

HIGH COURT OF CHHATTISGARH, BILASPUR
CRMP No.28 of 2019

- State Of Chhattisgarh Through The Station House Officer, Police Station- Bagicha, District- Jashpur, Chhattisgarh., District : Jashpur, Chhattisgarh

---- Petitioner

Versus

- Kishan Kumar Manikpuri S/o Late Samaldas Manikpuri Aged About 35 Years Caste- Panika, R/o Village- Marol, Present Address Village- Mahadevdand, Police Station- Bagicha, District- Jashpur, Chhattisgarh., District : Jashpur, Chhattisgarh

---- Respondent

Present:- Shri Pawan Kesharwani, GA for State/petitioner.

Division Bench: Hon'ble Shri Justice Manindra Mohan Shrivastava & Hon'ble Smt. Justice Vimla Singh Kapoor
Order On Board

15/02/2021

1. Heard on application (I.A.No.1/2019) for condonation of delay in filing acquittal appeal.
2. Also heard on prayer for grant of leave to appeal against acquittal of the accused from charges of commission of offence under Section 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocity) Act, 1989 (In short "the Act of 1989").
3. Even if, we are inclined to condone the delay in filing acquittal appeal, there is no case on merits.
4. Prayer for grant of leave to appeal has been made on the argument that though the accused has been convicted for commission of offence under Section 376(2)(a) of IPC, he has been acquitted from the charges of commission of offence under Section 3(2)(v) of the Act of 1989. He would submit that from the evidence of the prosecutrix and other evidence, it is clear that when the prosecutrix was brought to the accused and the accused started playing certain "Jadu tona" on her to set her free from witchcraft, the prosecutrix, a minor, was raped in the name of providing her some "Jadu tona".
5. Even if we take the evidence of the prosecutrix and other evidence as it is, there is nothing in the evidence to show that the alleged act of rape was

committed on the prosecutrix for the reason that she belongs to Scheduled Tribe category.

6. Provision of Section 3(2)(v) of the Act of 1989 and its applicability is came up for consideration before the Supreme Court in more than one case i.e. in the case of ***Khuman Singh vs. State of Madhya Pradesh***¹, ***Dinesh alias Buddha vs. State of Rajasthan***² and also in the case of ***Masumsha Hasanasha Musalman vs. State of Maharashtra***³. In all these cases, it has been held that in order to attract the provision of Section 3(2)(v) of the Act of 1989, *Sine qua non* is that the victim should be a person, who belongs to a Scheduled Caste or a Scheduled Tribe and that the offence under the Indian Penal Code is committed against him on the basis that such a person belongs to a Scheduled Caste or a Scheduled Tribe. In the absence of such ingredients, no offence under Section 3(2)(v) of the Act arises. In all the aforesaid cases, though, conviction under the provision of Indian Penal Code was sustained, conviction under Section 3(2)(v) of the Act of 1989 was not ordered in the absence of any evidence, which shows that the reason for committing the offence was that the victim belongs to a Scheduled Tribe category.

7. In the case of ***Dinesh alias Buddha*** (supra), it was a case of commission of offence of rape, though, conviction under Section 376 of IPC was sustained, but conviction under Section 3(2)(v) of the Act of 1989 was set aside and the Hon'ble Supreme Court held that there is no evidence to show that the rape was committed for the reason that the prosecutrix belongs to a Scheduled Tribe category. Similar was the case of ***Masumsha Hasanasha Musalman*** (supra).

8. In view of above, no case for grant of leave to appeal is made out. The application (Cr.M.P.No.28 of 2019) is accordingly rejected.

SD/-
(Manindra Mohan Shrivastava)
Judge

SD/-
(Vimla Singh Kapoor)
Judge

1 2019 SCC Online 1104

2 (2006) 3 SCC 771

3 (2000) 3 SCC 557