

**IN THE HIGH COURT OF MADHYA PRADESH**

**AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE ACHAL KUMAR PALIWAL**

**CRIMINAL APPEAL No. 1187 OF 2005**

**BETWEEN:-**

**KESLAL LOHAR S/O SUKHDEEN  
LOHAR, AGED ABOUT 18 YEARS, R/O  
VILLAGE RIHANGI, POLICE STATION  
DINDORI, DISTRICT DINDORI.**

**.....APPELLANT**

***(BY SMT. NALINI GURUNG – AMICUS CURIAE FOR APPELLANT)***

**AND**

**THE STATE OF M.P. THROUGH POLICE  
STATION BEHARI, DISTRICT SIDHI  
(MADHYA PRADESH)**

**.....RESPONDENT**

***( BY SMT. EKTA GUPTA – PANEL LAWYER  
FOR THE RESPONDENT/STATE)***

---

**RESERVED ON : 04/04/2024**

**PRONOUNCED ON : 25/04/2024**

-----

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

**J U D G E M E N T**

Appellant has preferred this criminal appeal under Section 374 (2) of Code of Criminal Procedure, 1973, challenging the judgment dated 27.05.2005 passed by Special Judge, SC/ST (Prevention of Atrocities) Act, Mandla in S.C.No.81/2004 whereby appellant has been convicted under Section 3(i)(xi) of SC/ST(Prevention of Atrocities) Act and sentenced to undergo R.I. for six months and with fine of Rs.500/- and has also been convicted under Section 354 of IPC and sentenced to undergo R.I. for six months and with fine of Rs.500/-, with default stipulation.

2. Prosecution story in brief is as under:-

"2. अभियोजन कहानी सारांश यह है कि प्रार्थिया ..... दिनांक 12.3.2004 को शाम 6-7 बजें ग्राम ..... में अपनी बाड़ी में लेट्रिन करके वापस घर आ रही थी। उसी समय आरोपी केश लाल लुहार ने वहां पहुंच कर प्रार्थी की लज्जा भंग करने के आशय से उसके दोनों हाथ पकड़ कर उसे जमीन में पटकने की कोशिश की। प्रार्थिया ने अभियुक्त को एक लात मारी और छूट कर अपने घर भागी। अभियुक्त ने दौड़ कर उसे पुनः पकड़ लिया प्रार्थिया ने बचाव बचाव चिल्लाया तो अभियुक्त ने उसके मुंह में शाल भर दी। अभियुक्त ने पीछे से जोर से दबा कर जानकी बाई को पकड़ लिया। ..... के दोनो हाथ की चुड़िया टूट कर वही पर गिर गयी। प्रार्थिया को दाहिने हाथ में चोट आयी। ..... ने अपने को छुड़ाया और अपने घर पहुंची। उसने अपने पति ..... तथा मामा ..... को घटना का हाल बताया। घटना के समय प्रार्थी का ब्लाऊज भी फट गया। प्रार्थी के पास गांव से थाना आने के लिए बस किराया के रूप्या नहीं थे। इसलिए दिनांक 14.3.2004 को दोपहर 13.15 बजे ..... ने थाना डिण्डौरी में घटना की रिपोर्ट लिखायी। अपराध क्रमांक-101/04 के अनुसार प्रदर्शनी-4 के रूप में जुर्म पंजीबद्ध किया गया। अनुसंधान पूर्ण कर अभियोग पत्र सी.जे.एम. डिण्डौरी के न्यायालय में पेश किया गया। जोकमिट होने के बाद इस न्यायालय को प्राप्त हुआ।"

3. After case was committed to the trial court, the trial court framed charges against appellant & the same were read over to the appellant. The appellant pleaded not guilty & claimed to be tried for the offences charged with. To prove the charges against appellant, prosecution adduced oral as well as documentary evidence. After completion of prosecution evidence, appellant was examined u/s 313 of CrPC. The appellant pleaded total denial & stated that he has been falsely implicated. After evaluating the evidence that came on record, the learned trial court vide impugned judgment convicted & sentenced appellant as above.

