IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SMT. JUSTICE ANURADHA SHUKLA

ON THE 2nd OF FEBRUARY, 2024

CRIMINAL APPEAL No. 2401 of 2006

BETWEEN:-

1. **BABLOO SINGH @ HARSHWARDHAN SINGH, S/O SUMANT SINGH, AGED ABOUT 38 YEARS, R/O NAI GADI DISTRICT REWA (MADHYA PRADESH)**

2. **SANJAY SINGH, S/O SAMSER SINGH, AGED ABOUT 28 YEARS, R/O JODHPUR PS. NAIGADI, DISTRICT REWA (MADHYA PRADESH)**

3. **HARICHARAN SINGH, S/O SIDDGHOPAL SINGH, AGED ABOUT 30 YEARS, R/O MAJHIGAWAN, PS. NAIGADI, DISTRICT REWA (MADHYA PRADESH)**

.....APPELLANTS

(NONE)

AND

STATE OF MADHYA PRADESH THROUGH AARAKSHI KENDRA, A.J.K. REWA DISTRICT REWA (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI P. CHATTERJEE - PANEL LAWYER)

Reserved on : 25.1.2024

Pronounced on: 02.02.2024

This appeal having been heard and reserved for judgment, coming on for pronouncement this day, the court passed the following:

JUDGMENT

This criminal appeal has been preferred against the judgment of conviction and sentence passed on 29.11.2006 by Special Judge, the Scheduled

Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989 (hereinafter referred to as "the Act"), Rewa, in Special Case No.34/2006 whereby the appellants were held guilty of offence of Section 324/34 IPC and Section 3(1)(x) of the Act and were convicted to six months rigorous imprisonment and fine amount of Rs.1,000/- for each of the offence, with a default stipulation to undergo simple imprisonment of six months, in case of non-payment of fine.

2. The brief facts of prosecution case leading to conviction of appellants are that on 24.4.2005 at around 5:00 p.m. complainant Ram Sajeevan alias Raju was on his way to the house of Mohan Jaiswal for repaying him the amount of Rs.2,000/- but he was wrongfully restrained by appellants Bablu Singh, Sanjay Singh, Haricharan Singh and their companions, who reached the place in two Marshall vehicles; their companion Harshwardhan Singh gave filthy abuses to the complainant and made exhortation to assault the complainant; all the appellants and their companions started physically assaulting the complainant; they were abusing with obscene remarks and were also insulting him by his caste name; in this physical assault, Harshwardhan Singh, Haricharan Singh and Sanjay Singh gave him blows with dandas, causing him head injury and also injuries on the hand; the intervention of villagers made the appellants and their companions to flee away, but before leaving the place they gave life threats to the complainant; they also robbed him of Rs.3,000/-, which he was having in his pocket; on the next morning, complainant gave a written complaint upon which Crime No.9/2005 was registered in Police Station, AJK, Rewa, and the matter was investigated. After filing the charge-sheet, the trial was held and the appellants were convicted but their companion Vinod Kumar Jaiswal was acquitted in the case.

3. The grounds raised in this criminal appeal are that the finding of conviction passed by the trial court is illegal and perverse; it is against the evidence available on record; it was not considered by the trial court that the prosecution had failed to prove its case beyond reasonable doubt; the FIR in the case was lodged with considerable delay; the vehicles allegedly used by the appellants were not seized; there was no material evidence to hold the appellants guilty of Section 3(1)(x) of the Act; Surendra Kumar Prajapati (P.W.10) had contradicted his own version, therefore his evidence could not have been the basis for rendering the finding of conviction; Dr. Atul Singh (P.W.12) did not support the prosecution version and, in his opinion, the injuries sustained by complainant could have been caused due to falling down on a pointed stone. It is, therefore, prayed that the appellants, being of young age and first offenders, be given the benefit of provisions of Section 4 of the Probation of Offenders Act or considering the evidence on record, their conviction be set aside and they be acquitted.

4. Learned counsel for the State has opposed the appeal by submitting that from the prosecution evidence, guilt of appellants is clearly proved and, therefore, the trial court did not commit any error in finding the appellants guilty for the aforesaid offence. A prayer for rejection of the appeal was accordingly made.

