

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.257 of 2019**

Arising Out of PS. Case No.-91 Year-1994 Thana- SAHEBGANJ District- Muzaffarpur

HARIBABU @ HARI BABU PRASAD son of Bujhy Lal, Resident of
Village Rajwada, P.S. Sahebganj, District- Muzaffarpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Yogesh Chandra Verma, Sr. Advocate
Mr. Rabish Kumar, Advocate
For the Respondent/s : Mr. Sadanand Paswan, Spl. P.P.

**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)**

Date : 01-07-2024

The present appeal has been filed under Section-374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C.')

challenging the impugned judgment of conviction dated 06.02.2019 and order of sentence dated 13.02.2019 passed by learned 11 th A.D.J.-cum-Spl. Judge (SC/ST) Act, Muzaffarpur in connection with Trial No.206/2015, G.R. No.1096/1994, arising out of Sahebganj P.S. Case No. 91 of 1994 dated 05.10.1994, whereby the appellant has been sentenced to undergo imprisonment for 7 years U/s.376 of L.P.C. and also with a fine of Rs.10,000/-(ten thousand) and, in default of payment of fine, to undergo



further imprisonment for three months. He has further been sentenced to imprisonment for life under Section 3(2) (v) of SC/ST (POA) Act and also with a fine of Rs.10,000/- (ten thousand) and, in default of payment of fine, to undergo imprisonment for three months. Both the sentences have been directed to run concurrently.

2. Heard Mr. Yogesh Chandra Verma, learned senior counsel for the appellant assisted by Mr. Rabish Kumar, and Mr. Sadanand Paswan, learned Spl. P.P. for the respondent-State.

3. The brief facts leading to the filing of the present appeal are as under:

“On Wednesday (04.10.1994) at about 09.00, the informant was sleeping on a mat spread on the ground in a hut facing north when Hari Babu, son of Bujhu Lal, came with a pistol in his hand and put it on her neck and asked her to keep quiet, otherwise she would be killed. Thereafter, he gagged her mouth with his hand and after removing her *saree* and *saya*, forcefully inserted his penis into her private part. She kept moving her hands and legs. Meanwhile, semen got discharged from his penis, which fell on her private part, thigh and the cloth. After this, she raised alarm and on her alarm, her mother



Surji Devi asked as to what happened. She started making a noise that Hari Babu is running away after abusing her. Many people of the village like Anat Paswan, Janak Paswan, Yogendra Paswan, Dukha Paswan etc. also saw him running away after the incident.”

4. After filing of the F.I.R., the investigating agency carried out the investigation and, during the course of investigation, the Investigating Officer recorded the statement of the witnesses and collected the relevant documents and thereafter filed the charge-sheet against the accused. As the case was exclusively triable by the Special Court (SC/ST) Act, the case was committed to the Court of Special Judge (SC/ST) Act where it was registered as Trial No. 206 of 2015.

5. Learned senior counsel for the appellant Mr. Yogesh Chandra Verma, at the outset, submits that the case of the prosecution rests on the deposition given by the victim, P.W.1. However, there are major contradictions in the deposition given by her and other witnesses and, therefore, the version given by the victim is not required to be believed. It is also contended that P.W.3, who is the mother of the victim, has stated in her examination-in-chief that she has seen the accused fleeing away from the house in the light of the earthen lamp.



She has further deposed that the victim did not inform her anything. Thereafter, on the next day, she went to the police station along with her daughter. Learned senior advocate further submits that there is a delay of two 24 hours in lodging the F.I.R. wherein the present appellant has been falsely implicated. It is submitted that though the victim had identified the accused appellant and other family members and more than 40 persons had gathered immediately at the place after the occurrence and had seen the accused fleeing away from the place of incident, surprisingly, the F.I.R. was lodged after 24 hours.

6. Learned senior advocate would thereafter submit that P.W. 6, the doctor who had examined the victim, has also specifically opined that evidence of rape was not found. At this stage, it is also submitted that P.W. 5 and P.W. 8 have not supported the case of the prosecution and they have been declared 'hostile'.

