

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.224 of 2014

Arising Out of PS.Case No. -335 Year- 2003 Thana -KOTWALI District- MUNGER

Umesh Prasad Singh son of late Nirbhay Narain Singh, resident of village Ghoshi
Tola, P.S. Kotwali, District Munger

The State of Bihar.

Versus

.... Appellant

.... Respondent

Appearance :

For the Appellant/s : Mr. Chitranjan Sinha, Advocate
Mr. Zeyaul Hoda, Advocate

For the Respondent/s : Mr. Sujeet Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 02-09-2016

Heard Mr. Chitranjan Sinha, learned Senior Counsel
for the appellant and Mr. Sujeet Kumar Singh, learned Additional
Public Prosecutor for the State.

2. The sole appellant Umesh Prasad Singh was
arraigned before the Special Judge (Scheduled Castes/Scheduled
Tribes)-cum- 1st Additional Sessions Judge, Munger in Sessions
Trial No. 124 of 2012 arising out of Kotwali P. S. Case No. 335 of
2003 on charge of voluntarily causing hurt and using criminal



force with intent to outrage the modesty of informant Reeta Das, a member of Scheduled Caste Community as also intentionally intimidating her with intent to humiliate in a public place within 'public view' and using force upon her punishable under Sections 323 and 354 of the Indian Penal Code (for short 'IPC') and Sections 3(1)(x) and 3(1)(xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'SC & ST Act') respectively.

3. On completion of trial and after hearing arguments advanced on behalf of the parties, the trial court, vide judgment and order dated 05.05.2014, convicted the appellant under Section 3(1)(x) of the SC & ST Act and sentenced him to undergo imprisonment for two years and to pay fine of Rs.2000/- and in default to undergo imprisonment for additional one week. The trial court acquitted the appellant of other charges framed against him, i.e. under Section 3(1) (xi) of the SC & ST Act and Sections 323 and 354 of the IPC.

4. The appellant is appealing against both the conviction and sentence alleging that there was no appreciation of facts and law involved in the case in correct perspective by the trial court and the trial court had erred in admissibility of certain evidences in arriving to its factual findings. It is also urged that the

investigation of the case was conducted by an officer not authorized in law. Hence, the very foundation of the case under the SC & ST Act is *non est* in the eyes of law.

5. The informant Reeta Das made her oral statement on 25th July, 2003 at 13.30 hour in the Chamber of the Chief Manager, State Bank of India (for short 'SBI'), Main Branch, Munger, which was recorded by a Sub-Inspector of Police, namely, P. R. Chauhan. On the basis of the said oral statement Kotwali P. S. Case No. 335 of 2003 was registered under Section 354 of the IPC and Sections 3 and 4 of the SC & ST Act. In her statement, the informant has stated that she joined the SBI in the year 1985 as a Clerk-Cum-Cashier. Since then, she was working in the Main Branch at Munger. In the same Branch, Umesh Prasad Singh (the appellant), who is senior to her, was also posted earlier, but presently he is posted in the Bazar Branch of the SBI at Munger. She has alleged that earlier, when he was posted in the Main Branch, he oftenly used abusive, vulgar and derogatory language towards her. He intentionally used to make sexually coloured remarks and with intent to humiliate her he used to call her '*chamaraniya*' in derogatory manner on the place within '**public view**' in presence of several staffs of the Bank. He also coerced her to get married to his servant Vinay Kumar Tiwari. In the said

proposal for marriage, his intention was apparently dishonest. When she refused to marry his servant, he started harassing her more vigorously. Thereafter, in the election of the office bearers of the Staff Association of the SBI of Bhagalpur Zone, he was elected as Deputy General Secretary.

6. It is alleged that after being elected as Deputy General Secretary, abusing his position, he got her transferred to Safiyabad AMY Branch in order to put pressure upon her so that she may surrender and the appellant may sexually exploit her.

7. After recording of the *fardbeyan*, the informant put her signature over it. The *fardbeyan* was also signed by Mr. Vipin Kumar Singh, Chief Manager, SBI, Munger and Nawal Singh, Manager, Development Banking, SBI, Main Branch.

8. On the basis of the aforestated statement of the informant, Kotwali P. S. Case No. 335 of 2003 dated 25.07.2003 was registered against the appellant Umesh Prasad Singh under Section 354 of the IPC as also Sections 3 and 4 of the SC & ST Act and investigation of the case was handed over to the Sub-Inspector of Police, P. R. Chauhan by the Officer-in-Charge of the police station.

9. On perusal of the records, it would appear that after completion of the investigation, the Investigating Officer

submitted his report in the court of Chief Judicial Magistrate holding the accusation made against the appellant to be true only under Section 354 of the IPC.

10. Upon perusal of the materials collected during investigation, the Chief Judicial Magistrate, Munger, vide order dated 05.11.2003, took cognizance of the offence punishable under Section 354 of the IPC and summoned the appellant to face trial.

