with intent to outrage the modesty of the prosecutrix (PW-1) on the ground of her caste, but offence has been committed on the ground that the prosecutrix was a woman i.e. opposite sex. The parties have entered into compromise on 28.8.98 and the appellant was acquitted of the charge of Section 354 of the IPC.
9. In absence of evidence to show that offence has been committed on the ground of caste of the prosecutrix, conviction and sentence of the appellant under Section 3 (1) (xi) of the Act are not sustainable under the law.
10. As regards the question of sentence under Section 452 of the IPC, evidence of the prosecutrix (PW-1) is sufficient for proving the aforesaid fact. I do not find any illegality in convicting the appellant under Section 452 of the IPC.
11. Consequently, appeal is partly allowed. Conviction and sentence of the appellant under Section 3 (1) (xi) of the Act are hereby set aside, however, his conviction under Section 454 of the IPC is hereby maintained and considering the compromise under Section 354 of the IPC, period already undergone by the appellant i.e. 6 days and payment of fine, again sending the appellant to jail to serve out the remaining sentence would not serve any useful purpose, therefore, he is hereby sentenced to undergo imprisonment for the period already undergone by him i.e. 6 days and fine of Rs.500/-. The appellant has paid fine amount of Rs.1000/-, same shall be adjusted.

Sd/-  
T.P. Sharma  
Judge