IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI

ON THE 29th OF DECEMBER, 2023

CRIMINAL APPEAL No. 1334 of 1999

BETWEEN:-

ARJUN LODHI, SON OF HAJARILAL LODHI, AGED ABOUT 20 YEARS, OCCUPATION CULTIVATION, R/O VILLAGE KOSAMGHAT, PS MAHARAJPUR, DISTRICT MANDLA (MADHYA PRADESH)

.....APPELLANT

(BY SHRI SANJAY PATEL - ADVOCATE)

AND

THE STATE OF MADHYA PRADESH (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI AKHILENDRA SINGH- GOVERNMENT ADVOCATE)

This appeal coming on for hearing this day, the court passed the following:

JUDGMENT

This appeal is directed aged the judgment and order dated 26.04.1999 passed by Special Judge SC/ST (Prevention of Atrocities) Act, Mandla, in Special Case No. 19/1998 whereby, the appellant has been convicted for the offence under Section 354 of IPC and has been sentenced to undergo RI for 3 months and Section 3(1)(xi) of SC/ST (Prevention of Atrocities) Act, 1989 (for short "Act") and has been sentenced to undergo R.I. for 6 months and fine of Rs. 500/- with default stipulation.

2. The incident relating to molestation of the prosecutrix was reported to the Police Station Maharajpur, District Mandla where FIR (Ex.P/2) was registered

on Crime No. 199/97 under Sections 354 of IPC and Section 3(1)(x) of SC/ST (Prevention of Atrocities) Act. After completion of investigation, charge sheet was filed. Learned trial Court vide impugned judgment, convicted and sentenced the appellant as mentioned herein above.

3. Learned counsel for the appellant challenging the finding of conviction and sentence submits that no caste certificate has been produced to prove the caste of prosecutrix Shyamkali (PW-1) by the prosecution. There are serious anomalies, contradictions and omissions present in the testimony of prosecution witnesses and prays for acquittal. In the alternative limb of prayer he submits that the incident took place in the year 1997 i.e. near about 26 years back. No criminal antecedents are attributed to the appellant, therefore, taking lenient view jail sentence may be suitably reduced to the period already undergone.

4. Learned counsel for the State supports the impugned judgment and prays for dismissal of this appeal stating that it is devoid of merits.

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

6. From perusal of the statement of the prosecutrix Shyamkali (PW-1), it is apparent that even though she has mentioned her belonging to Pradhan caste but nothing is on record to prove that Pradhan belongs to scheduled caste or scheduled tribe. No caste certificate has been brought on record.

7. In **Chalaniya Dheemar versus State of Madhya Pradesh, ILR 2012 MP 189 and Pillu Alias Pyarelal versus State of Madhya Pradesh, ILR 2012 MP 1309**, it has been specifically held by coordinate Bench of this Court that if caste of victim is not proved by cogent and reliable document issued by the competent authority, then mere oral deposition of witness would not be

sufficient to prove the caste certificate.

8. In such circumstances, when the caste of the prosecutrix is not proved which is mandatory for proving offences under the Act, which vitiates the conviction recorded under Section 3(1)(xi) of the Act and therefore, it is set aside and appellant is acquitted of the above charges.

9. The evidence adduced in support of the allegation with regard to offence u/s. 354 of IPC is found to be clear, cogent and consistent. The same is free from any material infirmity and anomaly. The testimony of prosecutrix Shyamkali (PW-1) stands duly corroborated with the FIR (Ex. P/2) therefore, finding of conviction cannot be interfered and is hereby affirmed.

10. As regards the sentence, the prayer made on behalf of the appellant appears to be reasonable. Incident took place for more than 26 years back. Appellant faced trial and appeal during the long period of time. No criminal antecedents are attributed to the appellant, therefore, the period of jail sentence is set aside by enhancing the fine amount for the offence under Section 354 of the IPC.

11. Accordingly, this appeal is **partly allowed**. The fine of Rs.2000/- is imposed for the offence under Section 354 of the IPC. The appellant will have to deposit this amount of fine within a period of two months from the date of judgment passed by this Court, before the concerned trial Court failing which the appellant will have to undergo R.I. for one month. Since he has been acquitted for the offence under Section 3(1)(xi) of the Act, therefore, the fine amount, if any, deposited by the appellant for this offence, will be refunded back to him by learned trial Court. The appellant is on bail. His bail bond and personal bond stand discharged.

12. Let record of the learned trial Court along with the copy of the judgment

of this Court forthwith be sent back for compliance and necessary action.

13. C.C. as per rules.

(BINOD KUMAR DWIVEDI)
JUDGE

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