11. It would appear from the record that no substantial progress was made in the case for six long years after taking cognizance of the offence. It would further appear that on 15.11.2010, the substance of accusation under Section 354 of the IPC was explained to the appellant and the case was fixed for evidence. In course of trial six witnesses were examined on behalf of the prosecution. Thereafter, an application was filed by the State in the court of Magistrate to add Sections 3 and 4 of the SC & ST Act to the charge against the appellant.

12. The Jurisdictional Magistrate, vide order dated 15.02.2011, came to a finding that on the basis of evidence on record charge is required to be amended and the appellant ought to be tried also under Section 3 of the SC & ST Act.

13. Accordingly, the Jurisdictional Magistrate fixed the case for commitment to the court of Sessions.

14. It would further be evident from the record that on 09.01.2012, the case was committed to the court of Sessions and the learned District and Sessions Judge, Munger, vide order dated 16.02.2012, transferred the record of the case to the court of 1st Additional Sessions Judge-cum-Special Judge, Munger for trial.

15. The learned Special Judge, upon consideration of the record and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, considered that there is sufficient ground for proceeding against the appellant under Sections 323 and 354 of the IPC and Sections 3(1)(x) and 3(1)(xi) of the SC & ST Act. Since the appellant denied the charges and claimed to be tried, the trial commenced.

16. In support of the charges, the prosecution led evidence of five witnesses; that of P. W. 1- Reeta Das, the informant of the case; then of P.W. 2 Ganga Raut, who was posted as a sweeper in the SBI, Main Branch, Munger at the relevant time; followed by P.W. 3 Moti Ram, who was also an employee of SBI, Main Branch, Munger; further followed by P.W. 4 Birendra Kumar Sinha, an advocate of Civil Court, Munger. The 5th witness, Prem Raj Chauhan, was the Investigating Officer of the case, who had recorded the *fardbeyan* and statements of witnesses, inspected the

place of occurrence, investigated the case and submitted the police report on completion of investigation under Section 173 (2) of the Code of Criminal Procedure (for short 'Cr.P.C.') in the court.

17. P. W. 1, the informant of the case has proved her signature on the *fardbeyan*, which has been marked, as Ext. 1.

18. The informant's testimony was that :

- (a) The alleged offence commenced in the year 1985 and continued till the registration of the FIR. In 1985, she joined SBI as a Clerk in Munger Main Branch. In the same Branch, one Umesh Prasad Singh (the appellant), who was senior to her, was also posted from before. He was a high headed man and had a dominating personality, as he was the son of a Bank officer. He used to call her '*chamaraniya*' and also used sexually coloured remarks towards her. Whenever, she used to talk to a senior staff of the Bank in relation to her official work, the appellant used to tell her that you will get nothing by sitting near an old employee. He also used to say that if you sit near a young employee, you will enjoy the company. He

coerced her to get married to his servant Vinay Kumar Tiwari.

- (b) Under cross-examination, the defence interrogated her on the statement she made to the police. She has stated that when the offence took place, she was posted in the Main Branch of SBI at Munger and at the time of institution of the FIR, the appellant was posted in the Bazar Branch of the SBI, which is located at a short distance. The offence took place continuously between 1985 and 2003. She admitted that no specific date, time, or month was disclosed to the police regarding the date and time of offence during investigation. She also admitted that the offence was never reported between 1985 and 2003 either to the Superintendent of Police, or to the Sub-Divisional Officer, or to the District Magistrate, or to the Chief Judicial Magistrate prior to the institution of the FIR. However, she has stated that an application was given to the officer of the Bank and a copy of the same was sent to the



Superintendent of Police by post. She has further admitted that when she was transferred from the Main Branch of the Bank to Safiyabad AMY Branch, she challenged the transfer order in the court of Munsif, II in which the appellant was also impleaded as one of the Defendants. She also admitted that the said suit filed before the Munsif was dismissed.

- (c) In her further cross-examination, she has admitted that she had instituted Kotwali P. S. Case No. 255 of 1988 against one Basant Kumar Karn, a co-employee, who had established physical relation with her on false pretext of marriage. She has also admitted that said Basant Kumar Karn was acquitted in that case.
- (d) Further, she has admitted that one Malati Devi had instituted a case under Section 302 of the IPC, vide East Colony P. S. Case No. 10 of 1989, against her and one Meera Bajrangi. She has also admitted that one Yogendra Pandit of Munger had lodged 3-4 false cases against her.

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- (e) She has denied the defence suggestion that she got the appellant implicated in a false case, as he became an office bearer of the SBI Staff Association. She has further denied the defence suggestion that she instituted a false case against the petitioner in retaliation to her transfer order from Munger Branch of the Bank to Safiyabad AMY Branch.

19. P.W. 2 Ganga Raut's evidence was that :

- (a) On 25.07.2003, he was working as a Sweeper in SBI, Munger Branch. He is acquainted with the informant Reeta Das. He denied to have any knowledge about the alleged offence. He also denied to have made any statement before the police.
- (b) At this stage, he was declared hostile by the trial Judge at the request of the prosecution.
- (c) After getting him declared hostile, the prosecution cross-examined him. However, nothing relevant could be elicited out of the cross-examination of the said witness.

