

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2604 of 2019

Arising Out of PS. Case No.-138 Year-2009 Thana- MINAPUR District- Muzaffarpur

1. Ajay Kumar Son of Ramchandra Ray Resident of Village - Bakhri, P.S.- Minapur (Panapur O.P.), Distt - Muzaffarpur.
2. Vishal Kumar Son of Kameshwsar Rai Resident of Village - Bakhri, P.S.- Minapur (Panapur O.P.), Distt - Muzaffarpur.
3. Shiv Shankar Kumar Son of Sheetal Rai Resident of Village - Bakhri, P.S.- Minapur (Panapur O.P.), Distt - Muzaffarpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Yogendra Kumar Singh, Advocate Mr. Ratneshwar Prasad, Advocate Ms. Nitu Kumari, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, Spl. P.P.

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

6 24-10-2024 Heard the learned counsel for the appellants and learned Special P. P. for the State.

2. The present appeal has been preferred for setting aside the judgment and sentence dated 26.04.2019 passed by learned 11th A.D.J-cum- Spl. Judge (SC/ST) Act Muzaffarpur in Session Trial no. 378/2015 (G.R. No. 1853/2009) in Minapur P.S. Case No. 138/2009 by which the learned Special Judge has sentenced the appellants simple imprisonment for three months under Section 341 Indian Penal Code; simple imprisonment of one year under Section 323 of Indian Penal Code and further sentenced for two years simple imprisonment each under



Section 504 of Indian Penal Code and Section 3(i) (x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'SC/ST Act'). All the sentences were ordered to run concurrently.

3. The prosecution case in brief is that informant one Om Prakash Ram had submitted his written application before the S.H.O. (Panapur O.P) Minapur P.S. stating therein that he is an *auto-rickshaw* driver and runs *auto-rikshaw* from Bishunpur Pandey Naya Bazar to Kanti chowk on a daily basis. It is alleged that on 24.06.2009 one Ajay Kumar, appellant No. 1 herein, approached the informant and asked him to carry his bundle of packets containing *pouch* (wine) with him but the informant refused. It is further alleged that appellants herein threatened the informant to teach a lesson and thereafter went away. Furthermore, it was alleged that when the informant returned to Bishunpur Naya Bazar all the three appellants herein surrounded the informant and abused him by taking his caste name and also assaulted him. It is also alleged that Ajay Kumar (appellant no. 2) snatched Rs. 500/- from the pocket of the informant.

4. As per the records of the case, the F.I.R in Minapur P.S. bearing No. 138/09 was registered on 25.06.2009. After



lodging the F.I.R., the police investigated the case and submitted chargesheet bearing No. 196/09 dated 31.08.2009 under Sections 341, 323 and 504/34 of the Indian Penal Code and Section 3(1) (x) of the SC/ST Act against all the three named accused who are the appellants herein.

5. Learned C.J.M, Muzaffarpur took cognizance against Ajay Kumar (appellant no.1), Vishal Kumar (appellant no. 2) and Shiv Shankar Kumar (appellant no. 3) under Sections 341, 323 and 504/34 of the Indian Penal Code and Section 3(i) (x) of the SC/ST Act and committed the case before the Sessions Court. Charges were framed on 24.02.2012 against all the accused- appellants and statement of accused persons were recorded under Section 313 Cr.P.C. in which they claimed themselves to be innocent. The accused pleaded not guilty and claimed to be tried.

6. Learned counsel for the appellants submits that in order to prove its case, the prosecution has examined altogether nine witnesses which are as follows:-

P.W-1-Om Prakash Ram (Informant)

P.W-2- Shashi Bhusan Rai (Hostile)

P.W. -3- Binod Bhagat (Hostile)

P.W.-4- Sheoji Sah (Hostile)



P.W.-5- Vinod Choudhary (Hostile)

P.W-6- Gagandeo Ram (Agnate /Gotia of Informant)

P.W. -7-Nageshwar Ram

P.W.-8- Lalita Devi (Gotiya)

P.W.-9- Asharfi Rai @ Asharfi Ram (Gotia of informant)

7. It is further submitted that some documentary evidence has also been exhibited by the prosecution which was Ext-1 *Fardbeyan* (F.I.R.).

