

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE HIRDESH**

**ON THE 30<sup>th</sup> OF JANUARY, 2024**

**Cr.A. No. 1677 of 2003**

**BETWEEN:-**

**BRIJENDRA KUMAR RAJAK S/O MANIRAM  
RAJAK, AGED ABOUT 23 YEARS, R/O VILLAGE  
MDAURI P.S. JATARA, DISTT. TIKAMGARH (M.P.)**

**.....APPELLANT**

**(BY SHRI R.S. PATEL - ADVOCATE)**

**AND**

**THE STATE OF MADHYA PRADESH THROUGH  
ARAKSHI KENDRA AJK, TIKAMGARH (M.P)**

**.....RESPONDENT**

**(BY SHRI SHAHRUKH RIYAZ – PANEL LAWYER)**

**RESERVED ON : 04.12.2023**

**PRONOUNCED ON : 30.01.2024**

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

**JUDGMENT**

1. This appeal has been filed by the appellant under Section 374(2) of Cr.P.C. against the judgment dated 27.09.2003 passed in the Special Case No. 221/2002 by Special Judge, Tikamgarh.

2 By the impugned judgment the trial Court has convicted the appellant under Section 509 of IPC and sentenced to undergo SI for 6 months, under section 451 of IPC and sentenced to undergo RI for one year and fine of Rs. 250/-, under Section 506(B) of IPC and sentenced to undergo SI for six months and under Section 3 (1)(x) of SC/ST (Prevention of Atrocities) Act and sentenced to undergo RI for one year with fine of Rs. 250/-, with default stipulation.

3. Brief facts of the prosecution story are that on 30.06.2002 at 4:00 pm prosecutrix was inside the house on the Bararnda. Her mother Munni Bai and brother Janki were sitting opposite the house under the Neam tree on the platform and elder brother was inside the house. At that time appellant came to her house and shows Rs. 10/- to her and made eye to her and says to go with him. She called her brother and then appellant used filthy language. Thereafter, other relatives of the prosecutrix came and then appellant ran away from the spot.

4. Thereafter, complainant lodged FIR against the accused in police station and police after investigation, filed charge sheet against the appellant before the Magistrate Court. Then it was committed before trial Court.

5. Trial Court framed the charge against the accused which was denied by the accused then and after taking evidence, trial Court found guilty of the aforesaid offences and convicted him as above.

6. Appellant challenged the aforesaid findings of sentence and conviction on the ground that there is enmity between appellant and brother of prosecutrix because of post of Jan Sevak Rakshak, which was advertised and the appellant as well as the brother of prosecutrix submitted the application for the post, but appellant was selected due to that reason appellant has been falsely implicated. This fact was not considered by the trial Court. He further submitted that trial Court has failed to see that in the house of the prosecutrix all family members of the prosecutrix were present in the house at that time. Nobody can dare to come to her house with bad intension to do this act.

7. So on the above ground, learned counsel for the appellant pray that impugned judgment of conviction and sentence be set aside and pray for acquittal from the charges.

8. Learned Panel Lawyer for the State supported the trial Court judgment and prays for dismissal of the appeal.

9. Now question for determination is that whether trial Court wrongly convicted the accused and whether appeal may be accepted?

10. Learned counsel of the appellant argued that trial Court committed error to hold that prosecutrix belongs to caste of SC/ST which is covered under such act.

11. On this ground on perusal of the trial Court record it is found that trial Court held in Para 4 of the judgment that prosecutrix has stated that she belongs to scheduled tribe caste and appellant accepted in his cross-examination under Section 313 of Cr.P.C. that prosecutrix belongs to ST community.

12. Learned counsel for the appellant submitted that before the trial Court prosecutrix had not filed any caste certificate issued by the Executive Magistrate that prosecutrix belongs to ST community which is covered under the SC /ST Act.

13. In case of **Shankarlal vs. State of M.P. 2005 (Vol 1) MPLJ 449** co-ordinate Bench of this Court held that prosecution has not led any evidence to the effect that prosecutrix is of the caste which has been included in the list of SC/ST. In the absence of any such evidence this fact cannot be taken for granted that prosecutrix belonged to the SC/ST community. As being one of the essential ingredient, this fact was required to be proved by the prosecution beyond reasonable doubt.

