A.F.R.

Court No. - 50

Case :- CRIMINAL APPEAL No. - 8196 of 2008

Appellant :- Jai Karan @ Pappu
Respondent :- State of U.P.
Counsel for Appellant :- S.N. Pandey,Amit Tripathi,Havaldar Verma,Ram Ashrey Kashyap,Syed Wajid Ali
Counsel for Respondent :- Govt. Advocate

Hon'ble Dr. Kaushal Jayendra Thaker,J.
Hon'ble Ajai Tyagi,J.

(Per Hon'ble Ajai Tyagi, J.)

1. By way of this appeal, the appellant has challenged the Judgment and order dated 24.11.2008 passed by court of Special Judge, S.C. & S.T Act/Additional Sessions Judge, Kanpur Dehat in Sessions Trial No.269 of 2001, arising out of Case Crime No.216 of 2001, under Sections 363/366/376 I.P.C., read with Section 3(1)(xi) of Scheduled Casts and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as, 'S.C./S.T. Act, 1989'), Police Station Akbarpur, District Kanpur Dehat whereby the accused-appellant was sentenced under Section 363 Indian Penal Code (I.P.C.) for three years' rigorous impriosonment and with a fine of Rs.1000/-; under Section 366 I.P.C. with the sentence of five years' rigorous imprisonment and fine of Rs.1000/- and; under Section 376 I.P.C. with the sentence of rigorous imprisonment for 10 years and a fine of Rs.2000/- and; under Section 3 (2) (v) of S.C. & S.T. Act with a sentence of life imprisonment and fine of Rs.2000/- with a direction that all the sentences will run simultaneously and in event of default of payment of fine, to undergo two months' further imprisonment.

2. The brief facts as per prosecution case are that on 12.8.2001 at about 8:00 p.m., the prosecutrix was kidnapped by appellant-Jai Karan @ Pappu and two other unknown persons. Father of the prosecutrix given the written information about the kidnapping to the near police

station. After two days on 14.8.2001 at about 10.00 a.m., the girl was found by her father in the field of sorghum which is the farm of Shiv Ram Shukla in an unconscious condition. After came to consciousness, she disclosed the whole incident to her family members that accused-appellant with two unknown persons committed gang rape with her by gagged her mouth at gunpoint and went away extending threat that if any report is lodged at the police station or this fact is divulged to anyone, they will kill her whole faimly. When she along with her father hiding themselves went to the police station for reporting the said incident and after denied lodging the FIR, they sent a complaint report to the Superintendent of Police, Kanpur Dehat then FIR was lodged on 15.8.2011 by the police.

3. Police Station Incharge, Akbarpur, Kashmir Singh Yadav tookup the investigation visited the spot, prepared site plan, recorded statements of the prosecutrix and witnesses and after completing investigation submitted charge sheet against the accused.

4. The accused being charge sheeted for offence triable by court of session. The learned Magistrate committed the case to the court of session. The court of session summoned the accused who pleaded not guilty to the charges framed and wanted to be tried.

5. The prosecution so as to bring home the charges examined eight witnesses, who are as under:-

1	Suryapal	P.W.1
2.	Prosecutirx	P.W.2
3.	Shiv Nath	P.W.3
4.	Dr. Narendra Kumar Jaiswal	P.W. 4
5.	Dr. Raj Rani	P.W. 5
6.	Kashmir Singh Yadav	P.W. 6
7.	Ramesh Chandra Pradhan	P.W.7
8.	Amar Singh	P.W.8

6. In support of the ocular version of the witnesses, following documents were produced and contents were proved by leading evidence:

1	F.I.R.	Ext. Ka-6
2.	Written report	Ext. Ka-1
3.	Statement of Prosecutrix under Section 164 Cr.P.C.	Ext. Ka-2
4.	Recovery memo of Blood & Semen stained Cloth Chaddhi and Salwar	Ext. Ka-9
5.	X-Ray Report	Ext. Ka-3
6.	Injury Report	Ext. Ka-4
7.	Supplementary report	Ext. Ka-5
8.	Charge Sheet Mool	Ext. Ka-14
9.	Site Plan with Index	Ext. Ka-13

7. Heard learned counsel for the appellant, learned AGA for the State and also perused the record.

8. It is submitted by the counsel for the appellant that as far as commission of offence under Section 3(1)(xi) and 3(2)(v) of S.C./S.T. Act, 1989 is concerned, the learned Sessions Judge convicted the accused due to the fact that the victim was a person belonging to Scheduled Caste Community, though there were no allegations as regard the offence being committed due to the caste of the prosecutrix and there were no allegations of commission of offence which would attract the provision of Section 3(2)(v) read with Section 3(1)(xi) of SC/ST Act, 1989.

