

A

ASHARFI

v,

STATE OF UTTAR PRADESH

(Criminal Appeal No. 1182 of 2015)

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DECEMBER 08, 2017

[**RANJAN GOGOI AND R. BANUMATHI, JJ.**]

Penal Code, 1860:

C *s.376(2)(g), 450 and 323 – Conviction under – By courts below – Relying on evidence of prosecutrix, another witness and medical evidence – Accused sentenced to 10 years RI with fine – On appeal, held: There is no perversity with respect to conviction and sentence – Conviction affirmed.*

D *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989:*

E *s.3(2)(v) (as prior to Amendment Act 1 of 2016) – Conviction under – By courts below – On appeal, held: Unamended s. 3(2)(v) can be pressed into service only if it is proved that the offence under the provisions of IPC (punishable with imprisonment for a term of ten years or more) has been committed on the ground that the victim belonged to Scheduled Caste community – In the present case, in the absence of evidence proving such intention of the accused, conviction u/s. 3(2)(v) cannot be sustained – Penal Code, 1860 – s.376(2)(g).*

F **Partly allowing the appeal, the Court**

G **HELD : 1. So far as the conviction under Section 376(2)(g) IPC is concerned, based upon the evidence of PW-3-the prosecutrix and PW-4 and the medical evidence, both the courts below recorded concurrent findings that the charge of rape has been proved. The Court is not inclined to interfere with the same and also the sentence of ten years of imprisonment imposed upon him. There is also no perversity with respect to the conviction and sentence of the appellant with respect to other offences under Penal Code. [Para 4] [131-F]**

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2.1 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 SC/ST Prevention of Atrocities Act is that any offence, envisaged under Indian 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”*. [Para 5] [131-G-H; 132-A-B]

2.2 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 26.01.2016 (i.e. the day on which the amendment came into effect), an offence under IPC 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 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. [Para 6] [132-C-E]

2.3 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 8/9.12.1995. 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. [Para 7] [132-E-F]

A **2.4 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 belonged to Scheduled Caste community. In the absence of evidence proving intention of the appellant in committing the offence upon PW-3 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. [Para 8] [132-G-H; 133-A]**

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C **2.5 Therefore, 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 life imprisonment imposed upon him are set aside and the appeal is partly allowed. [Para 9] [133-B]**

D **3. As the appellant had already undergone more than ten years, the appellant is ordered to be released forthwith unless he is required in any other case. [Para 10] [133-C]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1182 of 2015.

E From the Judgment and Order dated 29.01.2013 of the High Court of Judicature at Allahabad in Criminal Appeal No. 8270 of 2007.

 Vikrant Singh Bais (AC) Adv for the Appellant.

 The Judgment of the Court was delivered by

F **R. BANUMATHI, J.** 1. This appeal arises out of the judgment of the Allahabad High Court in Criminal Appeal No. 8270 of 2007 dated 29.01.2013 in and by which the High Court affirmed the conviction and sentence of the appellant awarded by the trial court. The trial court *vide* its judgment dated 30.11.2007 convicted the appellant for the offences under Sections 450, 376(2)(g), 323 IPC and under Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 [for short 'the SC/ST Prevention of Atrocities Act']. For conviction under Section 376(2)(g) IPC, the appellant was sentenced to undergo rigorous imprisonment for ten years with fine of Rs. 8,000/- with default clause and for conviction under Section 3(2)(v) of the SC/

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ST Prevention of Atrocities Act, the appellant was sentenced to undergo life imprisonment with fine of Rs. 10,000/- with default clause. The appellant was also imposed sentence of imprisonment for other offences under Indian Penal Code. A

2. Case of the prosecution is that on the intervening night of 8/9.12.1995, appellant Asharfi and one Udai Bhan are alleged to have forcibly opened the door and entered inside the house of PW-3-Phoola Devi and PW-4-Brij Lal and said to have committed rape on PW-3 Phoola Devi. PW-4-Brij Lal was kept away on the point of pistol. On raising alarm, neighbours (PW-1-Rassu and PW-2-Baghraj) came there and on seeing them, the accused persons ran away threatening the witnesses. Based on the complaint lodged by the complainant Brij Lal, FIR was registered in Case Crime No.76 of 1996 under Sections 376/452/323/506 IPC and under Section 3(1) 12 SC/ST Act against appellant and one Udai Bhan. After completion of investigation, chargesheet was filed against the appellant and the said Udai Bhan for the abovesaid offences. As noted above, the appellant and Udai Bhan were convicted for various offences by the trial court. In the appeal preferred by the appellant before the High Court, the High Court affirmed the conviction of the appellant and the said Udai Bhan. B C D

3. We have heard the learned *amicus curiae* appearing for the appellant. None appeared on behalf of the respondent. We have carefully perused the impugned judgment and materials on record. E

4. So far as the conviction under Section 376(2)(g) IPC is concerned, based upon the evidence of PW-3-Phoola Devi and PW-4 Brij Lal and the medical evidence, both the courts below recorded concurrent findings that the charge of rape has been proved. We are not inclined to interfere with the same and also the sentence of ten years of imprisonment imposed upon him. We also find no perversity with respect to the conviction and sentence of the appellant with respect to other offences under Indian Penal Code. F

5. 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 SC/ST Prevention of Atrocities Act is that any offence, envisaged under Indian 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 G

A 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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6. 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 26.01.2016 (i.e. the day on which the amendment came into effect), an offence under Indian 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

D knowledge that such victim belongs to SC/ST community, then the charge of Section 3(2)(v) of 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.

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7. 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 8/9.12.1995. 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.

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8. 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

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the appellant under Section 3(2)(v) of the SC/ST Prevention of Atrocities Act cannot be sustained. A

9. 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 life imprisonment imposed upon him are set aside and the appeal is partly allowed. B

10. So far as the conviction of the appellant under Section 376(2)(g) IPC and other offences and sentence of imprisonment imposed upon him are confirmed. As the appellant had already undergone more than ten years, the appellant is ordered to be released forthwith unless he is required in any other case. C

Kalpana K. Tripathy

Appeal partly allowed.