

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.31 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- MADHUBANI

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Sanjay Yadav S/O Chandra Kishore Yadav Resident of Dumrail P.S. Chousa,
District- Madhepura.

.... Appellant

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Shailendra Kumar Singh, Adv.

For the Respondent : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 05-02-2018

1. The sole appellant stands convicted under Sections 323 and 354 of the Indian Penal Code (hereinafter to be referred as the 'IPC') and sentenced to undergo R.I. for nine months and 18 months respectively under those Sections and further convicted under Section 3 (1)(x)(xi) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and sentenced to undergo R.I. for 2 ½ years. All the sentences shall run concurrently.

2. The prosecution case, as per Fardbeyan of of P.W.4 (Jaldhar Ram) in short is that while he was watching his maize field at 04:00 P.M. on 10.08.1992 his daughter-in-law came and he asked his daughter-in-law to remain there till he comes back and went to his house. Further prosecution case is that thereafter at 06:00 P.M., his



daughter-in-law came running to his house and narrated that one Sanjay Yadav of village Dumarail finding her alone with the bad intention started uttering '*anap-snap*' and when it was objected by her daughter-in-law, he tried to catch her and on that; she fled away from there. It has also been stated that thereafter a *Panchayati* was held in the house of Chhedi Yadav and in the *Panchayati*, appellant Sanjay Yadav and his father Chandra Kishore assaulted him, due to which his teeth was broken and he received injuries also.

3. On the basis of the aforesaid fardbeyan Chousa P.S.Case No.87 of 1992 was instituted and on investigation, the charge-sheet has been submitted under the Sections of Indian Penal Code as well as Section of SC/ST (Prevention of Atrocities) Act and trial was conducted by Sri Uday Shanker, the then Special Judge, Madhepura.

4. During the trial, four witnesses have been examined, they are P.W.1 Neelam Devi, P.W.2 Ajay Kumar Yadav, P.W.3 Bili Ram and P.W.4 Jaldhar Ram. It appears that neither the I.O. nor the Doctor has been examined in this case and the evidence further shows that P.Ws. 2 and 3 are tendered for cross examination and nothing is relevant in their cross examination for decision of the case.

5. So far P.W. 1 is concerned, she is daughter-in-law of the



informant and her evidence discloses that at the time of occurrence, she was watching her maize field and in the meantime, Sanjay Yadav came and started abusing her and thereafter she was chased and she came running to her house and informed about the same to her father-in-law. Her evidence further discloses that *Panchayati* was held at the *Darwaja* of Chhedi Yadav and in that *Panchayati*, appellant Sanjay Yadav and his father Chandra Kishore came and assaulted his father-in-law by fists and slaps due to which his teeth were broken, thereafter her father-in-law lodged a case in the Police Station. This witness has been cross examined and from her cross examination, it appears that the field of this witness and the field of appellant Sanjay Yadav is adjacent to each other and even her cross examination shows that she was abused and thereafter, she fled away from the place of occurrence. Her evidence in cross examination also discloses that she did not disclose the name of the person rather she has stated that one person has abused her and thereafter she and her father-in-law came back to her field. She also claims that in the *Panchayat*, both appellant and his father assaulted his father-in-law and to the court query, she has also stated that Sanjay Yadav has not touched her body.

6. P.W.4 is the informant in this case and his evidence discloses that while he was watching his maize field, his daughter-in-



law came to his field and thereafter he came back to his house and after some time, his daughter-in-law came running and stated that Sanjay Yadav abused her and chased her to outrage her modesty and for that; he had gone to inform about the occurrence at the *Darwaza* of Chhedi Yadav and Ajay Yadav and on that Sanjay Yadav and Chandra Kishore Yadav held and assaulted him by fists and slaps causing breaking his teeth. In the cross examination, he has admitted that he is not eye witness of the occurrence and his submission further shows that when he received injuries Chhedi Yadav, Ajay, Sanjay and Chandra Kishore Yadav were present there, however, his contradiction/omission has been taken from his earlier statement before the Police and he has stated before the Police that appellant Sanjay Yadav abused him – “.....चमार होकर दरवाजा पर चढकर बोलता है बेटी चोद को मारकर फेंक दो” and the I.O. has not been examined in this case to confront him about above evidence of P.W.4, hence, the same is not free from reasonable doubt.

