

IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE ACHAL KUMAR PALIWAL

CRIMINAL APPEAL No. 1191 OF 2007

BETWEEN:-

**SAMARU S/O SHRI RAMNATH PATEL,
AGED ABOUT 30 YEARS, PIPAR PANI
CHOUKI HIRDAYNAGR P.S.MAHARAJPUR
DIST.MANDLA (MADHYA PRADESH)**

.....APPELLANT

(BY MS. SMITA KEHRI – AMICUS CURIAE FOR APPELLANT)

AND

**THE STATE OF MADHYA PRADESH
THROUGH P.S.MANDLA [SC/ST]
DIST.MANDLA (MADHYA PRADESH)**

.....RESPONDENT

***(BY MS. CHANDRAKANTA PAL – 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 23.05.2007 passed by Special Judge, SC/ST (Prevention of Atrocities) Act, Mandla in S.C.No.12/2007 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/- with default stipulation and has been convicted under Section 451 of IPC and sentenced to undergo R.I. for three months.

2. Prosecution story in brief is as under:-

"2. अभियोजन कहानी सारांश यह है कि प्रार्थिया उमीता बाई ...घटना दिनांक 25.2.07 को दिन के लगभग दो बजे ग्राम पीपर पानी में अपने रिस्तेदार सीताराम के मकान में घर के भीतर थी। वह लगभग एक माह पहले से सीताराम के मकान में रह रही थी। क्योंकि सीताराम उसका रिस्तेदार था। प्रार्थी उमीता बाई शक्कर मिल में मजदूरी का काम करने के लिये आई थी। उस समय उमीता बाई की बड़ी मां रनिया बाई ग्राम तिलई गई थी। प्रार्थिया का दादा सीताराम भी घर पर नहीं था। उमीता बाई घर में अकेली थी और घर में लेटी थी। उसी समय आरोपी समार पटैल प्रार्थिया के घर पर गया और उसकी इज्जत लेने की गरज से उसका सीना पकडकर झूमा झपटी करने लगा। प्रार्थिया ने चिल्लाने का प्रयास किया तो अभियुक्त ने प्रार्थी के मुंह में साल डाल दिया था। उमीता बाई हाथ छुडाकर घर से भागी उसने दूसरे दिन अपनी बड़ी-मां रनिया बाई को घटना का हाल बताया उसके बाद रनिया बाई के साथ चौकी हिरदेनगर पहुंचकर प्रदर्श पी-1 के अनुसार घटना की लिखित रिपोर्ट पेश की। चौकी हिरदेनगर में 0/07 पर प्रदर्श पी-6 के अनुसार रिपोर्ट दर्ज की गई। प्रार्थिया का डाक्टरी मुलाहिजा कराया गया। थाना महाराजपुर में अपराध क्रमांक 39/07 प्र.पी. 7 के अनुसार पंजीबद्ध किया गया। पुलिस ने अनुसंधान पूर्णकर अभियोग पत्र सी. जे.एम. न्यायालय में प्रस्तुत किया जो कमिट होने के उपरांत विचारणहेतु इस न्यायालय में प्राप्त हुआ है।"

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. Appellant examined Sitaram as defence witness. 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 liable 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 appellant's conviction u/s 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.

8. 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.

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

10. So far as offence under Sections 354 and 451 of IPC, is concerned, perusal of prosecution evidence reveals that prosecution case primarily rests on testimonies of eye-witnesses etc. & documentary evidence.

11. So far as offence under Sections 354 and 451 of IPC is concerned, prosecutrix (PW-5) has deposed that in her examination-in-chief as under :

“1. मैं आदिवासी हूँ। प्रार्थी समार कर्मी पटैल हैं। पिछले होली के समय की बात है। मैं लगभग एक माह से रनियाबाई के घर में रहती थी। मैं शक्कर मिल में मजदूरी करने जाती थी। उस दिन रनियाबाई रिस्तेदारी में ग्राम तिलई गई थी। मैं घर में सो रही थी। मैं उस दिन घर में अकेली थी।

2. दिन के 2 बजे का समय था। आरोपी समारलाल पटैल मेरे घर में आया। मेरा सीना पकडने लगा। वह मेरे कपडे उठाने लगा। मैं चिल्लाने लगी रोने लगी तो अभियुक्त ने मेरी साल मेरे मुंह में भर दी। मैं जबरदस्ती छुडाकर बाहर भागी सामने रहने वाली दो लोहारिन जाति की महिलाएं जो आज गवाही देने आई हैं। उन्हें घटना का हाल बताया।

3. घटना दिनांक को मेरी बड़ी मां घर में नहीं थी। वह सोमवार के दिन लौटकर आई। तब हिरदेनगर चौकी जाकर मैंने घटना की रिपोर्ट की। मैंने रिपोर्ट में अंगूठा लगाया था। साक्षी की रिपोर्ट प्रदर्श पी-5 और प्रदर्श पी 6 पढ़कर सुनाई गई तो उसने कहा कि ऐसी ही रिपोर्ट लिखाई थी। मुझे मुलाहिजा के लिए जिला चिकित्सालय मंडला भेजा गया था।

4. पुलिस ने मुझसे शाल जब्त की थी। मैंने पुलिस को घटना स्थल बताया था।”

12. Prosecution witness PW-4 has also deposed almost identically to that on prosecutrix.

13. Now question arises, prosecution witnesses are wholly reliable witness. Perusal of deposition of prosecutrix and PW-4 reveal that there are no material contradictions, omissions and discrepancies in their testimonies *inter se* and their Court deposition as well in their police statement. Only contradiction in prosecutrix court testimony was in her police statement (Ex.D/2) is with respect to whether after incident she informed to any one or not.