8. It is also submitted that after considering oral and evidentiary evidence, the learned Trial Judge found the appellants guilty and they were sentenced for simple imprisonment of three months under section 341 of the Indian Penal Code, one-year simple imprisonment under Section 323 of the Indian Penal Code and simple imprisonment of two years each under Section 504 Indian Penal Code and Section 3(i) (x) of SC/ST (POA) Act. All the sentences were ordered to run concurrently.

9. Learned counsel for the appellants has submitted that the conviction of the appellants under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 cannot be sustained as the investigation on the case has been



done by a Sub-Inspector of Police, though the investigation should have been carried out by an officer of the rank of Deputy Superintendent of Police or above.

10. Rule-7 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1995 lays down that when an offence is committed under the SC/ST Act, the investigation shall be carried out by the officer not below the rank of Dy. S.P. and therefore the conviction of the appellants in a case which has been investigated by an officer of the rank of Sub-Inspector of Police cannot be sustained.

11. Learned counsel for the appellants has also submitted that the conviction under the SC/ST Act cannot be sustained as no caste certificate of the victim-informant has been produced during trial and the same is not on record though the victim claims to belong from the “*chamar*” community. The learned counsel emphasizes that there the prosecution should have produced the caste certificate and placed the same on record in order to satisfy the fundamental ingredient under the special statute, that is, SC/ST Act and in absence of the same, the conviction of the appellants under Section 3(i)(x) of the SC/ST Act cannot be sustained.

12. Learned counsel for the appellants has relied upon



the following judgments passed by various High Courts to challenge the conviction of the appellants under the SC/ST, Act in the case of

- (i) **Parmeshwar vs. State of Chhattisgarh (Criminal Appeal 269/2002, Neutral Citation 2023:CGHC:15054),**
- (ii) **Javed Khar & Anr. vs. The State of Madhya Pradesh in Cr. Appeal No. 874 of 2012,**
- (iii) **Pintu Gupta vs State of U.P. Criminal Appeal No. 4083 of 2017.**

13. So far as the other offences for which the appellants were convicted, that is, Sections 323, 341 and 504 of the Indian Penal Code, the learned counsel submits that the convictions under the aforementioned sections of the Indian Penal Code have not been challenged and further submits that the sentence awarded under the aforesaid Sections of the Indian Penal Code may be modified in the facts of the case, emphasizing the fact that besides the instant case, the appellants otherwise have clean antecedents.

14. Learned Special P.P. has submitted that the witnesses have supported their case and they have supported the conviction and sentence of the appellants.



15. I have considered the submissions of the parties.

16. A Division Bench of this Court in the case titled ***Ghanshyam Paswan vs. The State of Bihar Cri. Appl. (DB) 535 of 2023*** has relied upon the decision of the Hon'ble Supreme Court of India in the case of ***Dinesh v. State of Rajasthan, (2006) 3 SCC 771***, wherein the Hon'ble Supreme Court has observed as follows:

“15. *Sine qua non* for application of Section 3(2)(v.) is that an offence must have been committed against a person on the ground that such person is a member of the Scheduled Castes or the Scheduled Tribes. In the instant case no evidence has been led to establish this requirement. It is not the case of the prosecution that the rape was committed on the victim since she was a member of a Scheduled Caste. In the absence of evidence to that effect, Section 3(2)(v.) has no application. Had Section 3(2)(v.) of the Atrocities Act been applicable then by operation of law, the sentence would have been imprisonment for life and fine.”

17. In the case of ***Masumsha Hasanasha Musalman Vs. State of Maharashtra, (2000) 3 SCC 557***, Hon'ble Supreme Court has observed as follows:

“9. Section 3(2)(v.) of the Act provides that whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, commits any offence under the Penal Code, 1860 punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or



such property belongs to such member, shall be punishable with imprisonment for life and with fine. In the present case, there is no evidence at all to the effect that the appellant committed the offence alleged against him on the ground that the deceased is a member of a Scheduled Caste or a Scheduled Tribe. **To attract the provisions of Section 3(2)(v.) of the Act, the *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 Penal Code, 1860 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 that view of the matter, we think, both the trial court and the High Court missed the essence of this aspect. In these circumstances, the conviction under the aforesaid provision by the trial court as well as by the High Court ought to be set aside.”**

18. For better appreciating the purpose of the Act, the preamble of the Act reads as under :-

An Act to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts and the Exclusive Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto.

