

Court No. - 15

Case :- CRIMINAL APPEAL No. - 1302 of 2009

Appellant :- Shatrughan Maurya

Respondent :- State of U.P.

Counsel for Appellant :- Ram Yag Sharma, Ravindra Nath Pandey

Counsel for Respondent :- G.A., C.L. Yadav

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard learned counsel for the appellant as well as learned A.G.A. for the State and gone through the record.

2. The instant criminal appeal under section 374 (2) Cr.P.C. has been filed against the impugned judgment and order dated 30.04.2009 passed by the learned Special Judge (SC/ST)/Additional Sessions Judge/FTC-II, Faizabad (now Ayodhyaji) in Sessions Trial No.313 of 1999 (State Vs. Shatrughan Maurya), arising out of Case Crime No.081 of 1999, under sections 363, 366 and 376 IPC lodged at Police Station Inayat Nagar, district Faizabad (now Ayodhyaji) whereby, the appellant- **Shatrughan Maurya** has been convicted under section 3(I)(xii) S.C./S.T. Act and sentenced to undergo six months' imprisonment with fine of Rs.1000/- with default clause.

3. Learned counsel for the appellant, while referring to the impugned judgment and order, vehemently submits that the special/trial court has committed manifest illegality in appreciating the evidence available on record and has convicted the appellant for the offence, which has never been committed by him. It is further submitted that the trial court in its impugned judgement has not found the prosecution case proved for commission of the offence under sections 366 and 376 IPC and has also found that the age of the prosecutrix, at the relevant point of time, was more than 18 years and she was major and also that sexual relations have been established with her with her free-will, consent and volition and even then the trial court has gone to the extent of convicting the appellant for commission of the offence under section 3(1)(xii) SC/ST Act which is impermissible and against the evidence available on record and a contradictory finding has been recorded by the trial court in this regard.

4. It is vehemently submitted that the trial court has not taken into

consideration the evidence of the victim in its right perspective and found the case of the prosecution not proved with regard to enticing away of the victim and also of commission of any sexual assault but found that the appellant has misused his position in order to overpower the will of the prosecutrix/victim in order to take her consent for commission of sexual intercourse and this was impermissible. Thus, the trial court has committed manifest illegality in appreciating the evidence available on record and the impugned judgment, so far as the conviction of the appellant under section 3(1)(xii) SC/ST is concerned, is liable to be interfered and appellant is entitled to be acquitted of all the charges framed against him in this regard.

5. Learned AGA, on the other hand, submits that no illegality has been committed by the trial court in convicting the appellant under section 3(1)(xii) SC/ST Act and the impugned judgment is not required to be interfered with by this Court.

6. Perusal of record, in the background of the submissions advanced by the learned counsel for the parties, would reveal that the FIR of the instant case has been lodged by informant- Mihilal by moving a written application before the SHO of the concerned police station, alleging therein that the appellant has enticed away the victim in the intervening night of 01/02.02.1999 when she had gone to ease-out and she has also taken with her some jewellery items.

7. On the basis of written information, an FIR was registered on 22.02.1999 under sections 363 and 366 IPC read with section 3(1)(xii) SC/ST Act.

8. After being recovered, the prosecutrix/victim was medically examined on 23.02.1999 and no injury of any kind or any abnormality has been found on her person and no opinion with regard to commission of rape was given by the doctor.

9. Investigating officer, after completion of the investigation, submitted charge-sheet against the appellant for the offence under sections 363, 366 and 376 IPC read with section 3(1)(xii) SC/ST Act.

10. Trial court framed charges against the appellant under sections 366 and 376 IPC read with section 3(1)(xii) SC/ST Act to which the appellant

denied and claimed trial.

11. The prosecution, in order to prove its case, presented Mihilal (informant) as PW-1, Omprakash as PW-2, Kusama as PW-3, Dr. Meera Verma as PW-4, Devendra Singh as PW-5 and Ramsorcham as PW-6 and also relied on the documentary evidence.