9. Learned counsel for appellant has relied on the following decisions of the Apex Court rendered in the case of **Sadashiv Ramrao Hadbe Vs. State of Maharashtra, 2006 (10) SCC 92** and the judgments of this Court titled **Narain Trivedi v. State of Uttar Pradesh, LAW(ALL)-2009-1-147** decided on 15 Jan 2009 and case titled **Vishnu v. State of U.P.** in **Criminal Appeal No. 204 of 2021**,

decided on 28.1.2021 so as to contend and submit that in fact no case is made out against the accused under Section 376 IPC or the offences under Sections 363, 366 IPC and Section 3(1)(xi) read with Section 3(2)(v) of S.C./S.T. Act, 1989. It is submitted that the prosecutrix and her family members have roped in the accused with ulterior motive.

10. It is submitted by learned counsel for the State that prosecutrix belongs to Scheduled Caste community and the judgment of learned Trial Judge cannot be found fault with just because there is silence on the part of the prosecutrix about the caste and this is not so grave a lapse that benefit can be granted to accused. It is submitted that the incident occurred because of the caste of the prosecutrix. It is further submitted that any incident on person belonging to a particular caste would be an offence. It is further submitted by learned counsel for the State that the accused ravished the prosecutrix who was a minor and was belonging to lower strata of life.

11. Learned counsel for the appellant has relied on the judgment of **Sadashiv Ramrao Hadbe Vs. State of Maharashtra (supra)** and has submitted that learned counsel presses for clean acquittal of the accused and not for a fixed term incarceration though the appellant has been in jail for more than 13 years. In support of submission, learned counsel presses into service the judgment in the case of **Narain Trivedi v. State of Uttar Pradesh, LAW(ALL)-2009-1-147** rendered by this Court and learned counsel has relied on findings returned in paragraphs 4 and 5 of the said judgment, which lay down as follows :-

> *"4. Let the appellants Sri Narain Trivedi, Ashok Kumar @ Khanna and Pramod Kumar @ Nanhkau be released on bail in the above case till disposal of the appeal on their furnishing personal bond and two sureties each in the like amount to the satisfaction of the trial court concerned. Realization of fine to the extent of fifty per cent shall remain stayed till disposal of the appeal. Remaining fifty*

per cent fine shall be deposited in the trial court prior to the release.

It is worthwhile to mention that the learned Sessions Judge has convicted and sentenced the appellants to undergo imprisonment for life and to pay a fine of Rs.3000/- each under section 3(2)(5) SC/ST Act. They have also been convicted separately under section 307/34 I.P.C. and sentenced to undergo imprisonment for seven years and to pay a fine of Rs.2000/- each. This method of convicting and sentencing the appellants is not in accordance with law. Section 3(2)(5) SC/ST Act does not constitute any substantive offence and hence, conviction and sentence of the appellants under section 3(2)(5) SC/ST Act simplicitor is wholly illegal. Section 3(2)(5) SC/ST Act provides as under:-3(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe.-(i) to (iv).......................(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;

As would appear from the language used by the Legislature in section 3(2)(5) SC/ST Act, it is clear that this section does not constitute any substantive offence and if any person not being a member of a Scheduled Caste or a Scheduled Tribe commits any offence under the Indian Penal Code 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 Scheduled Caste or

Scheduled Tribe or such property belongs to such member, then enhanced punishment of life imprisonment would be awarded in such case, meaning thereby that conviction and sentence under section 3(2)(5) SC/ST Act simplicitor is not permissible and in cases where an offence under the Indian Penal Code punishable with imprisonment for a term of ten years or more is committed 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, then in such case the accused will be convicted and sentenced for the offence under Indian Penal Code read with Section 3(2)(5) SC/ST Act with imprisonment for life and also with fine. Therefore, in the present case, the appellants could not be convicted and sentenced under section 3(2)(5) SC/ST Act simplicitor.

