HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT JABALPUR

Case No.	**CRA. No.3580 of 2014**
Parties Name	*Vimlendra Singh alias Prince Singh* *Vs.* *The State of Madhya Pradesh*
Bench Constituted	Division Bench comprising of Hon'ble Shri Justice Sujoy Paul Hon'ble Shri Justice Vishal Dhagat
Judgment delivered by	**Hon. Shri Justice Sujoy Paul**
Whether approved for reporting	YES
Name of counsels for parties	**For Appellant:** Shri A.P. Singh, Advocate. **For respondent/State:** Shri Brindawan Tiwari, Government Advocate.
Law laid down	**1. Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989**– As per unamended provision, the prosecution was required to establish that the prosecutrix who was subjected to any offence under the IPC was subjected on the ground that she is a member of SC/ST community. In view of evidence on record, the prosecution could not establish that offence allegedly committed was on the ground that prosecutrix belonged to reserved community. Hence, the offence under Section 3(2)(v) of the Act of 1989 is not made out. 2. **Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 – Rule 12 (3)**: the date of birth certificate from the school first attended (other than the play school) can be basis for determination of age. In the instant case, the admission register of primary school, the school first attended by the prosecutrix, was not produced. The transfer certificate issued by the said school was not proved by producing any witness of the first school. Hence, the

	transfer certificate of first school cannot be admitted in evidence. 3. **Rule 12(3)** – Interpretation of Statute – if a statute prescribes a thing should be done in a particular manner, it has to be done in the same manner and other methods are forbidden. 4. **Interpretation of Statute** – If provision of a Statute is clear and unambiguous, it has to be given effect to, irrespective of the consequences. 5.**FIR**–Belated lodgment of– the prosecutrix was allegedly raped on 27th October, 2012 whereas FIR was lodged on 22nd June, 2013. The delay is not explained which causes a dent on the credibility of story of prosecution.
Significant paragraph numbers	**23,24,26,27.28,**

J U D G M E N T
(16.10.2019)

1. This criminal appeal filed under Section 374 (2) of the Code of Criminal Procedure, 1973 is directed against the judgment of conviction and order of sentence dated 05.12.2014 passed in Special Case No.33/2013 whereby the appellant was held guilty of committing offence under Sections 376(1), 506-B of the Indian Penal Code and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The appellant is directed to undergo sentence for Life for the offence committed under the Atrocities Act and for remaining offences, he was directed to undergo R.I. for a period of 7 years and 1 year respectively with default stipulation.

2. Briefly stated, the story of the prosecution is that on 22.06.2013, prosecutrix along with her parents lodged a first information report in Police Station, Majhauli that the appellant on 27.10.2012 called and hired her at his house to assist him regarding preparation of festival.

When the prosecutrix was inside the house, appellant entered the room, locked the room from inside and raped her. When she protested, he told her that he will marry her. Thereafter also, on many occasions, appellant developed physical relations with the prosecutrix. Later on, when she became pregnant, she apprised this to the appellant but he refused to marry her.

3. On 03.06.2013, prosecutrix solemnized marriage with one Kamalbhan Singh. However, on 15.06.2013, she gave birth to a daughter at Kamalbhan's residence. Kamalbhan Singh refused to keep her and sent her back to her parents' home. Thereafter, the first information report was lodged on 22.06.2013.

4. On the basis of the oral report, which is reduced in writing in the shape of first information report (Ex.P/1), the investigation was carried out. The prosecutrix was subjected to medical examination. The challan was prepared and in turn, matter after committal, came up for consideration before the Court of competent jurisdiction.

5. The appellant abjured the guilt and prayed for a full-fledged trial. The prosecution examined as many as 17 witnesses. In turn, one defence witness DW-1 Kailash Singh entered the witness box. In the statement under Section 313 of the Cr.P.C., the appellant pleaded ignorance about the incident even when incriminating material including D.N.A. report was put before him.

6. The Court below after hearing the parties, framed three questions for determination and came to hold that appellant is guilty of committing the offences mentioned hereinabove and convicted him.

7. Shri A.P. Singh, learned counsel for the appellant placed reliance on the statement of prosecutrix (PW-1) and urged that in the entire statement, she has nowhere stated that she was subjected to rape by the appellant. The statement makes it clear that no offence is caused on the prosecutrix because she belong to a particular caste. She further deposed that she was subjected to x-ray by the Government authorities on the basis of which her age could have been determined but such X Ray reports were not produced in the trial.