4. Learned counsel for the appellant has submitted that in the instant case there is no caste certificate of competent authority and prosecutrix has improved and Omprakash and Gyan Singh are not laible witness. Impugned judgment is bad in law, illegal, incorrect & improper. Learned trial court has erred in placing reliance on depositions of prosecution witnesses as the same are full of contradictions, omissions, discrepancies, inconsistencies & improvements. The evidence of prosecution witnesses does not fully support/corroborates evidence of each other. Prosecution has not examined independent witnesses to prove its case. Prosecution witnesses are unreliable. Trial court has not appreciated prosecution evidence appropriately. Defence version ought to have been accepted. Hence, trial court has erred in convicting & sentencing appellant as above. Alternately, it is also prayed that sentence imposed by the trial court is

disproportionate to the offence proved. Looking to the age of appellant as well as other circumstances of the case, trial court should have extended benefit of section 360 of CrPC/Probation of Offenders Act. It is also urged that trial court has acquitted appellant offence under Section 354 of IPC and there are material and contradiction with respect to place of incident in depositions of prosecution witnesses. Therefore, appeal filed by the appellant be allowed, impugned judgment be set aside & he be acquitted.

5. Learned counsel for the respondent/state has submitted that prosecution has proved its case by leading cogent evidence & has proved guilt of the appellant beyond reasonable doubt & there are no grounds to interfere with the same. The trial court has rightly convicted & sentenced the appellant, as above, hence, appeal is liable to be dismissed.

6. I have heard learned counsel for the appellant/state & have perused/examined record of trial court & grounds taken by the appellant/accused in the appeal memo minutely & carefully.

7. So far as offence under Sections 354 of IPC and 3(i)(xi) SC/ST (PA) Act of appellant is concerned, perusal of prosecution evidence reveals that prosecution case primarily rests on testimonies of eye-witnesses etc. & documentary evidence.

8. So far as appellant's conviction under Section 3(i)(xi) of SC/ST (PA) ACT is concerned, one of the primary/basic/fundamental requirement of law is

that prosecution is required to establish that complainant/victim belongs to/is member of scheduled caste or scheduled tribe & prosecution must prove this fact by production of caste certificate purported to have been issued by competent authority. As per ***Government of Madhya Pradesh, General Administration Department Notification No. F.7-2/96/Reservation Cell/one, Dated 1.8.96 (w.e.f.1 August 1996) only Collector/Additional District Collector/Deputy Collector/Sub-Divisional Officer*** is competent/authorized to issue permanent caste certificate. In this court's opinion, above fact can not be proved by oral testimony/admissions made in examination u/s 313 of CrPC or by production of certificate issued by any authority other than Sub-Divisional Officer.

9. Perusal of impugned judgment reveals that prosecution has not filed/produced any such caste certificate, purported to have been issued by competent authority as above. It is also evident from impugned judgment that learned trial court has, just on the basis of oral depositions of prosecution witnesses/admissions made in examination u/s 313 of CrPC, has concluded/held that it is established that complainant/victim belongs to/is member of scheduled caste or scheduled tribe. In this court's considered opinion, this finding of learned trial court is erroneous & against law.

10. Hence, in view of above, appellant can not be convicted & sentenced under Section 3(i)(xi) of SC/ST (PA) Act. Therefore, appellant is acquitted of offence under Section 3(i)(xi) of SC/ST (PA) Act.

11. So far as appellant's conviction under Section 354 of IPC is concerned, prosecutrix (PW-2) has deposed in her examination-in-chief as under:

“1. मैं उपस्थित आरोपी केस लाल को पहचानती हूँ। अभियुक्त हमारे गांव में पास के घर में रहता है।

2. लगभग एक साल पहले शाम सात बजे मैं लेट्रिन करने के लिए अपने खेत में गयी थी। आनंदी मेरा ससुर है। लेट्रिन करके जब मैं आने लगी तो अभियुक्त ने मुझे पकड लिया। अभियुक्त मुझे पकड लिया तो मैंने झ कार कर वहीं से भागी तो मेरा ब्लाऊज फट गया और चूडी फूट गयी। उसके बाद अभियुक्त ने दौड कर मुझे फिर से पकड लिया। मुझे पैरामें पटक दिया। मेरे मुंह में कपडा डाल दिया। मैंने चिल्लाया तो पप्पू और वीरेन्द्र को खेत तरफ जाते देखा। घर जाकर मैंने अपने पति को भी बताया। घटना स्थल पर मेरा पति नहीं आया। अभियुक्त ने मुझे बुरी नियत से पकड कर पटका था।

3. मैं परधान आदिवासी जाति की हूँ। आरोपी केस लाल लोहार जाति का है।

4. मैंने तीन दिन के बाद थाना डिण्डौरी में रिपोर्ट लिखायी थी। मेरे पास थाना जाने के लिए किराये के पैसे नहीं थे इसलिए विलंब से रिपोर्ट की थी। पुलिस रिपोर्ट प्रदर्श पी. -4 पर अ से अ पर मेरे हस्ताक्षर है। मुझे कलाई में चूडी लगने से चोट आयी थी। मेरा डाक्टरी मुलाहजा करवाया गया था।

