

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

BEFORE

HON'BLE SHRI JUSTICE AVANINDRA KUMAR SINGH

ON THE 24th APRIL, 2024

CRIMINAL APPEAL No. 1568 of 2001

BETWEEN:-

**1. RAJA BHAIYA AGED 29 YEARS
S/O MANOHAR SINGH THAKUR**

**2. RAGHURAJ SINGH AGED
ABOUT 35 YEARS S/O HARWAL
SINGH THAKUR**

**3. ARJUN SINGH AGED ABOUT 24
YEARS S/O KARANSINGH THAKUR**

**ALL R/O VILLAGE MANETHA P.S.
PRITHVIPUR DISTT. TIKAMGARH
(M.P.)**

.....APPELLANTS

(BY SHRI SANDEEP KOSHTHA – ADVOCATE FOR APPELLANTS)

AND

**1. STATE OF MADHYA PRADESH P.S.
PRITHVIPUR DISTT. TIKAMGARH (M.P.)**

.....RESPONDENT

(SHRI RAJEEV PANDEY - PANEL LAWYER FOR THE RESPONDENT/STATE)

Reserved on : 01.02.2024
Pronounced on : 24.04.2024

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

JUDGMENT

1. This appeal has been filed under Section 374 (2) of Cr.P.C. against conviction and sentence in Special Case No.262/2000 under Sections 456, 354, 323 of IPC and under Section 3 (i) (xi) of SC/ST Act, 1989 in which the learned Special Judge (Atrocities), District Tikamgarh (M.P.) has sentenced the each of the appellants under Sections 456, 354 of IPC and Section 3(i) (xi) of SC/ST (Prevention of Atrocities) Act with one year RI each along with fine of Rs. 1,000/- each. Sentences to run concurrently and in default to undergo four months RI each which shall run one by one. Under Section 323 of IPC all the three appellants have been sentenced with a fine of Rs. 500/- each and in default to undergo two months RI. Trial Court has also directed compensation of Rs. 3,500/- to be paid to the prosecutrix P.W.-1, as per Para 12 of the judgment.

2. In short, the case of the prosecution is that on 10.04.2000, in the night at about 09:00 pm when P.W.-1 prosecutrix was alone in her house in village Manetha, under the jurisdiction of Police Station Prithvipur, Distt. Tikamgarh (M.P.), all the appellants came and inquired about father, mother and brother of the prosecutrix and when they were informed that they are not at home, then appellant Raja Bhaiya entered into her house and gagged her mouth. Arjun caught her and thrown on the ground. Rajabhaiya and Arjun tore her blouse. Arjun was standing as a guard outside the house. Thereafter, suddenly brother of the prosecutrix Harpal Singh P.W. 2 came there and when he tried to enter the house he was prevented by appellant Arjun and when ultimately he entered the house both the accused beat him by fists and legs and abused him on the

basis of caste and threatened to kill him, if he lodges a report. Meanwhile, other neighbourers on hearing the noise also came then the appellants fled away. In Ex. P-1, written complaint, it is further mentioned that due to the beating by the appellants, Harpal Singh became unconscious and his sister P.W. 1 was weeping. Appellants also made a hunter of electric wires and beat Harpal Singh with that and it is further mentioned that in the rape with his sister, Dada Bhaiya and ors. have fully cooperated.

3. This written complaint bears date of 12.04.2000. Police lodged FIR on 16.05.2000. In FIR Ex. P-3, it is mentioned that after a discussion with police, the Superintendent of Police and on his oral direction case is being registered.

4. Ex. P-4 Panchnama by Panch and Sarpanch mentions that appellants tried to rape with prosecutrix this complaint has been made, but whole village knows that this is a false complaint. This Panchnama has been made by Sarpach, Deputy Sarpanch and other persons. The police investigated the matter and filed the charge sheet. Accused were charged. Appellants denied the charges. Trial Court recorded the statement of P.W.-1 prosecutrix, P.W.-2 his brother Harpal, P.W.-3 Kunji, P.W.-4 SDOP K.L. Dhurvey and P.W.-5 Inspector S.R. Chari. In statement under Section 313 of Cr.P.C. defence of the accused is that they have been implicated falsely due to political rivalry. They accepted that appellants are of Thakur caste, whereas prosecutrix is of Ahirwar Caste. Appellants have produced D.W.-1, Asharam the then Sarpanch of the village who had signed Panchnama Ex P-4.

5. In appeal, it has been stated that FIR is delayed. Statements are contradictory. Who was outside the house and who was inside the house, on this there is material contradiction and omission. Caste certificate has not been proved, therefore, learned counsel for the appellants seeks

acquittal and in alternative, the reduction of the jail sentence along with enhancement of the fine as the appellants remained in jail custody for a period of one day.

6. Learned Panel Lawyer submits that conviction and jail sentence are well justified, therefore, appeal should be rejected.

7. Perused the judgment. At the outset, it is seen that written complaint Ex. P-1 has been lodged after one day and incident is of 10.04.2000 and written complaint has been given to the police on 12.04.2000 by way of a typed compliant. Police has registered FIR only on the basis of oral direction of the Superintendent of Police, Tikamgarh Ex- P-4 and defense witness submits that complaint is false.

8. In Ex. P-4 it is also mentioned that complainant's father i.e. father of Harpal refused to get Harpal examined by the doctor submitting that there is no injury to his son. In addition, it is seen that in written complaint, it is mentioned that Arjun was standing outside the house, while Raja Bhaiya and Raghuraj went inside the room, but P.W.-1 prosecutrix in examination-in-chief stated that Raghuraj was outside the house and Raja Bhaiya and Arjun caught hold of her. In fact, in cross-examination Para 8, P.W.-1 submitted that she has not given this statement to police in Ex. D-1 that Arjun was standing outside. On the contrary, P.W.- 2 Harpal in his examination-in-chief has stated that Arjun was standing outside and he tried to stop him from going inside his house.

9. Normally date in sexual offences may not be of material importance, but every case is different. In this case, it seems that police was not inclined to register the offence as the medical of Harpal was refused, therefore, looking to the written complaint Ex. P-1 in which it has been stated that there are multiple injuries and even due to beating by electric wire hunter Harpal became unconscious. Refusal of medical

examination by Harpal dealt a blow to the credibility of prosecution case not only for Harpal, but for the allegations by the prosecutrix also. Certificate of caste is not proved, therefore, only on admitting that the appellants knew that complainants are of Ahirwar caste do not serve the purpose because producing of caste certificate is a must. Each district has got its own list of caste which falls under SC/ST Act and certificate of competent authority is a must. Even otherwise, in the facts and circumstances of the case, it is also not proved that heinous offence, if any, was committed due to particular community, appellants have raised a view of false implication, therefore, looking to the overall circumstances of the case, this Court is of the considered view that on the basis of prosecution evidence the charges under which the appellants have been convicted are not proved beyond reasonable doubt. There is a delay in lodging of FIR. Police was not inclined to register the FIR and only on the instruction of Superintendent of police case has been registered. There is also difference in statement as to who was guarding entrance of the house and who was inside the house and committed offence. Therefore, appeal is allowed. Appellants are acquitted of charges under Sections 456, 354, 323 of IPC and 3 (1) (xi) of SC/ST Act. Fine deposited by them to be returned.

10. Let a copy of this order be sent to the concerned Court along with this record.

(AVANINDRA KUMAR SINGH)
JUDGE

VKV/-