7. Learned senior advocate further submits that, in the present case, the prosecution did not examine the investigating officer who carried out the investigation and the same was fatal in the facts and circumstances of the present case. It is submitted that because of the non-examination of the



investigating officer, serious prejudice was caused to the defense. At this stage, it is submitted that relying upon the deposition of the victim only, order of conviction can be passed and no corroboration is required. However, the Court has to be satisfied that the victim is a sterling witness and her deposition is trustworthy. In the present case, from the story put forward by the victim, it cannot be said that the victim is not trustworthy witness and, therefore, this Court may not rely upon the deposition given by the victim.

8. Learned senior counsel, thereafter, submits that the prosecution has failed to prove the ingredients of Section-3(2)(v) of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as “SC/ST Act”). In fact, the said provision would not be attracted in the facts of the present case.

9. In support of his pleadings, learned senior counsel has mainly relied upon the following judgments:-

“Criminal Appeal No. 1786 of 2023 (Naresh @ Nehru Vs. State of Haryana) and analogous appeal, Criminal Appeal No. 2276 of 2014 (Manak Chand @ Mani Vs. The State of Haryana) and A.I.R. 2017 SC 5819 (Asharfi Vs. State of Uttar Pradesh).



10. Lastly, it has been submitted that the present is a case of false implication. It is pointed out from the deposition of the prosecution that P.W. 3 has specifically stated that the victim was running a Toddy shop and the accused and his brother used to go to the shop and drink toddy without paying for the same and when the amount was demanded, they were giving threats. It is, therefore, contended that because of the non-payment of money of toddy, this appellant has been falsely implicated.

11. Thus, when the prosecution has failed to prove the factum of rape, the impugned judgment of conviction and order of sentence passed by the 11th A.D.J.-cum-Special Judge, (SC/ST) Act, Muzaffarpur are required to be quashed and set aside.

12. On the other hand, learned Special P.P. Mr. Sadanand Paswan has vehemently opposed the appeal. Learned Special P.P. would submit that though medical evidence does not support the version of the victim, relying upon the deposition of the victim only, the conviction can be recorded and, therefore, the Trial Court has not committed any error while relying upon the deposition given by the victim. It is contended that the prosecution has proved the case against



the appellant beyond reasonable doubt and, therefore, the present appeal may not be entertained.

13. We have considered the submissions canvassed by the learned counsels for the parties. We have also perused the evidence of prosecution witnesses and also perused the documentary evidence exhibited.

14. At this stage, we would like to appreciate the relevant extract of entire evidence led by the prosecution as well as defense before the Trial Court.

15. Before the Trial Court, prosecution examined 8 witnesses. Defence has also examined 2 witnesses.

16. P.W. 1 Manjha Devi has stated in her examination-in-chief that it was a Tuesday at about 08:30 p.m. in the night. She was alone in her thatched house (*Marai*). An earthen lamp was lighted in the house. When somebody climbed her body, she woke up. It was Harilal, son of Bujhu Prasad. He is a resident of Rajwara itself. She identified him. He put 303 on her body and threatened to kill her, if she raised her voice. Then he lifted her *Saree* and *Saya* and committed “indecent act” (*bura kam*) with her. When he committed rape, she wriggled. The semen got discharged in her private part as also fell on her clothes. She raised alarm. After Harilal fled



away, her old mother came. Anant Paswan and Yogendra Paswan also came there. She went to the police station on the next in the evening. Her father and her brother Nemi Paswan had also gone with her. Police had got her medically examined. Police had also come to her house for enquiry. She is a Dusadh by case which is called Harijan.

