

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

BEFORE

HON'BLE SHRI JUSTICE GAJENDRA SINGH

CRIMINAL APPEAL No. 1706 of 2005

BETWEEN:-

**CHANDAR YADAV S/O PURAN LAL
YADAV R/O. RESIDENT OF VILLAGE -
RAIGAON, P.S. MOHGAON, MANDLA,
(MADHYA PRADESH)**

.....APPELLANT

(SHRI VINOD TIWARI – AMICUS CURIAE)

AND

**THE STATE OF MADHYA PRADESH
THROUGH P.S. A.J.K. MANDLA,
DISTRICT MANDLA (MADHYA PRADESH)**

.....RESPONDENT

**(SHRI ASHOK SINHA – GOVERNMENT ADVOCATE FOR THE
STATE)**

Reserved on : 03/01/2024

Pronounced on : 25/01/2024

*This Criminal Appeal having been heard and reserved for order,
coming on for pronouncement on this day, **Justice Gajendra Singh**
pronounced the following:*

JUDGMENT

This Criminal Appeal has been filed under Section 374(2) of the Cr.P.C. being aggrieved by judgement dated 08.08.2005 passed by Special Judge, SC & ST (POA) Act, 1989 Mandla District-Mandla (M.P.) in Special Case No.23/2005 whereby the appellant-accused has been convicted under Sections 294 of I.P.C. and sentenced to undergo R.I. for 1 months, Section 325 of the I.P.C. and sentenced to undergo R.I. for 9 months and Section 3(1)(X) of SC and ST (POA) Act and sentenced to undergo R.I. for 6 months and fine of Rs.500/- with default stipulations of 1-1/2 months additional rigorous imprisonment.

2. The facts in brief are that appellant-accused was prosecuted under Section 325, 447, 294, 506-B of I.P.C. and Section 3(1)(X) of SC and ST (POA) Act, 1989 regarding the incident towards victim Gomitbai Pandru (PW-5) on 06.05.2005 at 6 pm in village Raigaon, P.S. Mohgaon, District - Mandla in which appellant-accused hurled obscene words in public place which caused annoyance to the victim by threatening to kill her caused voluntary grievous injuries and not belonging to SC or ST category insulted or intimidated the victim belonging to Scheduled Tribes category committing criminal trespass regarding which an F.I.R. of crime No.1/05 was registered at Police Station AJAK Mandla.

3. Appellant-accused abjured guilt and prosecution examined the victim Gomitbai (PW-5), witness Munni Bai (PW-1), Bhaiya Lal (PW-2), witness Amola Bai (PW-3), Sahaj Kumar (PW-4) Dy. S.P. I.R. Aazmi (PW-6), Medical Officer Dr. A. Hussain (PW-7), Dr. Karuna Maskole (PW-8), witness Lalta Prasad (PW-9) and Inspector G.P. Dubey (PW-10). Defence examined Kamod Prasad (DW-1),

Ghanshyam (DW-2) and advanced the defence that victim (PW-5) sustained injury when she was handling her goat and falsely implicated the appellant-accused only to get compensation under SC and ST Act, 1989.

4. Appreciating the prosecution witnesses, Trial Court acquitted the appellant-accused from the charges of Sections 447, 506-B of I.P.C. and convicted under Sections 294 and 325 of I.P.C. and Section 3(1)(X) of SC and ST (POA) Act, 1989 recording the finding that it is proved that appellant-accused does not belong to SC or ST category and victim (PW-5) belongs to the Scheduled Tribes category and appellant-accused caused voluntary grievance injury to her and addressed her with caste to insult or humiliate her.

5. Challenging the conviction and sentence, this appeal has been preferred on the ground that the testimony of prosecution witness is full of contradictions, omissions and improvement and is not corroborated with the medical evidence. Trial Court has convicted the appellant-accused holding the victim belonging to caste Gond whereas she does not belong to Gond. Such serious sentence is not warranted in this case.

