

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
BEFORE  
HON'BLE SHRI JUSTICE GAJENDRA SINGH**

**CRIMINAL APPEAL No.1751 OF 2006**

**BETWEEN:-**

**KEDAR RAJAK, S/O MUNNA RAJAK AGED  
ABOUT 26 YEARS, R/O GRAM GHOOR,  
POLICE STATION- JUJHARNAGAR,  
DISTRICT – CHHATARPUR.**

**.....APPELLANT**

**(BY MS. GAYATRI LADIYA – AMICUS CURIAE FOR APPELLANT)**

**AND**

**THE STATE OF M.P. THROUGH THE  
POLICE STATION- JUJHARNAGAR,  
DISTRICT- CHHATARPUR, M.P.**

**.....RESPONDENT**

**(SHRI A.R.S. CHAUHAN – PANEL LAWYER FOR STATE)**

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**Reserved on                   :     24.01.2024**

**Pronounced on            :     21.02.2024**  
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*This Criminal Appeal having been heard and reserved for order,  
coming on for pronouncement on this day, Justice Gajendra Singh  
pronounced the following:*

## **ORDER**

This Criminal Appeal under Section 374(2) of the Code of Criminal Procedure has been preferred being aggrieved by the judgment dated 24.08.2016 in Special Sessions Trial No.105 of 2005 by Special Judge SC & ST (POA) Act, 1989, Chhatarpur whereby appellant/accused has been convicted under Sections 354 and 456 of IPC and Section 3 (1) (xi) of SC & ST (POA) Act, 1989 and sentenced to 6 months R.I. and a fine of Rs.500/-, 1 year R.I. and a fine of Rs.500/- and 1 year R.I. and a fine of Rs.500/- with default stipulations three months R.I. for each default in payment of fine.

2. Facts in brief are that victim (PW-1) belongs to Harijan caste which comes under Scheduled Caste category in District-Chhatarpur of Madhya Pradesh State whereas appellant/accused does not belong to Scheduled Caste or Scheduled Tribes category. In the intervening night of 6<sup>th</sup> and 7<sup>th</sup> of June, 2005, victim (PW-1) was sleeping in the Courtyard of her house situated at Village – Ghoor, Police Station – Jujharnagar, District- Chhatarpur. At some distance, her husband (PW-2), her sister (PW-4) and her niece (PW-3) were also sleeping. At about 3 am victim (PW-1) awoke due to feeling caught hold hand by someone and saw that appellant/accused Kedar was there. Victim (PW-1) tried to make alarm then appellant/accused grabbed her mouth by one hand and pressed her chest with other hand and warned to remain silent and offered to engage in sexual intercourse inside the house. Victim (PW-1) tried to escape but her bangles were broken and injured and got nail mark of appellant/accused on her chest. On getting free from the clutches of appellant/accused, victim (PW-1) made alarm, then her husband, sister and niece also awoke. Appellant/accused ran away by opening the latch

of the door. Victim (PW-1) lodged a report against appellant/accused at Police Station – Jujharnagar at 12:25 pm on 07.06.2005 where a crime No.65/2005 was registered and victim (PW-1) was examined at Community Health Center, Barigarh.

3. Spot map (Ex.P-4) was prepared, statements were recorded under Section 161 of Cr.P.C. and pieces of bangles were recovered from the spot as per the seizure memo (Ex.P-5). Caste certificate of Sarpanch, Village Panchayat- Mahure, Block Gaurihar, District – Chhatarpur was procured and a final report under Section 173 (2) of Cr.P.C. was submitted to the Court of JMFC, Laundi, Chhatarpur where a crime case No.408/2005 was registered and by order dated 22.07.2005 case was committed to Special Judge, SC and ST (POA) Act, 1989. Charges under Sections 354 and 456 of IPC and Section 3(1) (xi) of SC and ST (POA) Act, 1989 were framed.

4. Appellant/accused absurd guilt and prosecution examined victim as PW-1, her husband as PW-2, her niece as PW-3, her sister as PW-4, Medical Officer Dr. S.K. Prajapati as PW-5, Sarpanch, Village Panchayat- Ghoor, Ramesh Kumar Bidua as PW-6 and U.S. Sikarwar as PW-7.

5. In examination under Section 313 of the Cr.P.C., appellant/accused explained the circumstances against him that he is innocent and has been falsely implicated because his cousin was murdered by the brother-in-law (Shivratan) of victim (PW-1). Appellant/accused offered no evidence.

6. Appreciating the prosecution evidence, trial Court found proved that victim PW-1 belongs to “Chamar” caste which comes under the Scheduled Caste category in District Chhatarpur of Madhya Pradesh and appellant does not belong to SC or ST category. In para-15 of the judgment it is mentioned that appellant/accused was aware of the caste of

victim PW-1. Trial Court concluded in para-16 that in the intervening night of 6<sup>th</sup> and 7<sup>th</sup> of June, 2005, appellant/accused entered the house of victim by larking house trespass in night and used the criminal force with intend to outrage the modesty of victim PW-1 knowing that victim belongs to the member of Schedule Caste category and convicted and sentenced appellant/accused as per para-1 of the judgment.