16.1. In her cross-examination, she has stated that she was married 08-09 years ago. She resided at her in-laws' house for six months in all. Her husband died one year after the marriage. Six months after the death, a daughter was born. In her further cross-examination, she has denied the suggestion that the accused had filed a case in *Gram Panchayat* against her father, brothers and witnesses for alleged *Marpeet*. She had seen the accused coming inside the door. Her house has no door. He put pistol on her neck. She had never seen a pistol before that. She did not know any other name of pistol. The accused was having pistol in his right hand. Just entering the house he gagged her mouth with his left hand. As long as he committed rape, he kept the pistol in touch of her body and kept her moth gagged. She had not cross-tightened her thigh. She pushed the accused at intervals, but he again used to climb. She had received no scratches in the process. She



identified the accused in the light of the earthen lamp. She had dictated the said fact while giving her statement before Darogaji. Darogaji had come to the house. She had shown him that earthen lamp. She had also shown him the mat, clothes and other concerned articles. On alarm, the nearby people came and saw the accused fleeing away. Yogendra and Anand also saw. Over 100 people had gathered there. She has denied the suggestion to have lodged this false case on being turored or due to ill-will. She has also denied that her husband is alive and she does not live with him.

17. P.W. 2 Jhari Paswan has been tendered. She has not stated anything about the incident in his examination-in-chief.

17.1. In her cross-examination, she has stated that Manjha Devi lives at her parental house with her father. There are 14-15 members in that house. Manjha Devi at times used to run the shop of her brother. Manjha Devi's husband Hanslal Paswan is still alive. He is his brother's brother-in-law. Manjha Devi has deserted her husband. Hanslal had come to his brother's house in a feast (*nyota*) about 2-3 months ago.

18. P.W. 3 Suraji Devi has stated in her examination-in-chief that in the night of incident she was



sleeping in the cattle house and her daughter Manjha Devi was sleeping in the kitchen. When she (her daughter) raised alarm, she got up and saw Harilal fleeing from that house. She identified him in the light of the earthen lamp. Manjha Devi did not tell her anything. Next day she went to the police station with her daughter. There, her daughter gave her statement before the In-charge. The witness has been declared 'hostile'.

18.1. In her cross-examination, she has stated that she had not told Darogaji that her daughter informed her that Haribabu had gone to her house with a pistol and put it on her neck and threatening her to kill, gagged her mouth and committed rape on her. In her further cross-examination, she has stated at the relevant time, her daughter Manjha Devi was running the toddy shop. Hari Babu and his brother Sundar Babu both used to come to her shop and take toddy without paying for the same and, on demanding payment, they used to threaten to kill. On alarm being raised by her daughter, 50-100 persons and she had assembled there. Haribabu fled away towards the orchard in the North side. People had chased him. She also saw him at that very moment. She had also told Darogaji about identifying the accused in the light of the



earthen lamp. She has denied to have given false deposition.

19. P.W. 4 Nemi Paswan has stated in his examination-in-chief that the incident took place about two to two and a half years ago at 08:00-08:30 p.m. in the night. He was sleeping in his house. On the alarm raised by Manjha Devi and other village people, he got up and went to the house of Manjha Devi. He saw that Harilal was fleeing from her house. Manjha Devi told him that Harilal was fleeing after committing rape. He identifies Harilal. He is also known as Haribabu.

19.1. In his cross-examination, he has stated that Haribabu had not filed any case against them before this case. He has further stated that he was running a toddy shop. Haribabu and Sundar did not come to his shop to take toddy. He has further stated that, he had not stated before Darogaji that Sundarbabu used to come to his shop, take toddy and on demand for the money, used to threaten. He has further stated that when he reached the door of Manjha Devi, about 100 persons were present there. He saw from a distance of 10-12 laggi that village people were running after Haribabu. Around 50-60 persons were chasing. He has admitted to have stated before Darogaji that he had seen Haribabu fleeing away. He



had not stated before Darogaji, he was out of his house on the date of incident and when he returned, got the knowledge about the incident. It is not a fact that this case has been filed due to the dispute while selling toddy.

20. Evidence of PW-5 need not be gone into as he has not supported the prosecution case and he has been declared hostile by the prosecution.