20. P.W. 3 Moti Ram's evidence was that :

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- (a) He is familiar with the informant and the appellant of the case. He is not aware about any dispute between the informant and the appellant.
- (b) In the cross-examination, he has stated that the informant was earlier posted in Main Branch of the SBI, Munger. When she was transferred from the said Branch, she was under impression that her transfer order has been passed at the behest of the appellant. He has also admitted that in retaliation to the said transfer order, the informant had instituted the FIR.

21. P. W. 4 Birendra Kumar Sinha's evidence was that :

- (a) He is an advocate of SBI, Munger. He was not present in the Bank on the date of offence. He is acquainted with the informant and the appellant. He did not know about any dispute between them. He did not make any inquiry from any one in this regard.
- (b) At this stage, he was declared hostile by the trial Judge at the request of the prosecution.

(c) He too was subjected to cross-examination.

However, nothing relevant could transpire in his cross-examination.

22. P. W. 5 Prem Raj Chauhan's evidence was that:

- (a) On 25.07.2003, he was In-charge of Purab Sarai TOP. The *fardbeyan* was recorded by him. The informant had submitted an application to the Superintendent of Police and in order to inquire about the said application, he had gone to the Main Branch of the SBI, Munger. He went to the Chamber of the Manager of the Bank. The Manager took him to the Chief Manager's Chamber, where the *fardbeyan* of Reeta Das was recorded.
- (b) He himself handed over the *fardbeyan* to the Officer-in-Charge of Kotwali Police Station, who instituted the FIR and handed over the investigation to him.
- (c) He recorded the subsequent statement of the informant and inspected the place of occurrence on 25.07. 2003.
- (d) He also recorded the statements of Bipin Kumar

Singh, Chief Manager, SBI, Munger, Ganga Raut, Karan Kumar, Ravi Ranjan Kumar, Shyam Sunder, R. K. Sinha, Birendra Kumar Sinha, Moti Ram and Ajay Kumar Sinha.

- (e) He found the accusation to be true under Section 354 of the IPC.
- (f) On receipt of the supervision note of the Deputy Superintendent of Police, he submitted charge-sheet under Section 354 of the IPC in the court.
- (g) Under cross-examination, he has admitted that he is not a witness to the offence and he could not come to know about the actual date of the offence during the entire investigation of the case. He has also admitted that he is not aware about the employees, who were posted in the Bank between 1985 and 2003. He further admitted that the copy of the complaint made by the informant to her senior officer was never made available to him. He has also admitted that the informant had disclosed him that she has been transferred from Main Branch, Munger to Safiyabad AMY Branch at the

behest of the appellant, who was elected as Deputy General Manager of the SBI Staff Association.

- (h) He has denied the defence suggestion that in retaliation to the order of transfer, the informant had instituted a false case. However, he has admitted that he did not investigate the case on this angle. He has admitted that he did not inquire about the cases instituted by the informant against other employees of the Bank.
- (i) He has also admitted that he came to know from the supervision report of the Deputy Superintendent of Police that the brother of the informant, namely, Chandeshwar Das, did not support the allegation made against the appellant by the informant.

23. After examination of P.W. 5, the evidence on behalf of the prosecution was closed and for the purpose of enabling the appellant personally to explain the substances appearing in evidence against him, the trial Judge recorded his statement under Section 313 of the Cr.P.C, wherein he has categorically denied the allegation that he ever used abusive, vulgar

or derogatory language towards the informant or sexually harassed her by calling her caste name '*chamaraniya*'.

24. The defence has examined one Yogendra Yadav in support of its case. Certain documents were also proved on behalf of the defence and were marked Exts. A to D/1 during trial, which are as under :-

- (a) Ext. A- the plaint of Suit No. 42 of 2003 filed by the informant in the court of Munsif-II, Munger challenging the order of transfer from SBI, Main Branch, Munger to another Branch,
- (b) Ext. B- the investigation report of the Bank on the complaint of the informant,
- (c) Ext. C- letter no. 4487 dated 21.08.2003 issued under the signature of General Secretary of the SBI Staff Association to the Circle Development Officer, SBI, Patna,
- (d) Ext. D- Copy of Complaint Case No. 1154-C of 2011 filed by one Yogendra Pandit, an advocate of the Munger against the informant of the case, and
- (e) Ext. D/1-Complaint Case No. 1369-C of 2010 filed by aforesaid Yogendra Pandit against the

informant of the case.

25. At this juncture, it would be pertinent to note here that learned Senior Counsel appearing on behalf of the appellant, has broadly raised three-fold submissions. His first submission is that the trial Judge has not appreciated the facts and law involved in this case in correct perspective; the second submission is that the trial Judge has erred in admissibility of certain evidence in arriving to its factual findings; and, the third submission is that investigation of the case was conducted by a person not authorized in law. Hence, the very foundation of the case under SC & ST Act is *none est* in the eyes of law.