8. Learned counsel for the appellant submits that in paragraph No.9 of cross-examination, the prosecutrix categorically admitted that she was subjected to sexual assault by the appellant only once. By taking this Court to paragraph No.6 of the cross-examination, it is argued that the age of the prosecutrix was above 18 years and it is a case where she was a consenting party to the alleged sexual intercourse. It was further admitted that she did not inform her parents that she is pregnant till she left for her in-laws' house after marriage. The next reliance is on the statement of PW-3 Nand Kumar Singh Gond, father of prosecutrix. This witness has stated that at the time of birth of her daughters including the prosecutrix, no birth certificate was issued by the Hospital, Police Station or Panchayat. He cannot state with certainty about the date of birth of her daughters including the prosecutrix. This witness also admitted that the prosecutrix was subjected to a medical examination which includes an x-ray test. Shri Singh, learned counsel for the appellant also placed reliance on the portion of deposition wherein, this witness had deposed that when his wife died, prosecutrix was a small

child whereas, prosecutrix deposed that she was studying in Class-V or VI when her mother died and his father solemnized the second marriage. The reliance is also placed on the statement of this witness wherein he had mentioned the gap between the births of his children.

9. Furthermore, the contention of the appellant is that PW-4 Sunita Bai has stated that her daughter/prosecutrix informed her that appellant subjected her to sexual contact on more than one occasion whereas this statement is totally untrustworthy if examined on the anvil of the statement of prosecutrix herself where she has stated that she was subjected to sexual assault by the appellant only once.

10. The learned counsel for the appellant referred to the statement of PW-10 Pushpraj Singh, Head Master who had deposed that date of birth of prosecutrix mentioned in the Admission Register of the School is 08.07.1999. By meticulously reading this statement, learned counsel for the appellant submits that it is clear that prosecutrix was admitted in this School in Class-VIth. Thus, it is not the first School where she was admitted. In cross-examination, this witness has clearly admitted that he had recorded the date of birth of prosecutrix on the basis of a Transfer Certificate (T.C.) received from the previous School/Primary School. In Primary School, who had recorded the date of birth, cannot be deposed by him. On the strength of this statement, which became reason to determine the age of the prosecutrix, learned counsel for the appellant submits that age of a juvenile needs to be determined as per the method prescribed in Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007. He submits that nobody entered the witness box

from the School first attended by the prosecutrix and, therefore, the statement of Headmaster cannot be said to be in consonance with the requirement of sub-rule (3) of Rule 12 of the Rules of 2007.

11. On the strength of statement of prosecutrix, her father and statement of PW-10 Pushpraj Singh, learned counsel for the appellant contends that the prosecution could not establish it beyond reasonable doubt that at the time of incident the prosecutrix was a minor. She nowhere stated that she was forcibly subjected to sexual assault by the appellant. Thus, prosecutrix was a consenting party because she did not narrate about the incident even to her parents till she was married.

12. The next contention of learned counsel for the appellant is based on un-amended Section 3(2)(v) of the Scheduled Castes and Schedules Tribes (Prevention of Atrocities) Act, 1989. The learned counsel urged that incident had taken place on 27.10.2012. The aforesaid provision has been amended w.e.f. 26.01.2016. Before the amendment, as per the then existing provision, the prosecution was required to establish that the offence is committed on the ground that victim is a member of Scheduled Caste or a Scheduled Tribe community. The prosecution has not led any iota of evidence to establish that offence was committed because victim belongs to Scheduled Castes/Scheduled Tribes community. Mere production of her caste certificate, which was issued after the date of incident, will not establish the offence under the Act of 1989.

13. It is further submitted that so far offence under Section 376 of I.P.C. is concerned, the appellant has already undergone more than six years and three months in jail. The punishment of Life Imprisonment is imposed under

the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 in a mechanical manner without appreciating that the necessary ingredients for invoking the Act of 1989 were totally missing before the Court below. Learned counsel for the appellant, during the course of hearing fairly admitted that in view of the finding of D.N.A. report, he is not attacking the impugned judgment to the extent the sexual relation between the appellant and prosecutrix is found to be established. However, such relation was an outcome of consent and not based on any force or coercion. In support of his contention, Shri Singh has placed reliance on the judgments of Apex Court in the case of **Dinesh @ Buddha vs. State of Rajasthan, AIR 2006 SC 1267; Ramdas and others vs. State of Maharashtra, (2007) 2 SCC 170** and another judgment of Supreme Court in Criminal Appeal No.1182/2015 (**Asharfi vs. State of Uttar Pradesh),** decided on 08.12.2017.