5. Mistake which has been committed by the learned Sessions Judge in present case in convicting and sentencing the appellants under section 3(2)(5) simplicitor has been noticed by us in some other cases also. The Registrar General is directed to send a copy of this order to Sri Dilip Singh, the then Addl. Sessions Judge/Special Judge, SC/ST Act, Fatehpur for his future guidance.

12. Learned counsel for appellant presses into service the judgment in the case of **Sadashiv Ramrao Hadbe Vs. State of Maharashtra** (supra) more particularly observations in paras 9, 10, 11 of the said judgment, which are verbatim reproduced as follows :-

"9. It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring of confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix. The courts shall be

extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen.

10. In the present case there were so many persons in the clinic and it is highly improbable the appellant would have made a sexual assault on the patient who came for examination when large number of persons were present in the near vicinity. It is also highly improbable that the prosecutrix could not make any noise or get out of the room without being assaulted by the doctor as she was an able bodied person of 20 years of age with ordinary physique. The absence of injuries on the body improbablise the prosecution version.

11. The counsel who appeared for the State submitted that the presence of semen stains on the undergarments of the appellant and also semen stains found on her petticot and her sari would probablise the prosecution version and could have been a sexual intercourse of the prosecutrix.

12. It is true that the petticot and the underwear allegedly worn by the appellant had some semen but that by itself is not sufficient to treat that the appellant had sexual intercourse with the prosecutrix. That would only cause some suspicion on the conduct of the appellant but not sufficient to prove that the case, as alleged by the prosecution."

13. Learned counsel for the appellant has also relied on the latest decision of Apex Court in the case of **Hitesh Verma Vs. State of Uttarakhand & another, 2020(10)SCC 710,** pertaining to Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and has contended that the incidence reported is prior to 2016, amendment more particularly relates to the year 2000, where no offence of S.C./S.T. Act, 1989 has been committed on the lady on the basis of her caste belonging to a particular caste. The learned Trial Judge has misread the provisions of law, just because the prosecutrix is belonging to scheduled caste community, the offence would not be made out the ingredients and facts must prove the same.

14. The accused is in jail since more than 12 years. Hence he has already remain in jail and has already undergone the punishment under Sections 363, 366 and 376 of the Indian Penal Code as senteced by the court below. The main submission is regarding the sentence under Section 3(2)(v) of SC/ST Act could not have been returned against the accused when it was not proved and even if proved life imprisonment is too harsh and sentence.

15. Learned counsel for the State has vehemently submitted that this is a clear case of allurement and the learned trial Judge has rightly convicted the accused under Sections 363, 366 and 376 of the Indian Penal Code for life under Scheduled Casts and Scheduled Tribes Act (SC/ST Act, 1989) and heavily relied on the deposition of the prosecutrix and the medical evidence so as to contend that the incident occurred with girl who is below the age of 14 and has submitted that the FIR and the evidence cannot be brused aside on minor contradictions and that the rape was committed during the entire night, the evidence of the prosecutrix clinches the issue and that the medical evidence is against the accused. We are unable to convince ourselves with the submission made by learned AGA for State that she has been a victim of atrocity as she belonged to particular community. We have been taken through the evidence and the deposition mainly of prosecution witnesses and judgment of Trial Court. We have read the same.

16. The recent decision of the Apex Court in the case of State of **Gujarat v. Bhalchandra Laxmishankar Dave, 2021 (0) AIJEL-SC 66983**, decided on 2nd February, 2021 wherein the Apex Court has held that while dealing with the matter relating to conviction, the Court should discuss the decision of the trial court and also the judgment in **Guru Dutt Pathak v. State of Uttar Pradesh, LAW(SC) 2021 5 5**, decided on 5th May, 2021. All the principles laid down in this latest decision, we are oblige to consider the evidence afresh.