26. *Per contra*, Mr. Sujeet Kumar Singh, learned Additional Public Prosecutor for the State has submitted that the judgment of the trial court has been passed on correct appreciation of facts and law involved in the case. He has submitted that the law is well settled that a person can be convicted even on the sole testimony of a witness, if the witness is trustworthy. He has further submitted that the informant has fully corroborated the prosecution case and the trial court has made no error in recording the finding of guilt against the appellant. He has also submitted that the State of Bihar has made certain notification, pursuant to which all the police officers up- to-the rank of Inspector of Police, Sub-Inspector

of Police and Assistant Sub-Inspector of Police have been authorized to investigate the cases under the SC & ST Act. Hence, neither the investigation, nor the trial of the case is vitiated in law.

27. Having regard to the submissions advanced on behalf of the parties, this Court would like to deal with all the three submissions made by the appellant one after another.

28. As I have discussed the evidence adduced before the trial court in some detail, hereinabove, it would be pertinent to note that P.W. 2 Ganga Raut and P.W. 4 Birendra Kumar Sinha were declared as hostile by the trial court at the request of the prosecution and their evidence is of no help to the prosecution.

29. So far as P.W. 3 Moti Ram is concerned, he has also not supported the case of the prosecution. However, for the reasons best known to the prosecution, no prayer was made during the trial to get him declared as hostile. In his deposition, as noticed above, he has stated that the informant was under impression that her transfer order was issued under the influence of the appellant as he had been elected as Deputy General Secretary of the SBI Staff Association and in retaliation to that she had instituted the FIR. He has not supported any of the allegations made by the informant against the appellant. Since he is the witness examined on behalf of

the prosecution and has not been declared as hostile, his deposition would be binding on the prosecution. If his evidence recorded during trial in the court below is to be accepted, it would mean that the FIR was registered for no other reason but because of transfer of the informant from one Branch to another Branch of the SBI.

30. Apart from the aforesaid three witnesses, the other two witnesses examined during trial in court below are the informant and the Investigating Officer of the case. Be it noted here that the Investigating Officer, being an official witness, is not a witness to the offence. Thus, in effect, the case of the prosecution rests on the sole testimony of the informant of the case.

31. True it is that conviction can be founded upon the testimony of a sole witness. However, the testimony of the sole witness must be confidence inspiring and beyond suspicion, leaving no doubt in the mind of the court.

32. It is well-settled in law that where there is a sole witness, the evidence has to be accepted with an amount of caution and after testing it on the touchstone of other materials on record.

33. In **Vadivelu Thevar vs. State of Madras**, since reported in **AIR 1957 SC 614**, the Supreme Court divided the nature of witnesses in three categories, namely, **wholly reliable**,

wholly unreliable and **neither wholly reliable nor wholly unreliable**. It held that the case of first two categories posed little difficulty, but in the case of the third category of witnesses, corroboration would be required. The relevant portion of the said judgment is reproduced hereunder :-

“11. ... Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way - it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material

particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses....”

34. Thus, it is to be seen that the deposition of the informant falls in which of three categories mentioned above. On analysis of evidence of P.W. 1 and on applying the principles stated above, this Court would find it difficult to put her evidence in the first category, i.e. “**wholly reliable**” for the following reasons:

- (a) Though the alleged harassment of the informant commenced in the year 1985, no complaint was ever made prior to date of institution of the FIR, i.e. on 25.07.2003. The inordinate and unexplained delay caused in institution of the first information report creates suspicion regarding the veracity of the allegation.
- (b) No specific date, month, or year has been given by the P.W. 1 either before the Investigating Officer or before the trial court of the

offence/offences alleged.

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- (c) The FIR was also not instituted till the appellant was posted in the SBI Main Branch at Munger, but the same was instituted after P.W. 1 was transferred from Main Branch of the SBI to Safiyabad AMY Branch.
 - (d) P.W. 1 has admitted that she had challenged her transfer order by filing a suit in the court of Munsif and had impleaded the appellant as one of the Defendants.
 - (e) In view of aforesaid facts as also in view of deposition of P.W. 3, a reasonable doubt arises in the mind that the informant may have instituted the FIR in retaliation to her order of transfer.
 - (f) P.W. 1 has admitted in cross-examination that she was being prosecuted along with one another in a case under Section 302 of the IPC.
 - (g) P.W. 1 has also admitted to have instituted a case against a co-employee, Basant Kumar Karn, charging him of establishing physical relation with her on false pretext of marriage

and has further admitted that said Basant Kumar Karn was acquitted of the charge by the court.

35. In view of the facts noted above, this Court is of the opinion that P.W. 1 is certainly not a “**wholly reliable**” witness. Her evidence has to be appreciated with caution and after testing it on the touchstone of other materials on record.