14. *Per contra*, Shri Brindavan Tiwari, learned counsel for the State submits that the age of prosecutrix is duly established because the Headmaster has entered the witness box and proved the Admission Register of his School as well as the Transfer Certificate wherein date of birth of prosecutrix is mentioned as 08.07.1999. Thus, no fault can be found on the finding of Court below whereby prosecutrix was found to be a minor at the time of incident.

15. The learned Government Advocate further submits that when it is established by prosecution beyond reasonable doubt that the prosecutrix was minor at the time of incident, the question of consent pales into insignificance. It is established by producing a caste certificate that

prosecutrix belongs to Scheduled Caste/Scheduled Tribe community. Thus, necessary ingredients for invoking the relevant provisions of Indian Penal Code and the Act of 1989 were duly established. There is no perversity in the judgment which warrants interference by this Court.

16. Shri Tiwari placed reliance on a judgment of this Court passed in Criminal Appeal No.2151/2018 **(Vinod *alias* Rahul Chouhtha vs. State of M.P.)** decided on 08.08.2018.

17. No other point is pressed by the learned counsel for the parties.

18. We have heard the parties at length and perused the record.

19. The first attempt of the appellant was to show that prosecution has failed to establish that prosecutrix was minor on the date of alleged rape and, therefore, question of consent does not arise. If appellant succeeds in this attempt, he will be out of the clutches of Section 376 (1) of IPC. Another attempt made is to show that as per Section 3(2)(v) of the Act of 1989 (unamended) the prosecution must prove that offence was committed on a person on the ground that such person is a member of SC/ST community. Having failed to prove this, the conviction and sentence needs to be axed.

20. We deem it proper to deal with aforesaid contention in the light of relevant statutory provisions. Section 3 (2)(v) of Act of 1989 reads as under:-

> *"3(2)(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property* ***on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe*** *or such property belongs to such member, shall be punishable with imprisonment for life and with fine"*
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> *[Emphasis Supplied]*

Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 reads as under:-

> *"(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.*
> *(2) The Court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.*
> *(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining—*
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> > *(a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;*
> > *(ii) the date of birth certificate **from the school** (other than a play school) **first attended**; and in the absence whereof;*
> > *(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;*
> > *(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.*
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> *and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.*
> *(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the Court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.*
> *(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after*

examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.
(6) The provisions contained in this rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law."

[Emphasis Supplied]

21. On the basis of evidence on record, it is required to be seen whether prosecutrix was major on the date of incident. In order to establish that she was major, Shri Pushpraj Singh (PW/10), Incharge Head Master of Middle School Chunguna entered the witness box and proved the admission register (ExP/13). During cross examination, he fairly admitted that in his school prosecutrix was admitted in Class 6th . The date of birth recorded in ExP/13 is based on a Transfer Certificate (TC) issued by the previous school where prosecutrix had studied. In the said primary school, the date of birth was neither recorded by him, nor he is aware as to who had recorded the same. He pleaded ignorance how the date of birth of prosecutrix was recorded in the primary school.

22. Rule 12 of Rules of 2007 prescribes the procedure to be followed for determination of age. This procedure needs to be followed for determining age in civil and criminal cases. The age can be determined on the basis of (i) the matriculation or equivalent certificate, and in the absence whereof (ii) the date of birth certificate from the school (other than a play school) *first attended* and in the absence whereof (iii) the birth certificate issued by a corporation/Municipal Authority/Panchayat. If no evidence as per (i) (ii) and (iii) are available, the medical opinion can be sought from a duly constituted Medical Board.

23. In the instant case, indisputably, no evidence as per Rule 12 (3)(a)(i) and (iii) were produced before the Court below. The statement of PW/10 and the Admission Register produced by him became the foundation/reason to hold that prosecutrix was minor. Rule 12 (3)(a)(ii) enjoins the Court to accept a date of birth certificate provided it is issued *by a school first attended*. When a statute prescribes a thing to be done in a particular manner, it has to be done in the same manner and other methods are forbidden. ***[See AIR 1959 SC 93 (Baru Ram vs. Prasanni), 2001 (4) SCC 9 (Dhananjaya Reddy vs. State of Karnataka), 2002 (1) SCC 633 (Commissioner of Income Tax, Mumbai vs. Anjum M.H. Ghaswala)*** and judgment of this Court in ***2011 (2) MPLJ 690 (Satyanjay Tripathi & Anr. vs. Banarsi Devi)]*** Thus, in our view, the Admission Register (Ex.P/13) of the second school was not a document which satisfies the requirement of Clause (ii) aforesaid. The parents of prosecutrix could not narrate about her date of birth with necessary clarity. On the contrary, the statement of father (PW/3) and mother (PW/4) is in variance on this aspect. The prosecutrix, as per prosecution story, was subjected to X Ray and medical examination but no such report which could throw light on the question of date of birth could be produced before the Court below. Apart from this, the law is trite that if provision of a statute is clear and unambiguous, it should be given effect to irrespective of consequences. ***[See (1992) 4 SCC 711 (Nelson Motis vs. Union of India)]***