7. Learned trial court considering evidence of witnesses has convicted the appellant as stated above and sentenced him.

8. Submission of the learned counsel for the appellant is that no case is made out under Section 354 or under other Sections of the IPC and under Section 3(i)(x)(xi) of SC/ST (Prevention of



Atrocities) Act and as per the evidence, no criminal force was used with intention to outrage the modesty of the daughter-in-law of the informant and further though it is stated that appellant Sanjay Yadav and Chandra Kishore Yadav abused him by taking caste name and assaulted him but considering contradictions from his earlier statement before the Police, that does not inspire confidence as well as in the FIR there is no such allegation, as such the aforesaid allegation has been made only with a view to make out a case under Section 3 (i)(x)(xi) of SC/ST (Prevention of Atrocities) Act. It has also been submitted that though it is alleged that two teeth of the informant were broken but the Doctor has not been examined in this case and only P.W.4 is the witness of the occurrence as appellant no.1 is not a witness of first part of the occurrence and in such view of the matter, conviction of the appellant under Section 323 of the IPC does not inspire confidence and it is not sustainable in the eye of law. So far conviction under Section 354 of the IPC as aforesaid are concerned, submission of the learned counsel for the appellant is that in view of evidence available on the record, no such case is made out under those Sections also as such conviction is bad in law under the aforesaid Sections also.

9. Heard learned counsel for the State, who has submitted



that there is allegation of abusing the daughter-in-law of the informant and also abusing him and further allegation is that the appellant has assaulted the informant by fists and slaps, causing breaking of two teeth, as such conviction of the appellant is just and proper and does not require any interference by this Court.

10. In the background of the aforesaid rival contention, on perusal of the evidence, it appears that the occurrence is in two parts – first part is occurrence, which took place in the maize field and in that part of the occurrence also, P.W.1 is the only witness and the evidence of P.W.1 also shows that she was abused and there is no allegation of using criminal force or assault and outraging her modesty. So far second part of the occurrence which took place at the *Darwaza* of Ajay Yadav and Chhedi Yadav is concerned, P.W.4 and P.W.1 claimed to be eye witness of the occurrence but the evidence of P.W.4 clearly demolish presence of P.W.1 at the place of occurrence as he has stated that Chandra Kishore, Sanjay Yadav and Chhedi Yadav and others were present. It further appears that there is allegation of breaking of two teeth of the informant. Further in this case, the Doctor has not been examined and except the evidence of the only witness P.W.4 there is absolutely no evidence to corroborate the same and on the basis of the evidence of the sole witness, conviction



of the appellant has been made but in the present case there is specific allegation that two teeth of the informant was broken but the Doctor and the I.O. have not been examined in this case however, evidence of P.W.4 remains unrebutted so far assault to him is concerned.

11. Considering the entire discussions made above, so far conviction under Section 354 of the IPC and Section 3 (i)(x)(xi) of SC/ST (Prevention of Atrocities) Act is concerned, there are so many infirmities and inconsistencies in the evidence, as such conviction of the appellant under those Sections is not sustainable in the eye of law hence, conviction of the appellant under Section 354 of the IPC and Section 3 (i)(x)(xi) of SC/ST (Prevention of Atrocities) Act is set aside, however, so far conviction under Section 323 of the IPC is concerned, there is nothing available on the record to disbelieve the evidence of P.W.4, as such conviction under Section 323 of the IPC is upheld. The appellant has been sentenced to undergo RI for nine months under Section 323 of the IPC, however, the occurrence is of the year, 1992 and the appellant was aged about 32 years at the time of judgment i.e. on 19th of December, 2002 and there is also nothing available on the record to show that he has misused the privilege of bail or there is nothing against his conduct and he remained in custody for seven days during trial, in such view of the matter, the sentence is



reduced to the period already undergone.

With the above modification in conviction and sentence,
this Appeal is partly allowed.

(Vinod Kumar Sinha, J)

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AFR/NAFR	AFR
CAV DATE	N/A
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