19. Therefore, from the afore-quoted decisions and the preamble of the Act, it is clear that the fundamental requirement in order to attract the provisions of the SC/ST Act



would be that the injured/victim must belong from the SC/ST community. The special statute was enacted to prevent commission of offences of atrocities against the members of the SC/ST community. Therefore, it is inescapable that the Act can be invoked only by a member of the SC/ST community and which forms the basis of the criminal prosecution under the Act.

20. The High Court of Chhattisgarh in the case of **Parmeshwar vs. State of Chhattisgarh (Criminal Appeal 269/2002, Neutral Citation 2023:CGHC:15054)** in para 17 to 22 has held as follows -

“17. In this respect, after going through the record it can safely be observed that the prosecution has not submitted any caste certificate to prove that complainant belongs to scheduled tribe community as the investigating officer has not filed any document to prove that the complainant belongs to Surayavanshi which is scheduled caste. The prosecution has examined complainants and Investigating Officer but no document with regard to caste of the complainants has been exhibited before the trial Court and even in the statement recorded under Section 313 CrPC, the appellants in reply to question No.2 have denied about the caste of the complainants. It can safely be observed that while putting a defense by the accused under Section 313 of Cr.P.C. they had denied the fact that victims namely Ashok Kumar, Dilharan, Santosh Kumar, Girdharilal, Badri Prasad, Laxminarayan, Tares Kumar, Dilip Kumar belong to scheduled caste. As it can safely be held that merely saying by the complainants that they belong to Schedule Cast is not enough, it is required to be proved by cogent and unimpeachable evidence that the complainant falls within the castes, races or tribes or parts of groups



within such castes, races or tribes which has been notified as Scheduled Castes or Scheduled Tribes. In absence thereof, a caste certificate issued by competent authority ought to be produced by the prosecution discharging such burden, therefore, the offence as alleged under Section 3(1)(v) of the SC/ST Act has not been made out. In this regard it can safely be observed that while specifying the offences under sub-Section (1) to (xvi) of Section 3 of the Act, it is clear that different act indicating commission of offence has been described and in every sub-Section it has been made clear that the offence relating to atrocities of a member whoever not being a member of a Scheduled Castes or Scheduled Tribes is punishable. In such circumstances thus it is incumbent upon the prosecution to prove that the complainant belongs to Scheduled Castes or Scheduled Tribes community and the member not being Scheduled caste or Scheduled Tribes committed any of the offence specified in Section 3(1) to (xvii) of the Act, in such circumstances, it can be observed that filing of caste certificate is sine-qua-non, or the legal or cogent oral unimpeachable evidence specifying the said ingredients ought to be produced to prove the offences of Atrocities Act.

*18. The High Court of Madhya Pradesh in the case of **Bharat Singh Vs. State of M. P.** reported in **2006(4) MPLJ 174** para 4 has held as under:-*

“4. After hearing the learned counsel for the parties and perusing the entire record, this Court is of the considered view that the conviction of the appellants is not sustainable because the prosecution has failed to establish by adducing cogent and reliable evidence that the complainant (PW01) Remeshwar belonged to the Scheduled Caste or Scheduled Tribe community. In the Court Statement Rameshwar (PW-1) has deposed that he belongs to BALAI caste but no-where he has stated that his caste



falls within the category of scheduled caste or scheduled Tribe. None of the prosecution witnesses has stated so though the appellants have admitted that the complainant belong to BALAI Community but that itself is not sufficient to establish that the complainant belonged to the scheduled caste community. Learned trial Court, without any evidence on record, has held in para 8 of the judgment that the complainant Rameshwar (PW-1) and Sobalsingh (PW2) belong to the Scheduled caste community. The authority to prove that the caste of the complainant Rameshwar falls within the category of Scheduled Caste. Filing of caste certificate is sinequa-non.”