21. P.W. 6, the doctor who examined the victim girl, has stated in her examination-in-chief as follows:-

1. On 06.1.1994 at 02:30 PM. I examined Manjha Devi D/O-Parameshwat Paswan. Vill-Rajwara, P.S. Sahebganj. Distt-Muzaffarpur at Sadar Hospital, Muzaffarpur and found the following.

(i) Marks of identification:- Two mole on left side of nose. Old scar mark on left wrist joint. Height 158 Cms, weight 46 kg, teeth 14/14 axillary and pubic hair present(Scanty) Breast well developed, pendulous.

(ii)Per vaginal findings:- Hyman old ruptured, loose, no external or Internal injury seen on her private part. No blood or Semen spot found on her garments and private parts. Vaginal swab examined microscopically. Spermatozoa not found.

(iii) X-ray of pelvis shows fusion of iliac crest, epiphesis X-ray of both wrist joints shows complete fusion of distal end radius ulna epiphesis.

Opinion:- with above finding no evidence of rape. Age above 19 years.

2. The above lady had been to me for examination. ..(torn)....my controlling officer on ..(torn).. requisition in Sahebganj P.S. No. 1/94 (Ext-1).

3. This report is in my pen and in bears my signature (identifies).”



21.1. In her cross-examination, she has stated that she did not know Manjha Devi from before.

22. PW-7 Kawleshwar Devi has not supported the prosecution. She has just stated that she saw Haribabu fleeing away from the house of Manjha Devi. In her cross-examination also she has denied to have any knowledge about the incident.

23. Evidence of PW-8 need not be gone into as he has not supported the prosecution case and he has been declared hostile by the prosecution.

24. DW-1 Vijayshankar Mishra has stated in his examination-in-chief that he identifies Haribabu. He has stated that there is a dispute between Haribabu and Manjha Devi as Haribabu's crops were destroyed by her cattle. Further her has attested certain receipts as Ext. A, A/1 and A/2, B. Manjha Devi has also threatened to implicate him in some case whenever she gets an opportunity. Manjha Devi's (illegible) Hanslal Paswan is alive. Manjha Devi stays at her parental house and sells toddy. In her cross-examination, she has denied to have relationship with the accused. She has nothing to do with the business of either side.

25. DW-2 Shiv Bachan Sahni has stated in his



examination-in-chief that he was *Sarpanch* of Dariyapur Rajawara from 1978 to 2001. Parmeshwar's (illegible) is Manjha Devi. She stays at her parental house. She sells toddy there. Nemi Paswan had threatened to implicate in some case.

26. From the evidence led by the prosecution, it would reveal that the incident took place at 09:00 p.m. on 04.10.1994, for which the F.I.R. was lodged on 05.10.1994 at 09:30 p.m. Thus, there is a delay of 24 hours in lodging the F.I.R. It further transpires that after the alleged incident of rape took place, when the victim shouted, her mother, Anant Paswan, Janak Paswan and Yogendra Paswan along with other village people came to the house of the informant and it is also submitted that all of them had seen the accused fleeing away from the said place. However, it is relevant to observe that Janak Paswan has not been examined and Anant Paswan (P.W. 5) and Yogendra Paswan (P.W.8) have not supported the case of the prosecution and they have been declared 'hostile'. It would further reveal that the victim, P.W. 1, has stated in the examination-in-chief that when somebody climbed her body, she woke up. It was Harilal, son of Bujhu Prasad. He is a resident of Rajwara itself. She identified him. She has further stated "*three naught bhira diya*" on her body and threatened to



kill her, if she raised her voice. Then he lifted her *Saree* and *Saya* and committed “indecent act” (*bura kam*) with her. However, in her cross-examination, the victim has stated that she had seen the accused coming inside the door. Her house has no door. He put pistol on her neck. She had never seen a pistol before that. She did not know any other name of pistol. The accused was having pistol in his right hand. Just entering the house he gagged her mouth with his left hand. As long as he committed rape, he kept the pistol in touch of her body and kept her mouth gagged. She had not cross-tightened her thigh. She pushed the accused at intervals, but he again used to climb. She had received no scratches in the process. Thus, the story put forward by the victim about the manner in which the incident took place raises doubt. It is the specific case of the victim and her mother that accused was identified in the light of the earthen lamp. It is also stated by the victim that she has tried to resist, however, she had received no scratches in the process of defending herself. It is also relevant to note that it is the specific case of the victim, P.W. 1, that her husband died within one year from the date of her marriage.