7. Challenging the conviction and sentence, this appeal has been preferred on the ground that findings of guilt is perverse, baseless, illegal and against the provisions of law. The prosecution has completely failed to prove his case beyond all the reasonable doubts against the appellant/accused. All the witnesses of the incident belong to the close family members of the complainant and these witnesses are not consistent with their statement. There is major contradictions between the evidence and statement recorded by the police under Section 161 of the Cr.P.C.

8. Heard.

9. Prosecution has supported the conviction and sentence of appellant and prays for dismissal of the appeal.

10. Perused the record.

11. Trial Court found the victim (PW-1) as wholly reliable and trial Court also discarded the objection regarding reliability of PW-2, PW-3 and PW-4 on the ground that at the time of incident their presence at the spot is natural and their testimonies cannot be discarded merely they are relatives. They cannot be termed as interested witnesses. Trial Court also recorded the findings that victim (PW-1) is corroborated with the medical evidence of Dr. S.K. Prajapati (PW-5) and discarded the suggestions of appellant/accused that injuries on the body of victim (PW-1) were caused during feeding of her child. Trial Court also discussed the identification

of appellant/accused and recorded positive finding that appellant/accused was identified by the victim (PW-1) and her family members.

**12.** Trial Court also recorded the finding that appellant/accused does not belong to SC or ST category whereas victim belong to “Chamar” caste of Schedule Caste category and appellant/accused entered the house by making precautions to avoid his presence.

**13.** This Court is re-appreciating the evidence of prosecution, victim (PW-1) has categorically stated the incident and cross examination of witnesses comprising in para Nos.-5 to 10 does not indicate any material that create any suspicion regarding her credibility. On making alarm the non presence of persons outside in family has been explained in para-7 of the testimonies properly that at 3 AM who will come. The time consumed till lodging the report has been accounted in para-8 of her statement and presence of broken bangles till seizure has also been properly explained in para-8.

**14.** Husband of victim (PW-2), niece (PW-3) and sister (PW-4) has supported the victim (PW-1). Dr. S.K. Prajapati (PW-5) also stated that injury Nos.3 and 4 in Ex.P-2 were caused due to broken bangles and he also found the injury on both side of the chest. So finding of trial Court does not call for interference that appellant/accused entered the house of victim (PW-1) by taking precautions to conceal such house trespass from family members of victim and caused larking house trespass in night with intent to commit an offence of using criminal force to outrage the modesty of victim (PW-1).

**15.** This Court is re-appreciating the evidence regarding the caste of victim (PW-1). This issue has been dealt by the trial Court in para-15 of the judgment and finding of trial Court is based on the oral testimony of victim (PW-1) and testimonies of PW Nos.2, 3, 4 and 6 and certificate

(Ex.P-3) issued by Ramesh Kumar Bidua (PW-6). Certificate is issued by the then Sarpanch of Village Panchayat -Ghoor as Ex.P-3 and basis of this certificate is the entry of Electoral Roll. The basis of issuing caste certificate by Sarpanch does not conform to the procedure for issuing caste certificate, hence, it does not satisfy the requirement of proving the caste of victim (PW-1) that she comes under the Schedule Caste category in District Chhatarpur of Madhya Pradesh State. Hence, finding of trial Court regarding this cannot be sustained.

**16.** No reliable material is placed that appellant/accused has been falsely implicated due to murder of uncle of appellant/accused by brother-in-law of victim (PW-1). So this defence is not proved to the standard of preponderance of probability.

**17.** Accordingly, conviction of appellant/accused under Sections 354 & 456 of IPC does not call for interference and it is maintained but conviction under Section 3(1)(xi) of SC & ST (POA) Act, 1989 is set aside.

**18.** Now the Court is considering the quantum of sentence imposed under Sections 354 & 456 of IPC. It is argued that the incident relates to about 19 years old and appellant/accused has been in custody during the investigation of the case from 20.06.2005 to 25.06.2005 i.e. 6 days. He has no criminal antecedent & he belongs to weaker background also.

**19.** The duration of undergone period is not sufficient. Considering the arguments on behalf of appellant, sentence under Section 456 of IPC is reduced from one year to 6 months R.I. with fine of Rs.500/- with default stipulations. No interference is required in the sentence imposed under Section 354 of IPC by trial Court.

**20.** Accordingly, this appeal is partly allowed and conviction & sentence of appellant under Section 3 (1) (xi) of the CPC is set aside and

maintaining conviction under Section 456 and 354 of IPC, the sentence of appellant under Section 456 is reduced to 6 months R.I. and a fine of Rs.500/- with default stipulations. Conviction of appellant under Section 354 of IPC as imposed by trial Court for a period of 6 months R.I. and a fine of Rs.500/- with default stipulations of 3 months is maintained. Both sentence shall run concurrently and the period of custody of appellant/accused from 20.06.2005 to 25.06.2005 i.e. 6 days shall be set-off against the sentence imposed.

**(GAJENDRA SINGH)**  
**JUDGE**

DPS