5. घटना स्थल पर चूडी के टुकडे गिर गये थे। पुलिस ने घटनास्थल से चूडी के टुकडे जप्त किए थे। जप्ती पत्र प्र.पी.3 पर ब से ब पर मेरे हस्ताक्षर है।’

6. पुलिस ने फआ हुआ ब्लाऊज जप्त किया था। मौका नक्शा बनाया था जो प्रदर्शी पी. 5 है अ से अ पर मेरे हस्ताक्षर है।

*7. मैंने घर आकर घटना का हाल अपने पति को बताया था पति ने  
आस पास के लोगों को घटना का हाल बताया था।'*

12. Prosecution witness Aanandi Lal(PW-3) and Ambika Prasad (PW-4) have also deposed almost identically to that of prosecutrix.

13. Now question arises whether prosecution witnesses are wholly reliable witness. Pappu (PW-1) and Birendra Kumar (PW-2) have turned hostile and they have not supported the prosecution story.

14. Perusal of deposition of (PW-3) Anandi Lal reveal that she has turned hostile and she has also denied that she witnessed the incident. On the contrary, prosecution witness Anandi Lal has deposed that on the next date of incident, prosecutrix informed him about the incident.

15. Perusal of deposition of prosecutrix reveal that she has nowhere stated that on the next date of incident, she informed Anandi Lal about the incident. In view of above, in this Court's considered opinion, Anandi Lal is not a reliable witness.

16. Further, perusal of deposition of prosecutrix as well as FIR(Ex.P/4) reveal that in the instant case, incident occurred on 12.03.2004 and FIR has been lodged on 14.3.2004. Explanation furnished for the same is that prosecutrix did not have the fare/charges for conveyance. There is nothing on record to show as to what was the fare from place of incident to police station Dindori and how and when and from whom prosecutrix arranged for the same. Thus, there is

considerable delay in lodging the FIR and no satisfactory explanation has been furnished for the same. Prosecutrix's husband (PW-4) has admitted in his cross examination that there was a dispute with accused prior to the incident.

17. With respect to above, cross examination of prosecutrix is also relevant.

Prosecutrix has deposed in her cross examination as under :

*“8. यह बात सही है कि आरोपी केस लाल हमारे गांव का अकेला लोहार हैं। यह बात सही है कि शाम सात बजे काफी अंधेरा हो जाता है।*

प्र. 9. अंधेरा होने के कारण एकदम से समझ में नहीं आया कि कौन हैं?

उ. जी।

प्र. 10. अन्दाज से जाकर तुमने अपने पति को बताया था?

उ. जी।

11. आनंदी से मेरी कोई बातचीत नहीं हुयी। यह बात सही है कि मेरा पति ठीक से नहीं सुन पाता हैं।

प्र.12. जब तीसरे दिन रिपोर्ट करने गयी तो पुलिस वालो ने कहा कि ऐसा लिख रहे है कि पैसा ना होने से रिपोर्ट करने नहीं आयी?

उ. ठीक है।

प्र.13 पुलिसवाले कह रहे थे कि हम अपने हिसाब से रिपोर्ट लिख रहे हैं कोर्ट में जाकर बता देना?

उ. हां ठीक है।

प्र. 14 रिपोर्ट तुम्हें पढ़कर नहीं सुनायी गयी?

उ. हां ठीक है।

15. ऐसा कहना गलत है कि केसलाल ने मेरे साथ छेड छाड नहीं की है। स्वतः कहा कि अभियुक्त ने पकडा है। ऐसा कहना गलत है कि अंधेरा होने से अभियुक्त को पहचान नहीं पाया। ऐसा कहना गलत है कि अभियुक्त के खिलाफ झूठा बयान दे रही हूं।”



18. Thus, from cross examination of prosecutrix also, it is evident that she is not a wholly reliable witness.

19. Thus, from discussion in the forgoing paras, it is evident that prosecutrix is not a wholly reliable witness. There was previous dispute/rivaliy between prosecutrix's family and accused. Independent witnesses have turned hostile. No eye witness has supported the prosecution story. There is delay in lodging FIR for which no satisfactory explanation is on record.

20. Hence, in view of above discussion in forgoing para, appeal filed by the appellant is allowed and appellant is acquitted of charge under Section 3(i)(xi) of SC/ST Act as well as 354 of IPC.

21. Appeal filed by the appellant is disposed of accordingly.

**(ACHAL KUMAR PALIWAL)**  
**JUDGE**