24. Ancillary question is whether prosecution has satisfactorily established that prosecutrix was minor at the time of incident. The answer, in our considered opinion, is no. We say so because prosecution was required to establish the age of prosecutrix as per requirement of Rule 12 of the said

rules. The Apex Court in ***2013 (7) SCC 263 (Jarnail Singh vs State of Haryana)*** considered the Scheme of Rule 12 aforesaid and opined that in absence of certificate issued as per Clause 12 (3)(a)(i), the date of birth entered in the *school first attended* by the child can be treated as final and conclusive. At the cost of repetition, in the present case, no such certificate issued by school first attended by the child was produced. The Transfer Certificate was although issued by primary school but the Admission Register of primary school was not produced. Nobody entered the witness box to prove any document issued by the school first attended by the child. In ***(2010) 8 SCC 714 (Satpal Singh vs. State of Haryana)***, the Court opined there is nothing on record to corroborate the date of birth of the prosecutrix recorded in the school register. It is not possible to ascertain as to who was the person who had given her date of birth at the time of initial admission in the primary school. It cannot be ascertained as who was the person who had recorded her date of birth in the primary school register. The primary school register was not produced and proved before the Trial Court and, therefore, it was opined that it cannot be held with certainty that the prosecutrix was major. We find support in our view from the judgment of ***Satpal Singh*** (supra) and constrained to hold that TC issued by previous school does not fulfill the requirement of Rule 12 of the said rules.

25. Similarly, in ***(2011) 2 SCC 385 (Alamelu vs. State)*** it was poignantly held that date of birth mentioned the Transfer Certificate has no evidencery value unless the person who made such entry or who gave the date of birth is examined. Pertinently, the Transfer Certificate was disbelieved because the Head Master of concerned school which had issued the TC was not

examined. This judgment covers the aforesaid aspect squarely and it can be safely held that prosecution has failed to establish that prosecutrix was minor at the time of incident.

26. In this backdrop, the question of consent of prosecutrix assumes significance/importance. Putting it differently, if prosecution could have established by leading cogent evidence that prosecutrix was minor, we would have persuaded with the argument of learned Government Advocate that question of consent is irrelevant in this case. The incident had taken place on 27-10-2012. The FIR was lodged after about eight months on 22-06-2013. On 03-06-2013, the prosecutrix solemnized marriage with Kamal Bhan Singh and gave birth to a child at his residence on 15-06-2013. When her husband returned her back to her maternal house, she lodged report on 22-06-2013.

27. The prosecutrix (PW/1) nowhere stated that she was subjected to rape by the appellant. Her deposition is silent on yet another aspect i.e. whether she was subjected to sexual assault on the ground that she is a member of SC/ST community. The prosecutrix deposed that she was subjected to sexual assault by appellant only once whereas her mother narrated a different story of multiple sexual assaults/contacts by appellant. The father (PW/3) stated that before marriage of her daughter, she did not inform the family members about the sexual assaults. The mother (PW/4) followed the same line of statement. Both the statements, in our view, do not inspire confidence for the simple reason that the prosecutrix was married on 03-06-2013 when she was at the stage of full time pregnancy. It is unbelievable that her aforesaid condition could not be noticed by the parents and they came to know about

pregnancy only when she told them about it after the marriage. There is no plausible reason for not lodging report of alleged rape between 27-10-2012 to the date of marriage. In this view of the matter, we are unable to countenance the findings of Court below that prosecution has proved beyond reasonable doubt that appellant had committed rape on the prosecutrix.

28. The Court below on the basis of a Caste Certificate No.1438/B-121/2012-13 (ExP/12) came to hold that prosecutrix belongs to ST community. As per evidence on record, it is a case of consensual sexual relation and hence appellant cannot be held guilty. As per the unamended provision i.e. Section 3 (2)(v) of the Act of 1989, the prosecution was required to establish that a person is subjected to any offence under the IPC punishable with imprisonment for a term of ten years or more against a person *on the ground that such person is a member of a SC or a ST community*. At the cost of repetition, the prosecution could not establish that rape was committed (although sexual relation was admittedly established) on the ground that prosecutrix is a member of ST community. In ***AIR 2006 SC 1267 (Dinesh vs. State of Rajasthan)*** the Apex Court held as under:-