14. In case of **Achhelal vs State of M.P., Criminal Appeal No. 1496/1997** by judgment dated 12.05.2017 co-ordinate Bench of this High Court also held that as regard the offence of this Act of 1989, there is no evidence on record neither caste certificate has been produced.

15. So without Caste certificate which was issued by the Executive Magistrate, it was not proved that prosecutrix belonged to SC/ST community.

16. In present case, prosecution has not produced any caste certificate in regard to the SC/ST community of the prosecutrix. On the other hand, there is no evidence to show that appellant has used criminal force against prosecutrix to outrage her modesty only because she belongs to a particular caste or community. There is no such circumstance to suggest that her modesty was intended or tried to be outraged simply because she belongs to the particular community. Thus it is clear that ingredient of Section 3 (1)(x) of SC/ST (Prevention of Atrocities) Act was not proved, so conviction of the aforesaid Section 3 (1)(x) of SC/ST (Prevention of Atrocities) Act deserves to be set aside.

17. Considering the evidence of prosecutrix, the ingredient of offence punishable under Section 506 of IPC has also not been proved. The so called threat given by the appellant does not appear to be real in sense. There is no

evidence that victim felt threatened actually. So conviction of the appellant under section 506 of IPC is not maintainable and deserves to be set aside.

18. Considering the evidence regarding to Section 451 of IPC and 509 of IPC, it was found that P.W. 2 Dekchand complainant accepted that accused was standing on the door of her house. So as per evidence of this witness it is clear that accused/ appellant had not entered in her house.

19. Section 442 of IPC and Section 451 of IPC reads as thus :-

*"442. House trespass.—Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit “house-trespass”. Explanation.—The introduction of any part of the criminal trespasser’s body is entering sufficient to constitute house-trespass."*

*"451. House-trespass in order to commit offence punishable with imprisonment.—Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years."*

20. Considering the evidence of P.W. 1 prosecutrix, it was found that appellant had not entered in her house. He was standing on door of her house. So it is proved that accused/appellant had not entered in her house.

So ingredient of Section 451 of IPC is also not proved. So conviction under Section 451 of IPC is also deserves to be set aside.

21. Section 509 of IPC reads as thus :-

*"509. Word, gesture or act intended to insult the modesty of a woman.—Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine."*

22. Considering the evidence of the prosecutrix, it was found that appellant came to door of her house and shows Rs. 10/- note and made eye to her and asked her to go with him. On this fact, P.W. 1 is intact in her cross-examination, which was supported by the other prosecution witnesses, so conviction under Section 509 of IPC can be sustained. So this Court upheld the conviction given by the trial Court under Section 509 of IPC .

23. In this case appellant was aged 23 years at the time of incident. Incident took place in the year 2002 and appellant is regularly coming to Court since then. Record of the trial Court shows that appellant has not been previously convicted so he may be first offender. He was earning member of his family and now if he is sentenced in jail then enmity between accused

and complainant must be increased and accused may be developed as a criminal when he will live in jail with hardcore criminals.

24 In **Ved Prakash vs. State of Haryana AIR 1981 SC 643** Hon'ble Apex Court held that sentencing an accused person is a sensitive exercise of discretion and not a routine or mechanical prescription acting as hunch. The social background and the personal factors of the crime-doer are very relevant.

25. So therefore, this court directed that the appellant be released under Section 4 (1) of the Probation of Offenders Act 1958 and instead of sentencing him direct that he be released on his entering into a bond of Rs. 5,000/- before the trial Court with one surety to appear and serve sentence, when called upon directing the bond of three years from the date of judgment and meantime to keep the peace and to be of good behavior. If he violate the condition of bond liable for sentence given by trial Court. Bond must be furnished within one month from the date of judgment.

26. So the appeal of the appellant is allowed partially in the point of sentence and the bail bond stands cancelled.

**(HIRDESH)  
JUDGE**

VKV/-