6. Heard learned counsel for the parties.

7. Learned public prosecutor has supported the conviction and sentence.

8. Perused the record.

9. Para-12 of the judgment discloses that the victim PW-5 is married to Brahman Mishra (PW-4) and para-13 of the judgment

discloses the circumstance of incident that victim (PW-5) run a grocery shop in the village and appellant-accused demanded 100 gram oil and Bidi match box on credit. Victim (PW-5) denied to give that items on credit to appellant-accused. Addressing the victim (PW-5) Godaniya uttered abusive words and pushed the victim due to which injury was caused in the right leg of PW-5 and slapped her on chest regarding which a report was lodged with husband. Husband of victim is PW-4 which admits in para-8 of his testimony that his wife has lodged an FIR against him under Section 376 of I.P.C. also and that report was lodged after his marriage with the victim (PW-4) and on this basis it is argued that elements of caste has been added falsely only to get the compensation because the victim has received the amount of compensation even in the rape case that she had lodged against her husband.

10. Trial Court in paras-8, 13, 14, 15, 16, 19, 20, 21, 23 and 24 has discussed the evidence regarding the words used at the time of incident but did not discuss the above evidence. When we consider the matter from facts mentioned in paras-8, 13, 14, 15, 16, 19, 20, 21, 23 and 24 then it is not proved that the incident of this case was happened to insult or intimidate the victim (PW-5) or appellant-accused uttered the words that caused annoyance to the victim (PW-5) or any person present at that place. Findings of Trial Court convicting the appellant-accused under Section 294 of I.P.C. and Section 3(1)(X) of SC and ST (POA) Act, 1989 cannot be sustained.

11. Testimony of victim (PW-5), Medical Officer Dr. A. Hussain (PW-7) and Dr. Karuna Maskole (PW-8) proved that victim sustained fracture in the lower part of fibula bone of her right leg and testimony

of Bhaiyalal (PW-2), Smt. Amola Bai (PW-3), Lalta Prasad (PW-9) proved that the injury of PW-5 was caused when appellant-accused pushed the victim (PW-5) on 06.01.2005 at 6 pm. The finding of Trial Court recorded in para-54 regarding causing voluntary grievous injuries to victim are on proper appreciation of the prosecution evidence.

12. In this case, appellant-accused has suffered a period of custody of 28 days. Appellant-accused has no criminal antecedents and circumstances in which the incident happened taken together entitles him to extend the benefit of Section 4 of Probation of Offenders Act, 1958 for the offence under Section 325 of I.P.C.

13. Looking to the nature of the incident, having regard to the facts and circumstances of the case and the character of appellant/accused, it is expedient to release him on probation of good conduct under section 4 of the Probation of Offenders Act, 1958.

14. This appeal is **partly allowed** and appellant-accused is acquitted from the charges of Section 294 of I.P.C. and Section 3(1)(X) of SC and ST (POA) Act, 1989 and his conviction under Section 325 of I.P.C. for causing grievous injury voluntarily to victim (PW-5) by pushing on 06.01.2005 is affirmed. The finding of the trial court regarding the sentence is modified and instead of sentencing the appellant-accused at once it is directed that appellant-accused be released on bail entering into bond with surety of **Rs.20,000/- (Rupees Twenty Thousand Only)** to the satisfaction of the trial court within a period of 90 days to appear and receive sentence when called upon by

the trial Court during a period of 3 years and in the meantime to keep the peace and be of good behavior.

15. Under Section 5 of Probation Of Offenders Act, 1958 appellant-accused shall also pay **Rs.5,000/-(Rupees Five Thousand Only)** to Gomtibai (PW-5) as compensation for the injury suffered for the commission of offence. The appellant-accused shall deposit the compensation amount within 90 days failing which the said amount shall be recovered from appellant-accused in accordance with law. The amount of fine deposited by the appellants-accused before the trial court shall be adjusted towards in amount of compensation.

16. With the aforesaid, the criminal appeal is disposed off.

(GAJENDRA SINGH)
JUDGE

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