



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

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE GAJENDRA SINGH

ON THE 25th OF FEBRUARY, 2025

CRIMINAL APPEAL No. 1677 of 2018

SHAKIR

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Ms. Nupur Garg – Advocate for the appellant.

Shri Sonal Gupta – Addl. A.G. for respondent/State.

JUDGMENT

Per: Justice Gajendra Singh

1. The appellant has filed this appeal challenging the judgment dated 20.12.2017 passed by the Special Judge (SC/ST), Dewas in S.T. No.2100388/15, whereby he has been convicted and sentenced as under:-

Conviction	Sentence	Fine amount	Imprisonment in lieu of payment of fine amount.
S. 363 IPC	3 years R.I.	Rs.1000/-	3 months



S. 366 IPC	5 years R.I.	Rs.1000/-	3 months
S. 376(2)(ॢ) IPC	10 years R.I.	Rs.10,000/-	6 months
S.5(ॢ)/6 of POCSO Act, 2012	10 years R.I.	Rs.10,000/-	6 months
S. 3(2)(5) of SC/ST (Prevention of Atrocities) Act.	Life Imprisonment	Rs.10,000/-	6 months

2. As per the prosecution story, on 12.8.2015 information was given by father of the prosecutrix that his daughter aged about 16 years left the house last night nearabout 11-12'O clock without giving information to the family members. He his having apprehension that Shakir resident of the same village is not available in his house and both have ran away and performed the marriage. The information was recorded at Crime No.182/15 under Section 363, 366 of IPC. The investigation revealed that prosecutrix was sleeping in her house and this appellant along with two others entered into her house and committed rape upon her. The FIR was later on registered under Section 376(ॢ)3 of IPC, Section 3(1)(12), 3(2)(5) of SC/ST Act and Section 3/4 & 5ॢ/6 of POCSO Act against Shakir, Amjad and Yasin. All were put to trial under the aforesaid offences. They denied the charges. Vide judgment dated 20.12.2017 Amjad and Yasin have been acquitted and present appellant Shakir has been convicted and sentenced as mentioned hereinabove.

3. Learned counsel for the appellant submits that so far as the conviction under Section 363, 366 and 376(2)(ॢ) of IPC & Section 5(ॢ)/6 of POCSO Act is concerned, the appellant is not challenging the same as he has undergone the sentence which is 10 years, but he has wrongly been convicted under Section 3(2)(5) of SC/ST (Prevention of Atrocities) Act



because there is no allegation that he has committed the aforesaid offences because the prosecutrix belongs to backward community.

4. Learned counsel for the respondent/State opposed the prayer and prayed for dismissal of appeal.

5. Heard learned counsel for the parties and perused the record.

6. In this case the incident occurred on 12.8.2015 and this date of offence was prior to the enforcement of SC & ST (Prevention of Atrocities) Amendment Act, 2015. The issues relating to the applicability of provision of Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is case in hand. For ready reference, the provision of Section 3(2)(v) (as applicable prior to Amendment Act, 2015) is being reproduced hereinbelow:-

Whoever, not being a member of 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.

(Emphasis supplied)

8. From the language used by the Legislature in Section 3(2)(v) of the 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 cases, meaning thereby that conviction and sentence under Section 3(2)(v) SC/ST Act, simpliciter 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 a person is a member of a Scheduled Caste or Scheduled Tribe or such property belongs to such member, then in such a case the accused will be convicted and sentenced for the offence under Indian Penal Code read with Section 3(2)(v) SC/ST Act, with imprisonment for life and also with fine. Thus, in order to attract the provision of Section 3(2)(v) the following ingredients must be established:

- (i) The offender should not be a member of a Scheduled Caste or a Scheduled Tribe;
- (ii) He must commit an offence under the Indian Penal Code punishable with imprisonment for a term of 10 years or more;
- (iii) The commission of such offence must be against a person or property of a member of a Scheduled Caste or a Scheduled Tribe;
- (iv) The offences must have been committed **on the ground** that such person is a member of a Scheduled Caste or a Scheduled Tribe.