17. We venture to discuss the evidence of the prosecutrix on which reliance is placed by learned trial judge and whether it inspires confidence or not so as to sustain the conviction of accused. There were concrete positive signs from the oral testimony of the prosecutrix as regards the commission of forcible sexual intercourse. In case of **Ganesan Versus State Represented by its Inspector of Police, Criminal Appeal No. 680 of 2020 (Arising from S.L.P. (Criminal) No.4976 of 2020)** decided on 14.10.2020 wherein the principles of accepting the evidence of the minor prosecutrix or the prosecutrix are enshrined the words may be that her testimony must be trustworthy and reliable then a conviction based on sole testimony of the victim can be based. In our case when we rely on the said decision, it is borne out that the testimony of the prosecutrix cannot be said to be that of a sterling witness and the medical evidence on evaluation belies the fact that any case is made out against the accused.

18. PW-1, Surya Pal is the father of the prosecutrix. It was he who was the person whom the prosecutrix had conveyed about the incident. In his cross examination, conveyed that After two days of kidnapping on 14.8.2001 at about 10.00 a.m., the girl was found by him in the filed of sorghum which is the farm of Shiv Ram Shukla in an unconscious condition. After she regained conscious, she disclosed the whole incident to her family members that accused-appellant with one unknown person committed rape one by one with her. The accused gagged her mouth at gunpoint. The accused went away extending threat that if any report is lodged at the police station or this fact is divulged to anyone, they will kill her with entire faimly.

19. PW-2, is the prosecutrix who in her ocular version has reiterated the statement made under Section 164 to Magistrate and contents of FIR version that she was 14 years of age when incident occurred. She was found in an unconscious condition from the filed of Corn. The Prosecutrix conveyed to the author of the FIR that two persons had

taken her rather forced her on gunpoint and had threatened her with dire consequnces and gagged her that is why she could not shout. The prosecutrix also mentioned that both of them committed sexual intercourse with her and both of them used to commit rape. Jai Karan aged about 33 years of age whose village is next to her village and when they were commmitting this act they had done it on gunpoint. She has also conveyed that when her FIR was not lodged by the police station then she dictated the typed FIR and sent to the Superintendent of Police, Kanpur Dehat, in her cross examination she deposed that she (prosecutrix) belonged to the community known as Chamar community which is enumerated as scheduled caste. The prosecutrix in her oral testimony has narrated the version of forcible sex on her and that the accused had gauged her, she did not convey this to anybody because of threats given by the accused. In her cross examination, she conveyed that her father had dictated the report to the police. If the police did not mention in the FIR that the accused had done the illegal act she could not possibly know why the same is not reflected in the report. According to her, she was aged 17 and half years at the time of deposition. She knew one accused- Jai Karan @ Pappu by name, but did not know the name of another accused.

20. PW-3 is the uncle of prosecutrix who has deposed on oath that his Niece was going out of her cottage to piss and when she did not return till late night PW-3, complainant and other family members started searching her. After two days the girl was found in filed of sorghum in an unconscious condition. After she conscious, she disclosed the whole incident.

21. The ocular version of PW-4 and 5 who are Medical Officers, PW-6 who is the Officer who had conducted the investigation. PW-7 who is the Principal of School stated that age of the prosecutrix as per the school record is 1.3.1987. The medical officer in his ocular version opined that on local examination, there was no mark of injury on

private parts and inside the thighs, no blood was present on internal examination of prosecutrix. Her hymen was torn and two fingers could easily pass without pain. Doctor in her medical certificate opined that on the above findings, it cannot be said that rape has been committed or not, but she was habituated to sexual intercourse, she was referred to the Radiologist and Pathology lab. The pathology report showed that no live or dead sperm was seen in the vaginal smear and therefore the medical evidence belies the theories of the complainant that she was raped.

22. We now decide to sift the evidence threadbare of the prosecution story, the evidence led and discussed before the trial court and appreciated by the learned Trial Judge. The Apex Court recently in **State of Gujarat v. Bhalchandra Laxmishankar Dave** has held that trial court judgment and findings should be dealt with threadbare which we are doing and therefore when there is no finding of fact that as to how the offence under Section 3(2)(v) of SC/ST Act is made out, the accused could be punished. Jai Karan and other person committing gang rape and the leanred Judge did not accept the version of the accused. There is no finding of fact as to how the case under SC/ST Act or as popularly known Atrocities Act is made out. There is no finding corroborated by the evidence of the prosecutrix which would bring whom the charge under Section 3(2)(v) else neither the prosecutrix nor her father nor other witnesses have mentioned that she was lured, kidnapped and raped because she belonged to a particular community.