12. After completion of the evidence by the prosecution statement of the appellant was recorded under section 313 CrPC wherein he denied the evidence produced by the prosecution against him, however, stated that the informant used to take grocery from his shop and when he did not pay the amount of the grocery for a long time and the appellant demanded the same, in retaliation, this case has been lodged against him.

13. Perusal of the judgment and order passed by the trial court would reveal that the trial court, while discussing and appreciating the evidence available on record, has found that the prosecutrix/victim has voluntarily accompanied the appellant and she had given her consent for sexual intercourse also and, therefore, the trial court has categorically held that the prosecutrix/victim was a consenting party. The impugned judgment passed by the trial court would also indicate that the trial court has also found that the prosecution has failed to prove that the prosecutrix/victim was less than 18 years of age at the date and time of the incident. Thus, the trial court has categorically held firstly that the prosecutrix/victim was a consenting party and secondly that she was more than 18 years of age and, it is in this background of this evidence, the trial court has come to the conclusion that the prosecution has failed to prove its case with regard to the offence under sections 366 and 376 IPC. Surprisingly, even after holding that the prosecutrix/victim was a consenting party and she was major at the relevant point of time, the trial court in concluding part of its judgment has found that the appellant has misused his position in order to take consent of the prosecutrix for sexual intercourse. In this regard, statement of PW-3 (prosecutrix/victim) has been taken into consideration and also the statement of the appellant recorded under section 313 CrPC that the informant- Mihilal was taking grocery items from his shop and a huge amount was due on Mihilal and, on the basis of this evidence, the trial court has found the case of the prosecution proved under section 3(1) (xii) SC/ST Act.

14. In the considered opinion of this court, the trial court has acted utterly illegally in finding the appellant guilty of offence under section 3(1)(xii) SC/ST Act, more-so, when the trial court in earlier part of its judgment has categorically held the victim to be aged more than 18 years of age and also that she was a consenting party, there is no evidence at all with regard to the fact that it was the informant who has persuaded the victim to give her consent for sexual intercourse and the credit which has accumulated on the informant in the facts and circumstances of the case was not having any bearing on the free wish, will and volition of the prosecutrix with which she had entered into sexual relationship with the appellant, therefore, there was no evidence at all to suggest that the consent of the prosecutrix was taken under duress or compulsion as already held by the trial court in the earlier part of its judgment.

15. The trial court also appears to have committed illegality in using the answer given by the appellate/accused under section 313 CrPC without there being any other cogent evidence emerging against him. It is well settled law that with regard to heinous offence a person could not be convicted only on the basis of his statement recorded under section 313 CrPC and, apart from the statement made by the accused-appellant in response to a question posed by the court under section 313 CrPC, there has to be some other reliable and trustworthy evidence for the purpose of convicting him and, in the considered opinion of this court, when the trial court has arrived at a conclusion that the prosecution has failed to prove its case beyond reasonable doubt with regard to sections 366 and 376 IPC, there was no material/evidence available on record before the trial court to convict the appellant under section 3(1)(xii) SC/ST Act and thus, for the reasons mentioned herein before the appeal filed by the appellant-**Shatrughan Maurya** is **allowed** and the impugned judgment and order passed by the trial court is set-aside. The appellant is acquitted of all the charges framed against him under section 3(1)(xii) SC/ST Act.

16. The appellant appears to be on bail, his sureties are discharged. He need not to surrender in this case.

17. Having regard to the provisions contained under Section 437-A of the Cr.P.C., the appellant shall file his personal bond with two sureties of Rs. 50,000/- before the trial court for the purpose of securing his presence before the Hon'ble Supreme Court if any S.L.P. or to say any criminal

appeal is filed against this judgment.

18. A copy of this order be immediately sent to the trial court for information, along with trial court record, if the same is not required in any other cases, pending before this court.

Order Date :- 21.9.2024

MVS/-