*19. In the case of **Jukum Singh Vs. State of M.P. 2003(2) MPWN(79)**, it has been held that the victim must belong either to a scheduled caste or scheduled tribe ought to be established by unimpeachable evidence. On failing to prove by the prosecution, the said charge cannot be found established. In the said context, the judgment of the Bombay High Court in this case **Ashok K. Chintawar Vs. State of Maharastra reported in 2006 CGLJ (2234)** is also relevant. In para 6 of the said of the judgment, the court has observed as under:*

“6. For this purpose the learned counsel for the appellant relied on a judgment of this Court in Ashabail Ganeshrao Vs. State of Mah. Reported at MANU/MH/0505/2000: 1999(2) Mah. L. J. 36. In that case too the complainant’s Statement that he belonged to Matang Community had not been challenged. Yet the Court held that prosecution ought to have brought on record cast certificate of



the complainant. In the instant case, the accused had specifically denied that the complainant belonged to Madia tribe and had specifically denied that the complainant belonged to Madia tribe and had specifically alleged that the complainant belonged to Gowari caste. In view of this, since it was incumbent on the prosecution to establish the complainant belonged to Scheduled Tribe by unimpeachable evidence, which the prosecution failed to do the conviction under Section 3(1)(xi) of the Atrocities Act cannot be sustained.”

*20. Madhya Pradesh High Court in the case of **Tulsiram Vs. State of Madhya Pradesh** reported in 2012 C.L.R.(M.P.) 765 has held that the victim ought to have proved her caste by producing the caste certificate, mere oral evidence is not sufficient to assume that her caste covered under the act. Similarly, this Court in a recent judgment in the case of **Ashraf Khan Vs. State of Madhya Pradesh**, reported in 2013 Cr.L.J. (CG)76 has observed that filing and proving the caste certificate is a sine-qua-non to prove the offence under the Act.*

*21. The Madhya Pradesh High Court again in the matter of **Ashok and Others Vs. State of M. P.** reported in ILR (2015) MP 2475 has held at paragraph 13 which reads as under:-*

“13. Similarly, when it is not proved that the offence committed by the appellants was committed due to the caste of the complainant, therefore, only uttering the word “Chamra”, it cannot be said that the appellants insulted the complainant on the basis of his caste. In this connection the judgment passed in the case of “Anil Kumar Pandey V. Daulat Prasad”, [MMANU/MP/0181/2005:



2005(4) MPLJ 467] may be referred, in which it is held that if someone has been called by name of his caste without any intention to insult or humiliate a member of scheduled casts, then no offence under Section 3(1)(x) of the Special Act is made out. In the light of the aforesaid judgment, the trial Court has committed an error in convicting the appellants of offence under Section 3(1)(x) of the Special Act.”

22. Considering the law laid down by the Hon'ble Supreme Court evidence, material on record, it is quite vivid that the prosecution has failed to prove the caste of the victim beyond reasonable doubt, therefore, the conviction of the appellants for commission of offence under Section 3(i)(x) of the SC/ST Act and imposition of fine, is set aside and the appellants are acquitted from this charge.”

21. Therefore, it was imperative for the prosecution to have established the identity of the victim/injured as a member of the SC/ST community in order to attract the provisions of the SC/ST Act. The special statute can be invoked against the offenses of atrocities committed against the member of the SC/ST community and so it is a fundamental requirement to establish this identity of belonging to the SC/ST community by way of leading evidence. The prosecution has not discharged its obligation which is *sine qua non*, on which the prosecution ought to have proceeded which is found lacking in the instant case. Therefore in view of the law laid down by various High



Courts as relied by the appellants and as discussed above, the conviction of the appellants in absence to the caste certificate and in view of the investigation done by an officer below the rank of Dy. S.P., the conviction of the appellants under the provisions of SC/ST act is held to be illegal and set aside.

22. So far as the conviction of the appellants under Sections 323 and 341 and 504 is concerned, the same is upheld but the sentence awarded to the appellants under Section 323 and 341 and 504 is modified to that of the period undergone. The appellants shall pay a fine of Rs. 500/- each in addition to the sentence of period undergone in default of payment of the aforesaid fine, the appellants shall undergo simple imprisonment for a period of 15 days.

23. Accordingly, this appeal is partly allowed.

(Sandeep Kumar, J)

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