36. Coming back to the deposition of P.W. 5, the Investigating Officer of the case, Prem Raj Chauhan, it is reiterated that he is not a witness to the offence. He had simply inspected the place of occurrence, recorded the statements of witnesses and on completion of investigation submitted police report under Section 173(2) of the Cr.P.C.. He has admitted in cross-examination that during entire investigation, he was not told any specific date, or time of offence. He has further admitted that the supervising officer of the case in his supervision note had recorded that the brother of the informant, Chandeshwar Das, had not supported the prosecution case. He has conceded that he had not recorded the statement of brother of the informant during trial. He has also admitted that the informant had stated to him during investigation that she was transferred from the Main Branch of the SBI, to Safiyabad Branch at the behest of the appellant who had been elected as Deputy General Secretary of the SBI Staff Association.



37. It would transpire from the record and the deposition of the Investigating Officer of the case that several witnesses, whose statements were recoded under Section 161(3) of the Cr.P.C. by the Investigating Officer of the case during investigation and who were made witness in the police report submitted in the court, were not examined during trial. There is neither any explanation for their non-examination nor any valid reason why the prosecution withheld them.

38. Appreciation of evidence involves weighing the credibility and reliability of the evidence presented in the case. In criminal cases, the burden of proving the guilt of an accused is upon the prosecution. It must stand by itself. The accused need not establish his case beyond reasonable doubt. Upon such proof as is adduced, if there is a real and reasonable doubt as to his guilt, the accused is entitled to benefit of doubt. The law always requires that conviction should be certain and not doubtful.

39. In the present case, P. Ws. 2 and 4 have turned hostile. P.W. 3, though not declared as hostile, has not supported the prosecution case. On the contrary, in cross-examination he has admitted that the case was instituted by the informant in retaliation to her order of transfer, as she had a feeling that the transfer order was issued under the influence of the accused. The long silence of



over 15 years in instituting the case by the informant has neither been explained nor seems to be justified. Further, there is no corroboration from any one regarding the allegation made by the informant. Coupled with these deficiencies, non- examination of charge sheet witnesses during trial and admission by the Investigating Officer that he did not examine the brother of the informant, whose statement was recorded by the supervising officer, makes the whole prosecution case doubtful.

40. Keeping in mind, the nature of evidence adduced before the court below, as discussed, hereinabove, this Court has no hesitation in coming to a finding that the **trial court has completely erred in appreciating the facts involved in the case in correct perspective.**

41. Coming back to the **question of appreciation of law in correct perspective**, it is deemed necessary to reproduce Section 3(1)(x) of the SC & ST Act under which the appellant has been convicted.

42. Section 3(1)(x) of the SC & ST Act reads as under :

“3(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a

Scheduled Tribe in any place within public view.”

43. From a reading of the above provision of the SC & ST Act, it would be evident that the basic ingredients for constituting the offence are as under :

- (a) there should be intentional insult or intimidation by a person, who is not a member of scheduled caste and scheduled tribe;
- (b) the insult must be with intent to humiliate the member of scheduled caste or scheduled tribe;
- (c) the incident must occur in any place within the ‘**public view**’.

44. The offences under the SC & ST Act are quite grave and provide stringent punishment. Hence, the principle that will apply for such kind of offences would be “**graver is the offence, stronger should be the proof**”.

45. On that yardstick the expression ‘**public view**’ used in Section 3(1) (x) of the SC & ST Act would mean within the view which includes hearing also by some people. In order to attract the offence under the said provision of the SC & ST Act, it is necessary that intentional insult or intimidation with intent to humiliate a member of scheduled caste or scheduled tribe must be

made in any place within '**public view**' and '**public hearing**'.

46. There is no doubt that a Branch of a Bank in its working hours is a 'public place'. However, to attract the offence, a duty was cast upon the prosecution to prove that the offending word '*chamaraniya*' alleged to have been uttered by the appellant was used within '**public view**' and heard by some people present in the Branch of the Bank.

47. As noticed above, apart from the informant, no other witness or the employee of the Bank has come forward to corroborate the informant's version that he either heard 'offending word', or even saw the 'offending word' being used by the appellant against the informant of the case .

48. In that view of the matter, I am of the opinion that the court below has also **failed to appreciate the law in correct perspective.**

49. Coming back to the second submission of the appellant, from a perusal of the last paragraph of the impugned judgment, it would be evident that the trial court has recorded in its finding that there are circumstantial evidences against the appellant. In proof of such circumstances, the court has recorded that the informant had submitted certain applications which are available on record and which would reflect that the appellant used



to send some objectionable SMS on the mobile phone of the informant. It is further recorded that the appellant used to threaten the informant of the case and due to that reason the Superintendent of Police, Munger had to provide her police protection at the time of recording of the statement of the informant. It is the finding of the trial court that such conduct of the appellant shows that he used to humiliate, harass and coerce the informant of the case, who is a member of Scheduled Caste Community.

50. Having considered the aforesaid findings of the trial court, it is to be seen whether the findings are based on admissible evidence.