23. Provision of Section **3(1)(xi)** of the Scheduled Castes and Scheduled Tribes Act, 1989 read as follows : -

> "(xi) assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty;"

24. Provision of Section **3(2)(v)** of the Scheduled Castes and Scheduled Tribes Act, 1989 which reads as follows has not been

complied with and, therefore, the accused could not have been convicted under the provisions of Section 3(2)(v) of the SC/ST Act.

> *(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;*

25. Provision of Section 376 I.P.C. read as follows :

"376. Punishment for rape.—

(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the women raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever,—

(a) being a police officer commits rape—

(i) within the limits of the police station to which he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) on a woman in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's

institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) commits rape on a woman knowing her to be pregnant; or

(f) commits rape on a woman when she is under twelve years of age; or

(g) commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine: Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years. Explanation 1.—Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section. Explanation 2.—"Women's or children's institution" means an institution, whether called an orphanage or a home for neglected woman or children or a widows' home or by any other name, which is established and maintained for the reception and care of woman or children. Explanation 3.—"Hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation."

26. In respect of the victim, the doctor in medical report has opined as under :-

"In the x-Ray of both wrist A.P., all eight carpal bones were found present. The lower epiphyses of both wrist joints have not

fused. In the x-Ray of both elbow joints, all the bony epiphyses around both elbow joints had fused

In her supplementary report, lady doctor opined that no spermatozoa was seen by her. According to physical appearance, age of the prosecutrix was 15 to 16 years. No definite opinion about rape was given"

27. The evidence as discussed by learned Judge shows that the mere fact that no external marks of injury was found by itself would not throw the testimony of the prosecutrix over board as it has been found that the prosecutrix had washed all the tainted cloths worn at the time of occurrence as she was a minor girl. We also do not give any credence to that fact and would like to go through the merits of the evidence led.

28. As far as the commission of offence under Section 376 IPC is concerned, the learned Judge has relied on the judgments of **(1) Rafiq Versus State of U.P., AIR 1981 SC page 559, (2) Nawab Khan Versus State, 1990 Cri.L.J. Page 1179 and the judgment in (3) Bharvada Bhogin Bhai Hirji Bhai Versus State of Gujarat, AIR 1983 SC page 753** and convicted the accused. The accused has not sought benefit of Section 155(4) of Evidence Act.

29. The evidence of Dr. Raj Rani Kansal, District Hosptial/Dafrin Hospital, Medical Officer, PW-5 who medically examined the prosecutrix on 16.8.2000 at 12.00 noon, found no external or internal injury on the person of the victim. On preabclomen examination, uterus size was 20 weeks and ballonement of uterus was present. On internal examination, vagina of the victim was permitting insertion of two fingers. Internal uterine ballonement was present. The victim complained of pain during internal examination but no fresh injury was seen inside or outside the private part. Her vaginal smear was taken on the slide, sealed and sent for pathological investigation for examination. The doctor opined both in occular as well as her written report that the

prosecutrix was having five months pregnancy and no definite opinion about rape could be given.

30. In the x-ray examination, both wrist A.P., all eight carpal bones were found present. Lower epiphyses of both writst joints were not fused. All the bony epiphyses around both elbow joints were fused. In the supplementary report, the docotr opined that no spermatozoa was seen by her and according to the physical appearance, age of the victim was appearing to be 15 to 16 years and no definite opinion about rape could be given.

31. As far as the medical evidence is concerned, there are three emerging facts. Firstly, no injury was found on the person of the victim. We are not mentioning that there must be any corroboration in the prosecution version and medical evidence. The judgment of the Apex Court rendered in the case of **Bharvada Bhogin Bhai Hirji Bhai Versus State of Gujarat, AIR 1983 SCC page 753**, which is a classical case reported way back in the year 1983, on which reliance is placed by the learned Session Judge would not be helpful to the prosecution. The medical evidence should show some semblance of forcible intercourse, even if we go as per the version of the prosecutrix that the accused had gagged her mouth for ten minutes and had thrashed her on ground, there would have been some injuries to the fully grown lady on the basis of the body.