5. As no one has appeared on behalf of the appellants, therefore, the arguments on behalf of State have been heard. Also the judgment and record of the court below have been perused.

6. The appellants in this case have been convicted for the offence of Section 3(1)(x) of the Act but upon examining the record of trial court it is

evident that no certificate of caste of complainant Ram Sajeevan was produced in evidence by the prosecution. It has been held in the judgment of **Bhagwat Singh v. State of Madhya Pradesh 2006 (1) ANJ (MP) 355** that the course to be adopted in a trial under the provisions of the Act is that the prosecution should file a certificate of caste or tribe, as the case may be, which is duly issued by an authorized person.

7. The prosecution has relied upon the testimonies of complainant Ram Sajeevan (P.W.1), Chandra Shekhar Saket (P.W.2), Brahspat (P.W.3), Seetan (P.W.6), Mohanlal (P.W.7), Surendra Kumar Prajapati (P.W.10), Ramashray Sahu (P.W.11) and Rajkumar Jaiswal (P.W.13) to prove that the complainant is a member of scheduled caste category. It has been held in the case of **Manohar Sawai Rathod v. State of Maharashtra 2007 Cr.L.J. (NOC 785) 202** that mere statements of aggrieved person about his caste is not sufficient and the prosecution is required to prove this fact by producing documentary evidence.

8. The trial court has observed in para **2** of its judgment that it is an admitted fact that appellants are the members of upper caste while the complainant is a member of Scheduled Caste. It appears that this observation is made on the basis of answer given to Question No.1 during their examination under Section 313 Cr.P.C. by the appellants.

9. It has been held by the Apex Court in **Sidhartha Vashisht alias Manu Sharma v. State (NCT of Delhi) AIR 2010 SC 2352** that the answers given by the accused to the questions put under Section 313 Cr.P.C. are not *per se* evidence because firstly, they are not on oath, and secondly, they are not subjected to cross-examination. It is nevertheless subject to consideration by the court to the limited extent of drawing an adverse inference against such

accused for any false answers given voluntarily and to provide an additional/missing link in the chain of circumstances. Further, it has been held by the Apex Court in **Ashok Kumar v. State of Haryana (2010) 12 SCC 350** that conviction cannot be based merely on the statements made under Section 313 Cr.P.C. The proper use of this examination is to give opportunity of explanation to the accused and appreciate the evidence led by prosecution either to accept or reject it. Any admission made under Section 313 Cr.P.C. cannot act as a substitute for the evidence of prosecution.

10. In the light of these facts and the limited scope of answers offered by accused under their examination, this court is of the opinion that the trial court was in error in holding the caste of complainant proved solely on the basis of admission made by the appellants. The trial court did not undertake to examine whether the appellants had sufficient occasion to get acquainted with the ancestry and the caste of complainant. Thus, in the absence of proof by the prosecution regarding the fact that complainant belonged to Scheduled Caste category, the finding of conviction given under Section 3(1)(x) of the Act cannot be upheld.

11. All the three appellants have been convicted for the offence of Section 323/34 IPC and for this, the trial court has relied upon the testimonies of complainant Ram Sajeevan (P.W.1), Chand Shekhar Saket (P.W.2), Brahspati Saket (P.W.3), Sheetal (P.W.6), Mohan Jaiswal (P.W.7), Julfilal Saket (P.W.8), Surendra Kumar Prajapati (P.W.10), Ramashray Saket (P.W.11) and Rajkumar Jaiswal (P.W.13). Further, the statements of Dr. Atul Singh (P.W.12) have also been relied upon for the injuries sustained by complainant Ram Sajeevan. It may be mentioned here that Chandra Shekhar Saket (P.W.2) has

admitted in para 5 that he did not witness any incident of assault and he merely saw an injury on the head of complainant. Although it is claimed by him that when he reached the place of incident, the appellants were present there but he has failed to claim that any assault was made by the appellants. Brahspat Saket (P.W.3) too did not witness any assault. According to him, he only saw blood oozing out from the head of complainant and had no knowledge how this injury was caused. Sheetal (P.W.6) and Mohanlal (P.W.7) have given similar kind of testimonies.