51. Section 3 of the Indian Evidence Act defines 'evidence' in following words :

*“Evidence”.— “ Evidence” means and includes—
(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry, such statements are called oral evidence;
(2) [all documents including electronic records produced for the inspection of the Court], such documents are called documentary evidence.”*

52. The definition of 'evidence' given under Section 3 of the Evidence Act speaks about evidence before the

court by two means only: - (i) the statements of witnesses; (ii) the documents, including electronic records.

53. However, in a legal proceeding evidence includes everything that is used to demonstrate the truth of assertion. Giving or procuring evidence is the process of those things that are either presumed to be true or which are proved by evidence to demonstrate the truth of assertion. The evidence is an act of which one fulfils the burden of proof. Admissibility of evidence is that which a court receives and considers for the purposes of deciding a particular case.

54. Section 59 of the Evidence Act speaks that all facts, except the contents of document may be proved by oral evidence. Section 60 of the Evidence Act prescribes the provisions of recording oral evidence. Oral evidence is the evidence which the witness has personally seen or heard. Oral evidence must always be direct or positive. Section 3 of the Evidence Act says that all those documents which are presented in the court for inspection are documentary evidence. Section 61 of the Evidence Act prescribes that the contents of the documents may be proved either by primary or by secondary evidence. Section 62 of the Evidence Act says that primary evidence means the document itself produced for the inspection of the court. Section 63 of the Evidence Act says that



secondary evidence means and includes- (1) certified copies given under the provisions of the Evidence Act; (2) Copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies; (3) copies made from or compared with the original; (4) counterparts of documents as against the parties who did not execute them; (5) oral accounts of the contents of a documents given by some person who has himself seen it. Section 64 of the Evidence Act says that documents must be proved by primary evidence except under certain circumstances. Section 65 of the Evidence Act states about the circumstances under which the secondary evidence relating to documents may be given.

55. Having noticed different forms of the evidence admissible in law, what is curious to note, in the present case, is that the court below has relied upon certain applications or letters which were never presented before the court into evidence by any witness during trial. Those documentary evidences were neither proved by primary evidence nor by secondary evidence. The court has treated them to be circumstantial evidence in order to arrive at a finding of guilt against the appellant.

56. In **Hanumant Govind Nargundkar & Anr. vs. State of Madhya Pradesh**, since reported in **AIR 1952 SC 343**,



the Supreme Court observed that in dealing with circumstantial evidence there is always the danger that suspicion may take the place of legal proof. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

57. In **Ashok Kumar Chatterjee vs. State of Madhya Pradesh**, since reported in **AIR 1989 SC 1890**, the Supreme Court observed that when a case rests upon circumstantial evidence such evidence must satisfy the following tests : (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (3) the circumstances, taken cumulatively, should form a chain so complete that there is no



escape from the conclusion that within all human probability the crime was committed by the accused and none else, and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation on any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

58. In view of the ambit and scope of different forms of evidence recognized under the Evidence Act and the ratio laid down by the Supreme Court in **Hanumant Govind Nargundkar vs. State of Madhya Pradesh** (supra) and **Ashok Kumar Chatterjee vs. State of Madhya Pradesh** (supra) in respect of circumstances from which conclusion of guilt is to be drawn, this Court is of the considered opinion that the trial Judge has completely erred in admissibility of certain evidences in arriving to its findings in absence of the documents or their contents having been proved by the witnesses during trial either by primary or by secondary evidence. The informant was examined in the court. In her deposition she has not uttered a word that she was even threatened by the appellant during trial. The Superintendent of Police has not been examined in the court and the contents of any



letter sent by him were not proved by any witness during trial. Further, the Investigating Officer of the case has also not stated that at any point of time police force was deployed to enable the informant to depose before the court or that she was provided with any police protection. The circumstances which have formed the part of consideration by the trial court as evidence against the appellant were never put to the accused either during trial or even during recording statement of the accused under Section 313 of the Cr.P.C. The court below ought not to have considered certain documents, which were never legally brought on record during trial, as circumstantial evidence against the appellant.

59. It is well settled that extraneous factors and elements must always be kept out of mind while judging the guilt. The judicial officer should never import his own knowledge of facts or the character of the accused or witnesses into the case nor refer the matters which came to his knowledge from other sources which were never part of legal evidence adduced in the court. Personal impressions should not be a part of judicial order.

60. The third issue for consideration is whether the Investigating officer was authorized in law to investigate the case. It has been argued by Mr. Chitranjan Sinha, learned Senior Counsel



for the appellant that in accordance with Rule 7 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (for short 'the Rules of 1995'), an offence committed under the SC & ST Act is not to be investigated by a police officer below the rank of Deputy Superintendent of Police. He has submitted that the investigation, in the present case, was made by an officer, who was of the rank of Sub-Inspector of Police and was not authorized by the State Government under Section 9 of the SC & ST Act. Hence, the entire investigation, including the charge-sheet submitted under Section 173(2) of the Cr.P.C., was *void ab initio*.