14. It is also evident from depositions of prosecutrix as well as PW/4 that they have been cross examined by appellant but nothing has come out in their cross-examination so as to make them unreliable or untrustworthy.

15. From deposition of R.K.Patel (PW-6), prosecutrix and written report Ex.P/5 and FIR (Ex.P/6), it is evident that the incident occurred on 25.2.2007 and report has been lodged 26.2.2007 and as per explanation mentioned in the FIR as well as written report and from the deposition of prosecutrix, it is clear that on the date of incident elder mother(Badi Maa) was not at the house. Therefore, when she returned/came back, thereafter, prosecutrix went to lodge the report. Therefore, it cannot be said that there was delay in lodging the FIR and even for the sake of argument, if it is assumed that there is some delay in lodging the FIR, still the same stands explained from above evidence on record.

16. There are no material contradiction, omissions and discrepancies in Prosecutrix court's testimony as well as FIR. Therefore, prosecutrix's testimony also stands corroborated from written report/FIR.

17. Now questions arises, if, appellant did not molest prosecutrix, then, why prosecutrix is deposing falsely against appellant. Perusal of cross examination of prosecutrix reveal that a suggestion has been given to the witness on behalf of appellant that after being tutored by PW-4, prosecutrix has lodged report but no such suggestion has been given to prosecutrix as to why PW-4 has asked

prosecutrix to lodge the report against appellant and what was the rivalry/animosity of PW-4 with appellant.

18. Perusal of appellant's examination under Section 313 of Cr.P.C. reveal that therein appellant has stated that Sitaram had called fish from him and he had gone to deliver the same. Similar is the statement of defence witness Sitaram (DW-1) but no such suggestion has been given to prosecutrix and PW/4 that on the date of incident, Sitaram had called for fish from appellant and appellant had come to deliver the same.

19. In this Court's considered opinion, from appellant's above defence, it is clear that on the date of incident appellant did come at the house of prosecutrix.

20. Hence, in view of above discussions in forgoing para, prosecutrix as well as PW/4 are reliable witnesses and prosecutrix's deposition stands corroborated in material particulars, from other evidence on record. Appellant has failed to prove that he has been falsely implicated and defence of appellant is not probable. It is correct that Sandhya (PW-2) and Rukmani (PW-3) have turned hostile but in view of other evidence on record, fact of above witnesses turning hostile does not effect prosecution case adversely.

21. Further, Hon'ble apex court in *State of West Bengal Vs. Kailash Chandra Pandey, (2014) 12 SCC 29*, has observed in para 13 that it is needless to reiterate that appellate court should be slow in re-appreciating the evidence. This court time & again has emphasised that the trial court has the occasion to

see the demeanour of the witnesses & it is in a better position to appreciate it, the appellate court should not lightly brush aside the appreciation done by the trial court except for cogent reasons.

22. Hence, in view of discussion in the foregoing paras & after going through the evidence on record & having evaluated/appreciated the same, in this court's considered opinion, learned trial court has appropriately appreciated the overall evidence on record & has drawn correct conclusions & there is no illegality or perversity in the findings of learned trial court concerning appellant/accused's conviction for above offence/offences. Therefore, grounds taken by the appellant in appeal memo with respect to conviction are not acceptable & hence, rejected. Hence, learned trial court's findings & judgment with respect to appellant/accused's conviction for aforesaid Section 451 of IPC offence/offences are hereby affirmed. From discussions in the foregoing para, ingredients constituting offence under Section 354 of IPC are also clearly established.

23. So far as sentence is concerned, trial court has sentenced appellant under Section 451 of IPC with RI of 3 months. Incident is dated 25.2.2007, there are no criminal antecedents of appellant. Appellant has remained in custody from 4.3.2007 to 3.5.2007. In view of above, ends of justice would be served if appellant is sentenced with period already undergone and with fine only.

24. Hence, appeal filed by the appellant is partly allowed and appellant is sentenced with period already undergone for offence under Section 354 and 451 of IPC. Appellant is also sentenced with fine of Rs.250/- for each offence and in default seven days simple imprisonment. Substantive sentence under Sections 354 and 451 of IPC shall run concurrently.

25. It is made clear that period fixed for compliance of modified sentence as above, would start running after accused is summoned by the trial court to serve the sentence & from the date when presence of accused is secured.

26. In view of discussion in the foregoing paras, appeal filed by the appellant is partly allowed to the extent as indicated hereinabove.

27. Present appeal is disposed of accordingly.

(ACHAL KUMAR PALIWAL)
JUDGE

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