

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 747 OF 2013

(Arising out of Special Leave Petition (Crl.) No.4336
(Crl.M.P.No. 3518/2013))

P. Ramaswamy
...Appellant

Versus

State (U.T.) of Andaman
& Nicobar Islands

...Respondent

O R D E R

1. Delay condoned. The application for impleadment is allowed.
2. Leave granted.
3. This appeal by special leave is directed against the judgment and order dated 13/07/2012 passed in Criminal

Appeal No. 1/2011 and the judgment and order dated 10/12/2012 passed in CRA Nos. 11, 12 & 17/2012 by the High Court of Calcutta. By the impugned order dated 13/07/2012 passed in Criminal Appeal No.1/2011 the High Court converted the conviction of the appellant from Section 3(1)(xi) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, "**the SC & ST Act**") to Section 354 of the IPC. The High Court, accordingly, partly allowed the appeal by modifying the sentence imposed by the trial court from rigorous imprisonment for one year and fine of Rs. 3,000/- to six months rigorous imprisonment and fine of Rs. 3,000/-, in default, to suffer rigorous imprisonment for three months. Thereafter the parties arrived at a compromise. Application was made to the High Court for grant of permission to compound the offence. The High Court vide impugned order dated 10/12/2012 passed in CRA Nos. 11, 12 & 17/2012 held that once the judgment has been delivered by the Court, the Court becomes *functus officio* and in the absence of any pending lis, it cannot entertain the application seeking to

compound the offence. The High Court observed that remedy of the parties was to move this Court.

4. According to the prosecution, the complainant Dr. Harold Charles (PW-3) lodged a complaint against the appellant at the Car Nicobar, Police Station which was registered as FIR No.10 of 2004 under Section 354 of the IPC read with Section 3(1)(ix) of the SC & ST Act alleging that on 15/3/2004 around 1.30 p.m. the appellant molested his daughter PW6-the victim in his shop when she had gone there to buy some eatables. When the victim came home and narrated the incident to him, he rushed to the appellant and asked for an explanation. The appellant initially denied the incident but later admitted it and begged pardon.

5. On the basis of the said FIR, investigation commenced. On completion of investigation, charge-sheet was filed against the appellant. A charge under Section 3(1) (xi) of the SC & ST Act was framed against him. No charge was framed under Section 354 of the IPC. The prosecution, in support of

its case, examined eight witnesses. The appellant pleaded not guilty to the charge and claimed to be tried.

6. After considering the evidence on record, the trial court convicted the appellant for offence punishable under Section 3(1) (xi) of the SC & ST Act and sentenced him to suffer rigorous imprisonment for one year and to pay a fine of Rs. 3,000/-, in default, to suffer further three months imprisonment.

7. The appellant carried an appeal to the High Court. The High Court was of the view that there was nothing on record to establish that the victim had been singled-out for indecent sexual assault because she is a member of a Scheduled Tribe. Hence, essential ingredients of offence punishable under Section 3(1) (xi) of the SC & ST Act are not proved. The High Court was, however, of the view that though charge under Section 354 of the IPC was not framed, all the ingredients of that offence were proved. The High Court observed that punishment of offence under Section 354 of the IPC is lesser than the punishment provided for Section

3(1) (xi) of the SC & ST Act. Section 354 of the IPC is a lesser offence as compared to offence punishable under Section 3(1) (xi) of the SC & ST Act and all ingredients of the offence under Section 354 of the IPC are present in the graver offence namely Section 3(1) (xi) of the SC & ST Act. According to the High Court no prejudice would be caused to the appellant if he is convicted for offence punishable under Section 354 of the IPC which is a minor offence as compared to offence punishable under Section 3(1) (xi) of the SC & ST Act and also because all the facts constituting the offence under Section 354 of the IPC were disclosed in charge framed against the appellant and he was put to notice in regard thereto. The High Court, therefore, modified the conviction and held the appellant guilty of offence punishable under Section 354 of the IPC instead of Section 3(1) (xi) of the SC & ST Act. Bearing in mind the advanced age of the appellant his punishment was reduced to six months. He was sentenced to a fine of Rs. 3,000/-, in default, to suffer further imprisonment for three months.

8. It appears that thereafter the appellant and the complainant arrived at a compromise. On 6/8/12 the appellant filed an application in the High Court stating that he and the complainant and the victim had compromised the matter. Neither the victim nor the complainant is interested in sending the appellant to jail. The appellant further stated that he was 67 years of age. Due to the said case his pensionary benefits have been withheld and, therefore, he may be granted permission to compound the offence. The complainant also filed an application stating that he and his daughter had compromised the case with the appellant and, therefore, they may be permitted to compound the offence. The victim also filed an application stating that since they were residents of the same village and the same locality and they had settled the matter, she did not want the appellant to be sent to jail. She prayed that permission be granted to compound the offence. The High Court rejected the applications observing that after the appeal was decided by it, it had become *functus officio*. It cannot, therefore, entertain any application. The Code of Criminal Procedure

vests no power in the High Court to review its judgment and the remedy of the parties was to move this Court.

9. In this Court application for impleadment has been filed by the complainant Dr. Harold Charles and the victim. In the application it is reiterated that the parties have settled the matter and permission may be granted to compound the case. Affidavits have been filed by the complainant and the victim in support of the impleadment application. The application for impleadment has been granted by this Court.

10. The information received from the Jailor, District Jail, Prothrapur (Andaman and Nicobar Islands) shows that the appellant was in jail as undertrial prisoner from 23/03/2004 to 28/05/2004. He surrendered to the Prothrapur Jail on 7/2/2013 and is continuing in jail till date. The appellant has as of today undergone about five and half months imprisonment.

11. It appears from the applications filed by the complainant, the victim and the appellant that all of them

reside in the same locality. They have decided to bury the hatchet. They want to live peacefully and, therefore, they have arrived at a compromise. The victim is now about 18 years of age. The appellant is about 67 years of age. As already noted the information received from the Jailor, District Jail, Prothrapur (Andaman and Nicobar Islands) shows that the appellant has undergone almost the entire sentence imposed on him. He has undergone about five and half months imprisonment. Offence under Section 354 of the IPC is compoundable by the woman assaulted or to whom the criminal force was used. The victim has in her application filed in this Court prayed that permission be granted to compound the offence under Section 354 of the IPC. In the circumstances of the case, we feel that the prayer for compounding deserves sympathetic consideration. In the circumstances, without going into the question whether the High Court was right in refusing to take compromise on file and compound the offence, we deem it appropriate to grant permission to compound the offence. Hence, we permit the appellant, complainant and the victim to compound the

offence under Section 354 of the IPC. The said offence shall stand compounded. As per Section 320(8) of the Criminal Procedure Code the composition of this offence shall have the effect of acquittal of the offence under Section 354 of the IPC. Hence, the appellant is acquitted of the charge under Section 354 of the IPC. In view of this the impugned orders dated 13/7/2012 and 10/12/2012 passed by the Calcutta High Court are set aside. If the appellant is in jail, he is directed to be released forthwith unless otherwise required in any other case.

The appeal is disposed of in the aforesaid terms.

.....J.
(G.S. Singhvi)

.....J.
(Ranjana Prakash Desai)

New Delhi
9th May , 2013