61. In order to appreciate this argument of the appellant, it would be necessary to have a look at sub-section (1) of Section 23 of the S.C. & S.T. Act and Rule 7 of the Rules of 1995 made in exercise of power conferred under Section 23 of the S.C. & S.T. Act.

62. Sub-section (1) of Section 23 of the SC & ST Act reads as under :

“23. Power to make rules.- (1) The Central government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.”

63. In exercise of powers conferred by sub-section

(1) of Section 23 of the SC & ST Act, the Central Government framed the Rules of 1995, vide G.S.R.316 (E) dated 31.03.1995.

64. Rule 7 of the Rules of 1995 reads as under :

“ 7. Investigating Officer.-

(1) An offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government, Director- General of Police, Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time.

(2) The investigating officer so appointed under sub-rule (1) shall complete the investigation on top priority basis within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director-General of Police of the State Government.

(3) The Home Secretary and the Social Welfare Secretary to the State Government, Director of Prosecution the officer-in-charge of Prosecution and the Director-General of Police shall review by the end of every quarter the position of all investigations done by the investigating officer.”

(emphasis supplied)

65. At this juncture, it would also be appropriate to refer to Section 9 of the SC & ST Act, which reads as under :

*“ 9. Conferment of powers.- (1) Notwithstanding anything contained in the Code or in any other provisions of this Act, the **State Government may, if it considers it necessary or expedient so to do, -***

(a) for the prevention of and for coping with any offence under this Act, or

(b) for any case or class or group of cases under this Act,

in any district or part thereof, confer, by notification in the Official Gazette, on any officer of the State Government, the powers exercisable by a police officer under the Code in such district or part thereof or, as the case may be, for such case or class or group of cases, and in particular, the powers of arrest, investigation and prosecution of persons before any Special Court.

(2) All officers of police and all other officers of Government shall assist the officer referred to in sub-section (1) in the execution of the provisions of this Act or any rule, scheme or order made thereunder.

(3) The provisions of the Code shall, so far as may be, apply to the exercise of the powers by an officer under sub-section (1).

(emphasis supplied)



66. Section 9 of the SC & ST Act starts with *non-obstante* clause. It provides that notwithstanding anything contained in the Code or in any provision of this Act, the State Government may, if it considers it necessary or expedient so to do, confer, by notification of the Officiate Gazette, on any officer of the State Government, the powers exercisable by a police officer under the Code in such district or part thereof or, as the case may be, for such case or class or group of cases, and in particular, the powers of arrest, investigation and prosecution of persons before any special court.

67. It would be pertinent to note here that in exercise of power conferred by Section 9(1) of the SC & ST Act the State Government had issued a notification on 3rd June, 2002 authorizing all the officers of the rank of Police Inspector, Sub-Inspector of Police and Assistant Sub-Inspector of Police to investigate the cases filed under the SC & ST Act within the State of Bihar.

68. The Notification dated 3rd June, 2002 reads as under :

“ In exercise of powers conferred by Section 9 (1) of the Scheduled Cates and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (No. 33 of 1989) and having regard to the number of cases

filed under this Act, the State Government authorizes all the officers of the rank of Police Inspector, Sub-Inspector of Police and Assistant Sub-Inspector of Police to investigate the cases filed under this Act within the State of Bihar with effect from 31.03.1995, the date of coming into force of the Scheduled Cates and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 made under this Act.”

(emphasis supplied)

69. It would be evident from the reading of the aforementioned notification issued by the State Government that the notification confers the powers to all the officers of the rank of Police Inspector, Sub-Inspector of Police and Assistant Sub-Inspector of Police to investigate the cases filed under the SC & ST Act with retrospective effect.

70. The constitutional validity of the government notification dated 3rd June, 2002 published in the Official Gazette of the State of Bihar on 9th August, 2008 was challenged before this Court in a writ proceeding.

71. A Division Bench of this Court, vide its judgment in **Smt. Ram Deni Devi vs. State of Bihar and analogous cases**, since reported in **2011 (1) PLJR 1097**, after examining the issue in detail, held that the State Government has



power to enact laws and also to specify the date from which the law shall become applicable. It further held that the impugned Notification dated 3rd June, 2002 is not ultra vires Act of 1989 or the Rules made thereunder. It declared that the impugned Notification dated 3rd June, 2002 became effective from the date of its publication in the official gazette of the State of Bihar, i.e. on and from 9th August, 2008. It further declared that the investigation made by a police officer below the rank of Deputy Superintendent of Police after the Rules of 1995 was brought into force, i.e. 31st March, 1995 and prior to 9th August, 2008; and consequent prosecution will not stand validated by the impugned Notification dated 3rd June, 2002 published on 9th August 2008.