9. The words “on the ground” have not been used in anywhere in the Act, except in clause (v) of Section 3(2) of the Act. It will be seen that only serious offences under the Indian Penal Code which are punishable with imprisonment for a term of 10 years or more are covered by clause (v).



However, the provisions of the IPC are universally applicable whereas the clause (v) is applicable only where the victim is a person belonging to a Scheduled Caste or Scheduled Tribe. The law therefore expects a graver kind of mens-rea denoted by the words “on the ground”, to render already serious offences under the Indian Penal Code more serious, which has the effect of making it punishable by no less a punishment than imprisonment for life. In order to constitute an offence under Section 3(2)(v), something more than ‘intention’ is needed – the offence against the victim must have been committed with a particular object., i.e., it must have been committed ‘**on the ground**’ that he was a member of a Scheduled Caste or Scheduled Tribe.

10. The expression “on the ground” has been subject matter of decision in a number of cases decided under the SC/ST (P.A.) Act. In the case of *Masumsha Hasanasha Musalman V. State of Maharashtra, reported in AIR 2000 SC 1786* it was held that “To attract the provisions of Section 3(2) (v) of the Act, the *sine qua non* is that the victim should be a person who belongs to a Scheduled Caste or a Scheduled Tribe and that the offence under the Indian Penal Code is committed against him **on the basis** that such a person belongs to a Scheduled Caste or a Scheduled Tribe. In the absence of such ingredients, no offence under the Section 3(2)(v) of the Act, is constituted. In the case of *Dinesh alias Buddha v. State of Rajashtan, reported in AIR 2006 SC 1267* in paragraph no.15 it was held as follows; “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.” In the case of *Ramdas and Ors. v. State of Maharashtra reported in AIR 2007 SC 155* in paragraph no.10 it has been held that “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 Caste 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.”

11. Thus the words ‘**on the ground**’ show that the prosecution is required to prove that the target of crime was selected ‘on the ground’ that he/she belonged to Scheduled Caste or Scheduled Tribe, or that crime was committed for the reason that such person belonged to such community tribe. In other words it must be shown that if the victim would not have belonged to Scheduled Castes or Scheduled Tribes, the crime would not have been committed. The cause for the offence must contain an element of



caste/racial prejudice. Unless it is demonstrated that the accused offended the sensibilities of the victim in relation to his caste, the offence under Section 3(2)(v) is not constituted. If an accused committed rape on a woman belonging to a Scheduled Caste only to satisfy his sexual lust, without any prejudice of caste to which the women belonged or if sexual intercourse was committed by the accused with the consent of Scheduled Caste girl, who was a minor under 18 years of age, he would be guilty of an offence of rape under Section 376 IPC but he would not be guilty of the offence under Section 3(2)(v), as he did not commit sexual intercourse with the girl on the ground that she was a Scheduled Caste girl. Even when accused persons allegedly inflicted injuries on victim and fled away after calling him “CHAMAR” then also in the absence of evidence to show that injuries were inflicted on ground that victim belongs to Scheduled Caste community, the offence under Section 3(2)(v) cannot be said to have been made out. (**Amir v. State of Madhya Pradesh 2004 Cri.L.J. 3686**). Similarly, mere knowledge that the victim belongs to Scheduled Caste or Scheduled Tribe community is not sufficient to constitute an offence under Section 3(2)(v) of the Act (**Mekala Raji Reddy v. State of Andhra Pradesh, 2002 Cr.L.J. 3407**).

12. We have perused the statement of the prosecutrix and other family members. They have not specifically made allegation that this appellant committed sexual offence on the ground that prosecutrix belongs to backward community. This offence was committed prior to 26.1.2016 when the aforesaid condition of “on the ground” has been substituted with the



word “knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe” in Section 3(2)(5) of SC/ST Act by the Parliament.

13. Therefore, the appeal is partly allowed. The conviction and sentence under Section 3(2)(5) of SC/ST (Prevention of Atrocities) Act is quashed. Conviction and sentence in other sections is maintained.

14. Let the record of the Trial Court be sent back.

(VIVEK RUSIA)
JUDGE

(GAJENDRA SINGH)
JUDGE