12. Julfilal Saket (P.W.8) is the real brother of complainant and he too did not witness any incident. According to him, he was informed about it by the complainant. It has also been claimed by him that he reached the spot on receiving the information and then brought the complainant to home. Rajkumar Jaiswal (P.W.13) has also not given any statement about witnessing the assault. According to him, when he reached the spot he saw appellant Babloo Singh was using filthy language for complainant Ram Sajeevan and was helping him to get up from the ground. According to this witness, he did not see any other appellants on the spot.

13. Two prosecution witnesses, namely Surendra Kumar Prajapati (P.W.10) and Ramashray Sahu (P.W.11), have corroborated the prosecution story to some extent. According to Surendra Kumar Prajapati, the complainant was standing in the shop when appellant Babloo Singh arrived there in his vehicle; Babloo Singh slapped him twice; appellant Haricharan Singh was sitting in the vehicle; Sanjay Singh and Vinod Singh later came on spot; Vinod was giving filthy abuses. According to this witness, the villagers rushed to the spot but nowhere this witness has claimed that besides giving those two slaps, any injury was caused to complainant by any of the appellants. According to

Ramashray Sahu (P.W.11), on hearing the noise he reached the spot where he found a bleeding wound on the head of complainant but did not see anyone assaulting the complainant. According to this witness, he heard from the villagers that appellants had caused this injury to the complainant but it is not disclosed, who that informant was.

14. The testimonies of these prosecution witnesses reveal that they have generally not corroborated the fact of witnessing any of the appellants giving a blow with danda to the complainant Ram Sajeevan as claimed by him in his written complaint, marked as Ex.P-1. Witness Surendra Kumar Prajapati (P.W.10) has stated on oath that he saw appellant Babloo Singh giving two slaps to the complainant but written complaint, Ex.P-1, is silent on injuries caused to the complainant by slapping him.

15. The trial court has observed in para 14 of its judgment that in MLC report, marked as Ex.P-12, Medical Officer Dr. Atul Singh (P.W.12) found injury on the head of injured-complainant Ram Sajeevan (P.W.1) to be an incised wound while complainant Ram Sajeevan (P.W.1) had claimed that he was caused head injury with a danda, which is a hard and blunt object. Considering this contradiction the trial court held that even with a blow with danda, an incised wound can be caused on the head which has a hard surface beneath the skin and such an injury would not appear to be a lacerated wound. On the basis of this assessment, it was held by the trial court that injury on the head of complainant was caused by a hard and blunt object although it appeared to be an incised wound and for this, the appellants were convicted under Section 323/34 IPC.

16. While holding the appellants guilty of said offence, the trial court

completely ignored the fact that no other witness corroborated complainant Ram Sajeevan (P.W.1) on the fact of causing him injury with a blow of danda on the head. As many as 13 witnesses were examined in this case, including substantial number of eyewitnesses, still the statements of Ram Sajeevan (P.W.1) did not find any corroboration from a single witness about the head injury caused to him with a blow of danda. This shows that even the statements of complainant Ram Sajeevan (P.W.1) need to be carefully examined.

17. According to Ram Sajeevan (P.W.1), he had contested the election o f *Parshad* (Councillor) from Ward No.24 and appellants Haricharan and Sanjay Singh are residents of the same Ward. It is mentioned in para no.7 of written complainant, marked as Ex.P-1, that the appellants were asking the complainant not to contest the election from that Ward and they were even giving him threats. This shows that the complainant Ram Sajeevan (P.W.1) had political enmity with the appellants from before the date of incident. Despite this enmity between the two sides, the statements of complainant Ram Sajeevan (P.W.1) have not found due support from other witnesses. Further, the fact of slapping by appellant Babloo Singh has not been mentioned in the written complaint, marked as Ex.P-1.

18. In the light of this appreciation of evidence, the court does not find reliable evidence on record to hold the appellants guilty of the offence of Section 323/34 IPC. Accordingly, the prosecution case is not found to have been established through credible evidence, therefore finding of appellants guilty of the offence of Section 323/34 IPC and Section 3(1)(x) of the Act cannot be concurred with. They are accordingly acquitted of the offence of Section 323/34 and Section 3(1)(x) of the Act.

19. The appellants are already on bail. Their bail-bonds stand discharged.

20. Let a copy of this judgment be sent to the trial court along with its record for information and necessary compliance.

(ANURADHA SHUKLA)
JUDGE

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