

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3873 of 2022

Arising Out of PS. Case No.-133 Year-2019 Thana- DUMRA District- Sitamarhi

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1. DHARMENDRA KUMAR Son of Mr. Shivji Sahni Resident of Village- Lagma, P.S.- Dumra, District- Sitamarhi
 2. GAJENDRA KUMAR Son of Mr. Shivji Sahni Resident of Village- Lagma, P.S.- Dumra, District- Sitamarhi

... .. Appellant/s

Versus

1. The State of Bihar Bihar
2. Anil Ram Son of Kailash Ram Resident of Village- Lagma, P.S.- Dumra, District- Sitamarhi

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Kr Thakur, Adv. Ms. Vaishnavi Singh, Adv. Mr. Ritwaj Raman, Adv.
For the State(Spl. PP)	:	Mr.Binay Krishna

CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

ORAL ORDER

13 04-08-2025 Heard the learned counsel for the appellants as well as the learned Special PP for the State.

2. This appeal has been preferred against the order dated 27.07.2022 passed by learned 1st Additional District and Sessions Judge cum Special Judge SC/ST (POA) Act, Sitamarhi in Dumra P.S.Case No.133 of 2019 dated 08.04.2019 under section 302/34 of the Indian Penal code in which sections 3(2) (v) of the SC/ST (POA) Act was added by which the learned Special Judge has been pleased to take cognizance against the appellants under sections 302/34 of the Indian penal Code and



section 3(2)(v) of the The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'the SC/ST Act').

3. According to the allegation, when the informant awoke in the morning, he heard the voice of his mother, who was shouting. The informant found his sister, Kanchan Kumari, aged 18 years, lying in pool of blood near the toilet. Her throat was found slit. She was dead. The informant expressed suspicion that the appellants Dharmendra Kumar and Gajendra Kumar had committed murder of his sister by slitting her throat. The reason behind the occurrence is said to be some old dispute that took place at the time of Holi, when some altercation had taken place between both the parties. The informant was of firm belief that the appellants committed murder of the deceased by slitting her throat.

4. Assailing the impugned order dated 27-07-2022, whereby the cognizance was taken against the appellants under Section 302/34 of the IPC and Section 3(2)(v) of the SC/ST Act, learned counsel for the appellants has submitted that the provisions of the SC/ST Act are not attracted in the present case. It has further been submitted that even if the occurrence is assumed to be true, though denied, it has not taken place on the



ground that the victim (the deceased) was belonging to the Scheduled Caste / Scheduled Tribe. Merely because a person commits any offence punishable under the provisions of IPC or any other penal enactment, the provisions of SC/ST Act do not attract *ipso facto* merely because the member against whom the offence was committed, belonged to Scheduled Caste or Scheduled Tribe. In support of his submission, the learned counsel has also relied upon the decisions of Hon'ble Supreme Court in case of ***Khuman Singh vs. State of M.P.*** reported in ***(2020) 18 Supreme Court Cases 763.***

5. It has also been submitted that subsequent to taking of the cognizance, charges have also been framed in exactly similar provisions in which cognizance was taken.

6. By filing supplementary affidavit, the order framing the charges has also been challenged on the same ground.

7. The Hon'ble Supreme Court in the case of ***Khuman Singh vs. State of M.P.*** (supra) have been pleased to hold that being a member of Scheduled Caste, it is not the ground for the alleged incident, the provisions of 3(2)(v) of the SC/ST Act are not attracted. The relevant provisions (paragraph nos. 11 to 14) of that judgment are being extracted



hereinbelow:-

“11. The next question falling for consideration is whether the conviction under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act can be sustained? The deceased belongs to "Khangar" caste and in a wordy altercation, the appellant-accused is said to have called the deceased by his caste name "Khangar" and attacked him with an axe. Calling of the deceased by his caste name is admittedly in the field when there was a sudden quarrel regarding grazing of the buffaloes.

12. From the evidence and other materials on record, there is nothing to suggest that the offence was committed by the appellant only because the deceased belonged to a Scheduled Caste. Both the trial court and the High Court recorded the finding that the appellant-accused scolded the deceased Veer Singh that he belongs to "Khangar" caste and how he could drive away the cattle of the person belonging to "Thakur" caste and therefore, the appellant-accused has committed the offence under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Section 3 of the said Act deals with the punishments for offences of atrocities committed under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. 1989. Section 3(2)(v) of the Act reads as under:

"3. Punishments for offences of atrocities.(1)

(2) Whoever, not being a member of a Scheduled Caste or a Schedule Tribe,-

(v) commits any offence under the Penal Code, 45 of 1860 punishable with imprisonment for a term of ten years or more against a person or property knowing 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."

The object of Section 3(2)(v) of the Act is to provide for enhanced punishment with regard to the offences under the Penal Code punishable with imprisonment for a term of ten years or more against a person or property knowing that the victim is a member of a Scheduled Caste or a Scheduled Tribe.

13. In Dinesh v. State of Rajasthan, the Supreme Court held as under: (SCC p. 777. para 15)

"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 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.

14. As held by the Supreme Court, the offence must be such so as to attract the offence under Section 3(2)(v) of the Act. The offence must have been committed against the person ground that such person is a member of Scheduled Caste and Scheduled Tribe. In the present case, the fact that the deceased was belonging to "Khangar"-Scheduled Caste is not disputed. There is no evidence to show that the offence was committed only on the ground that the victim was a member of the Scheduled Caste and therefore. the conviction



of the appellant-accused under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities not sustainable.”

8. From bare perusal of the FIR, it appears that the cause of incident is not the ground that the victim (deceased) was belonging to the Scheduled Caste or Scheduled Tribe. As such, no offence punishable under Section 3(2)(v) of the SC/ST Act attracts in the present case.

9. Considering the aforementioned facts and circumstances, in my view, the offence under Section 3(2)(v) of the SC/ST Act is not attracted in the present case. Accordingly, the cognizance taken as well as the charge framed under Section 3(2)(v) of the SC/ST Act by the learned 1st Additional District and Sessions Judge cum Special Judge SC/ST (POA) Act, Sitamarhi in connection with Dumra P.S.Case No.133 of 2019 are hereby quashed.

10. So far as the cognizance and charge under Section 302/34 of the IPC are concerned, there shall be no interference.

11. With these observations, this appeal is disposed of.

(Nawneet Kumar Pandey, J)

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