> ***"15.*** *Sine qua non for application of Section 3(2)(v) is that an offence must have been committed against a person on the ground that such person is a member of the Scheduled Castes or the Scheduled Tribes. In the instant case no evidence has been led to establish this requirement.* ***It is not the case of the prosecution that the rape was committed on the victim since she was a member of a Scheduled Caste. In the absence of evidence to that effect, Section 3(2)(v) has no application****. Had Section 3(2)(v) of the Atrocities Act been applicable then by operation of law, the sentence would have been imprisonment for life and fine."*

In ***2007 (2) SCC 170 (State of Maharashtra vs. Ramdas)***, it was poignantly held that:-

> ***"11.*** *At the outset we may observe that there is no evidence whatsoever to prove the commission of offence under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.* ***The mere fact that the victim happened to be a girl belonging to a Scheduled Caste does not attract the provisions of the Act. Apart from the fact that the prosecutrix belongs to the Pardhi community, there is no other evidence on record to prove any offence under the said enactment****. The High Court has also not noticed any evidence to support the charge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and was perhaps persuaded to affirm the conviction on the basis that the prosecutrix belongs to a Scheduled Caste community. The conviction of the appellants under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 must, therefore, be set aside."*

In ***Ashrafi*** (supra), the Supreme Court had an occasion to examine effect of both the provisions namely amended and unamended Section 3(2)(v) of the Act of 1989 and expressed its view as under:-

> ***"6.*** *In respect of the offence under Section 3(2)(v) of the SC/ST Prevention of Atrocities Act, the appellant had been sentenced to life imprisonment. The gravamen of Section 3(2)(v) of the SC/ST Prevention of Atrocities Act is that any offence, envisaged under the Penal Code punishable with imprisonment for a term of ten years or more, against a person belonging to Scheduled Caste/Scheduled Tribe, should have been committed on the ground that "such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member". Prior to the Amendment Act 1 of 2016, the words used in Section 3(2)(v) of the SC/ST Prevention of Atrocities Act are "... on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe".*
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> ***7.*** *Section 3(2)(v) of the SC/ST Prevention of Atrocities Act has now been amended by virtue of Amendment Act 1 of 2016. By way of this amendment, the words "... on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe" have been substituted with the words "... knowing that such person is a member of a Scheduled Caste or Scheduled Tribe". Therefore, if subsequent to 26-1-2016 (i.e. the day on which the amendment came into effect), an offence under the Penal Code which is punishable with imprisonment for a term of ten years or more, is committed upon a victim who belongs to SC/ST community and the accused person has knowledge that such victim belongs to SC/ST community, then the charge of Section 3(2)(v) of the SC/ST Prevention of Atrocities Act is attracted. Thus, after the amendment, mere knowledge of the accused that the person upon whom the offence is committed*

belongs to SC/ST community suffices to bring home the charge under Section 3(2)(v) of the SC/ST Prevention of Atrocities Act.

8. *In the present case, unamended Section 3(2)(v) of the SC/ST Prevention of Atrocities Act is applicable as the occurrence was on the night of 8-12-1995/9-12-1995. From the unamended provisions of Section 3(2)(v) of the SC/ST Prevention of Atrocities Act, it is clear that the statute laid stress on the intention of the accused in committing such offence in order to belittle the person as he/she belongs to Scheduled Caste or Scheduled Tribe community.*

9. The evidence and materials on record do not show that the appellant had committed rape on the victim on the ground that she belonged to Scheduled Caste*. Section 3(2)(v) of the SC/ST Prevention of Atrocities Act can be pressed into service only if it is proved that the rape has been committed on the ground that PW 3 Phoola Devi belonged to Scheduled Caste community. In the absence of evidence proving intention of the appellant in committing the offence upon PW 3 Phoola Devi only because she belongs to Scheduled Caste community, the conviction of the appellant under Section 3(2)(v) of the SC/ST Prevention of Atrocities Act cannot be sustained.*

10*. In the result, the conviction of the appellant under Section 3 (2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the sentence of imprisonment imposed upon him are set aside and the appeal is partly allowed."*

[Emphasis Supplied]

29. In the light of these authoritative pronouncements, we have no scintilla of doubt that prosecution has failed to establish that offence has been committed under Section 376 (1), 506-B and Section 3(2)(v) of Act of 1989. Resultantly, the impugned judgment dated 05-12-2014 passed in Special Case No.33/13 is set aside. The appeal is allowed.

(Sujoy Paul)
Judge

(Vishal Dhagat)
Judge

sh/psm/mohsin