32. The findings in the case of Vishnu (supra) are verbatim reproduced as there is similarly affects:-

"*In our finding, the medical evidence goes to show that doctor did not find any sperm. The doctor categorically opined that no signs of forcible sexual intercourse were found. This was also based on the finding that there were no internal injuries on the lady who was grown up lady.*

The factual data also goes to show that there are several contradictions in the examination-in-chief as well as cross examination of all three witnesses. In her examination-in-chief, she states that incident occurred at about 2:00 p.m. but nowhere in her ocular version or the FIR, she has mentioned that she was going to the fields with lunch for her father-in-law. This statement was made for the first time in the ocular version of the husband of the prosecutrix i.e. PW-3 and that it was father-in-law who narrated incident to the police authority. The father-in-law as PW-2 in his testimony states that he was told about the incident by her daughter-in-law (Bahu) on which he complained some villagers about the accused who denied about the incident, therefore, they decided to go to the police station on the next day but the police refused to lodge the report on the ground that no one was present in the police station, therefore, they went on third day of the incident to lodge the FIR. After this, again he contradicts his story in his own statement recorded on cross-examination on the next date stating that the incident was told by his daughter-in-law to his wife who told him about the same. There is further contradiction in the statements of this witness. In examination-in-chief he states that the parties called for Panchayat in the village but there is nothing on record that who were the persons called for Panchayat. If the pregnant lady carries fifth month pregnancy is thrashed forcefully on the ground then there would have been some injury on her person but such injuries on her person are totally absent."

33. The judgment relied on by the learned counsel for the appellant will also not permit us to concur with the judgment impugned of the learned Trial Judge where perversity has crept in.

34. As far as Section 3(2)(v) of Scheduled Casts and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is concerned, the FIR and the evidence though suggest that any act was done by the accused on the basis that the prosecutrix was a member of Scheduled Castes and

Scheduled Tribes then the accused can be convicted for commission of offence under the said provision. The learned Trial Judge has materially erred as he has not discussed what is the evidence that the act was committed because of the caste of the prosecutrix. The sister-in-law of the prosecutrix had filed such cases, her husband and father-in-law had also filed complaints. We are unable to accept the submission of learned AGA that the accused knowing fully well that the prosecutrix belongd to lower strata of life and therefore had caused her such mental agony which would attract the provision of Section 3(2)(v) of the S.C./S.T. Act. The reasonings of the learned Judge are against the record and are perverse as the learned Judge without any evidence on record on his own has felt that the heinous crime was committed because the accused had captured the will of the prosecutrix and because the police officer had investigated the matter as an attrocities case which would not be undertaken within the purview of Section 3(2)(v) of S.C./S.T. Act and has recorded conviction under Section 3(2)(v) of the Act which cannot be sustained. We are supported in our view by the judgment of Gujarat High Court in **Criminal Appeal No.74 of 2006 in the case of Pudav Bhai Anjana Patel Versus State of Gujarat decided on 8.9.2015 by Justice M.R. Shah and Justice Kaushal Jayendra Thaker**.

35. Learned trial Judge wrongly came to the conclusion that as the prosecutrix belonged to community falling in the scheduled caste and the appellant belonged to upper caste the provision of SC/ST Act are attracted in the present case.

36. While perusing the entire evidence beginning from FIR to the statements of PWs-1, 2 and 3 we do not find that commission of offence was there because of the fact that the prosecutrix belonged to a certain community.

37. The learned Judge further has not put any question in the statement recorded under Section 313 Cr.P.C. of the accused relating to rape which is against him.

38. In view of the facts and evidence on record, we are convinced that the accused has been wrongly convicted, hence, the judgment and order impugned is reversed and the accused is acquitted of charges levelled. The accused appellant, if not wanted in any other case, be set free forthwith.

39. Appeal is allowed accordingly.

40. Record be sent to the trial court.

41. We are thankful to learned counsel for appellant and learned AGA for the State who have ably assisted the Court.

Order Date :- 10.11.2021

A.N. Mishra