26.1. At this stage, if the deposition given by P.W. 2 Jhari Paswan is seen, it is revealed that during cross-



examination, the said witness has stated that husband of the victim, namely Hanslal Paswan is alive and he is brother-in-law of the brother of the said witness. The said witness has further stated that the victim has deserted her husband.

26.2. From the deposition given by P.W. 3, who is the mother of the victim, it would further reveal that the said witness, in her examination-in-chief, has stated that when her daughter shouted, she had seen accused fleeing away from the house. She had identified him the light of the earthen lamp. However, victim did not tell her anything and on the next day they had gone to the police station to lodge F.I.R. The specific suggestion was made to the said witness by the defense and, therefore, the said witness has stated that the victim was running toddy shop and Hari Babu and his brother Sundar Babu both used to come to her shop and take toddy without paying for the same and, on demanding payment, they used to threaten to kill. At this stage, if the deposition given by P.W. 6 is carefully examined, it is revealed that the said witness had examined the victim on 06.01.1994 at 02:30 p.m. and she had recorded the following “The above lady had been to me for examination..(torn).. my controlling officer on ..(torn).. requisition in Sahebganj P.S. No. 91/94”.Thereafter, the said



witness has specifically given the opinion that with the above finding that she did not find any evidence of rape. Thus, we are of the view that the medical evidence does not support the case of the prosecution. At this stage, it is relevant to note that the prosecution did not examine the investigating officer who had carried out the investigation. It is the specific case of the defence that because of the non-examination of the investigating officer in the facts and circumstances of the present case, serious prejudice has been caused to the defence.

27. At this stage, we would like to examine the applicability of the judgments relied upon by the learned Special P.P. to the facts of the present case.

28. In the case of **Naresh @ Nehru (supra)**, the Hon'ble Supreme Court has observed in para-9.3 as follows:-

“9.3. As noticed hereinabove, the evidence of the eye-witness should be of very sterling quality and calibre and it should not only instil confidence in the court to accept the same but it should also be a version of such nature that can be accepted at its face value. This Court in the case of **Rai Sandeep @ Deepu alias Deepu Vs. State (NCT of Delhi) (2012) 8 SCC 21** has held:

"22. In our considered opinion the "sterling witness" should be of very high quality and caliber whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness



would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have correlation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged"

PW-9, the cousin of the deceased, was examined as an eyewitness to the crime. However, the presence of PW-9 at the scene raises doubt due to contradictions. Although Suraj, who was also the deceased's cousin, was accompanying the deceased, PW-9 never tried to contact



him to ascertain the names of the accused persons. This raises a serious doubt about his presence that has been ignored by the courts below. The presence of PW-9 at the scene raises doubts and raises questions about the veracity of his evidence. This is the second lacunae in the prosecution case.”

29. In the case of **Manak Chand @ Mani (supra)**, the Hon’ble Supreme Court has observed at para-5 as under:-

“5. The evidence of a prosecutrix in a case of rape is of the same value as that of an injured witness, It is again true that conviction can be made on the basis of the sole testimony of the prosecutrix. All the same, when a conviction can be based on the sole testimony of the prosecutrix, the courts also have to be extremely careful while examining this sole testimony as cautioned in *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384:

"If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement by material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations."

This was reiterated by this Court in *Sadashiv Ramrao Hadbe v. State of Maharashtra and Another* (2006) 10



SCC 92:

"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 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 belte the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix."