72. The operative portion of the judgment in **Smt. Ram Deni Devi vs. State of Bihar** (supra) is reproduced hereinabove :-

“15. The Act of 1989 has been enacted especially for protection of Scheduled Castes and Scheduled Tribes people from crimes against them committed by non-Scheduled Castes and non-Scheduled Tribes people. The Act of 1989 does not restrict the investigation of such crimes by a particular police officer or a particular class of police officers. In other words, any police officer empowered under the Code of Criminal Procedure to investigate a



*crime or lodge a prosecution was competent to make arrest, investigate or lodge prosecution in respect of the crime punishable under the Act of 1989. However, by the Rules framed under subsection (1) of Section 23 of the Act of 1989 published in the Gazette of India on 31st March 1995 a restriction was imposed in respect of investigation of offences committed under the Act of 1989. Under Rule 7 of the Rules the police officers not below the rank of Deputy Superintendent of Police alone are empowered to investigate a crime punishable under the Act of 1989. In other words, by necessary implication, the police officers lower in rank than a Deputy Superintendent of Police are debarred from investigating such crimes. **The necessary consequence would be that the investigation made in respect of such crime by a police officer lower in rank than the Deputy Superintendent of Police after the date of the Rules i.e. on and from 31st March 1995 is unauthorized and is invalid. A prosecution lodged consequent to such investigation would fail. It is apparent that with a view to validating such invalid investigation and consequent unauthorized prosecution the Government of Bihar has issued the impugned Notification empowering the police officers below the rank of Deputy Superintendent of Police such as Police Inspector, Sub-Inspector of Police and***

Assistant Sub Inspector of Police to investigate the crimes punishable under the Act of 1989 effective from 31st March 1995.

16. There is no gainsaying that the Parliament or a State Legislature has power to enact laws and also to specify the date from which such law shall become applicable. The operation of such law may be made retrospective by an express provision or by necessary implication. But how far such law can be made retrospective in operation has to be decided in the context of the matter. **In our view, the impugned Notification in so far as it confers power of investigation upon the police officers below the rank of the Deputy Superintendent of Police is valid. Its operation with retrospective effect is also valid to the extent that any offence committed prior to the date of the impugned Notification can, after the date of the impugned Notification, be investigated by a police officer who has been vested with the power of investigation though he may be of the rank below the rank of the Deputy Superintendent of Police. But to accept the argument advanced by the learned advocates Mr. Amanullah and Mr. Sinha would amount to validating the acts which were unauthorized and invalid from inception. In other words, if an investigation in such crime has been made by a police officer below the rank of the Deputy Superintendent of Police prior to the date**

of the publication of the impugned Notification, such investigation and consequent prosecution which were otherwise invalid cannot stand validated by the impugned Notification.

17. We are fortified in our above view by the judgment of the Hon^{ble} Supreme Court in the matter of I.T. Officer, Alleppey v. M.C. Ponnose (supra). In that matter in exercise of power conferred by Section 2(44) (ii) of the Income Tax Act, 1961, as it stood amended by the Finance Act, 1963, by a Notification issued on 14th August 1963 a Tehsildar in the State of Kerala was vested with the powers of a Recovery Officer with effect from 1st April 1962. The said Notification was published in the Official Gazette on 20th August 1963. The action of tax recovery by the Tehsildar after 1st April 1962 but prior to 14th August 1963 was held to be invalid.

18. *For the aforesaid reasons, we declare that the impugned Notification dated 3rd June 2002 is not ultra vires the Act of 1989 or the Rules made thereunder. It is further declared that the impugned Notification dated 3rd June 2002 has become effective from the date of its publication in the Official Gazette of the State of Bihar i.e. on and from 9th August 2008. Investigation and consequent prosecution lodged by a police officer empowered under the impugned Notification, though lower in the rank than a Deputy*

Superintendent of Police, on or after 9th August 2008 will be valid although the offence in question may have been committed prior to 9th August 2008. It is further declared that the investigation made by a police officer below the rank of a Deputy Superintendent of Police after the date of the Rules, i.e. 31st March 1995 and prior to 9th August 2008 and consequent prosecution will not stand validated by the impugned Notification dated 3rd June 2002 published on 9th August 2008.”

(emphasis supplied)

73. In view of the above provisions of the SC & ST Act and the Rules of 1995 as also in view of the ratio laid down by a Division Bench of this Court in **Smt. Ram Deni Devi vs. State of Bihar** (supra), in the opinion of this Court, **the entire investigation conducted by a Sub-Inspector of Police, in the present matter, was void ab initio.**

74. Thus, this Court finds force in all the three submissions made by the learned Senior Counsel appearing on behalf of the appellant.

75. In view of the discussions made, hereinabove, this Court is of the considered opinion that impugned judgment passed by the court below cannot be sustained as the prosecution

has miserably failed to bring home the charge framed against the appellant. Accordingly, the impugned judgment and order dated 05.05.2014 passed by the learned Special Judge, (Scheduled Castes/Scheduled Tribes)-cum-Additional Sessions Judge, 1st Munger in Sessions Trial No. 124 of 2012 are set aside. Consequently, the appellant is discharged from the liabilities of bail bonds.

76. The appeal stands allowed.

(Ashwani Kumar Singh, J.)

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