

SUPREME COURT OF INDIA**Full Bench: Justices B.R. Gavai, Prashant Kumar Mishra, and Sandeep Mehta****Date of Decision: 29th January 2024****CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO(S). OF 2024 (Arising out of SLP(Crl.) No(s). 6367 of 2023)****DASHRATH SAHU ...APPELLANT(S)****VERSUS****STATE OF CHHATTISGARH ...RESPONDENT(S)****Legislation:**

Section 320 of the Code of Criminal Procedure, 1973 (CrPC)

Section 3(1)(xi), 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC/ST Act)

Sections 451, 354 of the Indian Penal Code, 1860 (IPC)

Subject: Appeal against High Court's order partially allowing a compromise application in a case involving offenses under the IPC and SC/ST Act.**Headnotes:**

Criminal Appeal – Challenging High Court Order – Appellant challenges High Court order in Criminal Appeal No. 1088 of 2002 that disallowed joint application under Section 320 CrPC for offence under Section 3(1)(xi) of the SC/ST Act. High Court acquitted appellant of IPC Sections 354 and 451 but upheld conviction under SC/ST Act. [Para 2, 4]

Conviction under SC/ST Act – Review of Conviction for Outraging Modesty – Appellant's conviction for outraging the modesty of a Scheduled Caste woman under Section 3(1)(xi) of the SC/ST Act reviewed. Court considers whether the act was committed with the intention of targeting a person from Scheduled Caste. [Para 3, 8-9]

Application of SC/ST Act – Interpretation of Intent Requirement – Analysis of Section 3(1)(xi) of the SC/ST Act. Court emphasizes the necessity of an intention to commit the offence on the basis of the victim's caste identity for the application of the SC/ST Act. Reference to precedent in Masumsha Hasanasha Musalman Vs. State of Maharashtra for interpretation of similar provision in the SC/ST Act. [Para 7, 9-10]

Acquittal of Appellant – Setting Aside Conviction Under SC/ST Act – Conviction of the appellant under Section 3(1)(xi) of the SC/ST Act set aside. Appellant acquitted due to lack of evidence showing intent to commit the offence based on victim's caste. Bail bonds of appellant discharged. [Para 11-12]

Decision – Appeal Allowed – Appeal allowed, leading to acquittal of the appellant from charges under SC/ST Act. Pending applications, if any, disposed of. [Para 12-13]

Referred Cases:

Masumsha Hasanasha Musalman Vs. State of Maharashtra 2000(3) SCC 557

J U D G M E N T

Mehta, J.

1. Leave granted.
2. The accused appellant has assailed the order dated 21st March, 2023 passed by the High Court of Chhattisgarh, Bilaspur in Criminal Appeal No. 1088 of 2002 whereby the joint application filed by the appellant and the complainant of the case under Section 320 of Code of Criminal Procedure, 1973(hereinafter being referred to as 'CrPC') was disallowed to the extent of the offence punishable under Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act, 1989(hereinafter being referred to as the 'SC/ST Act').
3. Vide judgment dated 30th September, 2002 passed by Special Judge, Scheduled Castes/Scheduled Tribes(Prevention of Atrocities) Act, 1989 Bilaspur, C.G. in Special Sessions Trial No. 115/2001, the accused appellant was convicted for offences punishable under Sections 451, 354 of Indian Penal Code, 1860(hereinafter being referred to as 'IPC') and Section 3(1)(xi) of the SC/ST Act. He was sentenced to undergo simple imprisonment of one year and fine.
4. The accused appellant challenged the said judgment by filing Criminal Appeal No. 1088/2002 in the High Court of Chhattisgarh. During the pendency of the

appeal before the High Court, the accused appellant and the prosecutrix/complainant seem to have amicably settled their differences and accordingly a joint application under Section 320 CrPC, supported by affidavits of the accused appellant and the prosecutrix/complainant, came to be filed which was partly allowed by the High Court by the impugned order dated 21st March, 2023. The High Court accepted the compromise application to the extent of the offences punishable under Sections 354 and 451 IPC and acquitted the accused appellant of the said charges. However, the application was rejected qua the offence punishable under Section 3(1)(xi) of the SC/ST Act holding that the same is not compoundable and the minimum sentence provided for such offence is six months. Accordingly, the application under Section 320 CrPC was rejected qua the offence under SC/ST Act and the simple imprisonment of one year awarded to the accused appellant on that count was reduced to six months.

5. Being aggrieved of the order dated 21st March, 2023, the accused appellant has preferred the instant appeal. During the pendency of the appeal, the appellant was released on bail vide order dated 9th June, 2023 passed by this Court.
6. The short point arising for consideration of this Court is as to whether the conviction of the appellant for the offence punishable under Section 3(1)(xi) of the SC/ST Act and the rejection of the application under Section 320 CrPC was justified and lawful.
7. Section 3(1)(xi) of the SC/ST Act reads as below:-

“3. Punishments for offences of atrocities.—(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—

(i)-(x).....

(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;

...

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.”

8. A plain reading of the section makes it clear that the offence of outraging the modesty should be committed with the intention that the victim belonged to the Scheduled Caste category.
9. We have gone through the FIR and the sworn testimony of the prosecutrix/complainant as extracted in the judgments of the High Court as well as that of the trial Court. The case as projected in the FIR and the sworn testimony of the prosecutrix would reveal that the prosecutrix/complainant was engaged for doing household jobs in the house of the accused appellant who tried to outrage her modesty while the prosecutrix/complainant was doing the household chores. Apparently thus, even from the highest allegations of the prosecutrix, the offending act was not committed by the accused with the intention that he was doing so upon a person belonging to the Scheduled Caste. This issue was dealt with by this Court in the case of *Masumsha Hasanasha Musalman Vs. State of Maharashtra*¹ wherein it was held as below:-

“9. Section 3(2)(v) of the Act provides that whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, commits any offence under the Penal Code, 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. In the present case, there is no evidence at all to the effect that the appellant committed the offence alleged against him on the ground that the deceased is a member of a Scheduled Caste or a Scheduled Tribe. 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 Penal Code, 1860 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

¹ 2000(3) SCC 557

under Section 3(2)(v) of the Act arises. In that view of the matter, we think, both the trial court and the High Court missed the essence of this aspect. In these circumstances, the conviction under the aforesaid provision by the trial court as well as by the High Court ought to be set aside.”

(Emphasis supplied)

10. In the said judgment, this Court dealt with a case involving offence under Section 3(2)(v) of the SC/ST Act. The language of Section 3(1)(xi) of the SC/ST Act is pari materia as the same also provides that the offence must be committed upon a person belonging to Scheduled Castes or Scheduled Tribes with the intention that it was being done on the ground of caste.
11. Considered in light of the above factual and legal position, we are of the opinion that the conviction of the accused appellant for the offence under Section 3(1)(xi) of the SC/ST Act was otherwise also not sustainable on merits. Hence, the conviction of the accused appellant as recorded by the trial Court and upheld by the High Court for the offence under Section 3(1)(xi) of the SC/ST Act is hereby set aside and quashed. The appellant is acquitted of the charge under Section 3(1)(xi) of the SC/ST Act. The appellant is on bail. His bail bonds are discharged.
12. The appeal is allowed accordingly.
13. Pending application(s), if any, shall stand disposed of.

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