Both the prosecutrix as well as the accused have a right for a fair trial, and therefore when the statement of the prosecutrix does not inspire confidence and creates a doubt, the court must look for corroborative evidence. (1996) 2 Sce 384 Relying upon the case of **Gurmit Slagh (supra)** this court in **Raju and others v. State of Madhya Pradesh** (2008) 15 SCC 133 held as under:

"10. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on a par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the court.

11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured



witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration."

30. From the aforesaid decisions, it can be said that conviction can be made on the basis of the sole testimony of the prosecutrix. However, when a conviction can be based on the sole testimony of the prosecutrix, the Courts also have to be extremely careful while examining this sole testimony. If the evidence of the victim inspires confidence, it must be relied upon without seeking corroboration of the aforesaid statement in material particulars. It can further be said that 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.

31. Keeping in view the aforesaid decisions, if the deposition given by the prosecutrix is carefully examined, we are of the view that the version given by the victim raises doubt and does not inspire confidence. We have already discussed that even medical evidence does not support the version given by the victim. There is a delay of 24 hours in



lodging the F.I.R., for which no explanation was given by the prosecution. Thus, we are of the view that simply relying upon the deposition given by the prosecutrix, in the facts and circumstances of the present case, the appellant cannot be convicted or awarded sentence.

32. In the case of **Asharfi (supra)**, the Hon'ble Supreme Court has observed at para-8 as under:-

“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 the Appellant Under Section 3(2)(v) of the SC/ST Prevention of Atrocities Act cannot be sustained.”

33. Keeping in view the aforesaid decision, if the facts of the prosecution, as discussed hereinabove, are examined, we are of the view that there is no evidence on the record from which it can be said that the appellant has committed the offence under Section- 3(2)(v) of the SC/ST



(Prevention of Atrocities) Act, 1989.

33.1. Further, it is pertinent to note that even provisions of Section- 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989 would not be applicable in the present case and, therefore, the sentence awarded by the Trial Court for the said offence is also required to be set aside. Section- 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989 Provides as under:-

“5. Enhanced punishment for subsequent conviction.—Whoever, having already been convicted of an offence under this Chapter is convicted for the second offence or any offence subsequent to the second offence, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.”

34. In the present case, the incident took place in the year 1994 and, therefore, as per the provision prevalent at the relevant point of time with regard to Section-376 of I.P.C., it is revealed that the minimum sentence prescribed for the said offence is 7 years. In the present case, the Trial Court, relying upon the said provision, has sentenced the appellant imprisonment for 7 years. However, Section- 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989 provides that where the punishment prescribed for the offence under I.P.C. is



10 years or more years then life imprisonment can be awarded. In the present case, sentence provided in I.P.C. under Section-376 at the relevant point of time was 7 years and, therefore also, the Trial Court has committed grave error while imposing sentence of life imprisonment under Section- 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989.

35. Thus, from the aforesaid deposition of the prosecution-witnesses, we are of the view that there are major contradictions and improvement in the deposition of the prosecution-witnesses.

36. In view of the aforesaid facts and circumstances of the present case, we are of the view that the prosecution has failed to prove the case against the appellant/accused beyond reasonable doubt, despite which the Trial Court has recorded the impugned judgment of conviction and order of sentence. As such, the same are required to be quashed and set aside.

37. Accordingly, the impugned judgment of conviction dated 06.02.2019 and order of dated 13.02.2019 passed by learned 11th A.D.J.-cum-Spl. Judge (SC/ST) Act, Muzaffarpur in connection with Trial No.206/2015, G.R. No.1096/1994, arising out of Sahebganj P.S. Case No. 91 of



1994 dated 05.10.1994 are quashed and set aside and the appellant is acquitted of the charges levelled against him by the learned Trial Court.

37.1. Since the appellant, namely, Haribabu @ Hari Babu Prasad is in jail, he is directed to be released from jail custody forthwith, if his presence is not required in any other case.

38. The appeal stands allowed.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

K.C.Jha/-

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