A.F.R.

Reserved on 20.7.2022

Delivered on 28.7.2022

Court No. - 44

Case :- CRIMINAL APPEAL No. - 4083 of 2017
Appellant :- Pintu Gupta
Respondent :- State of U.P.
Counsel for Appellant :- Dharmendra Kumar Singh,Rajesh Yadav
Counsel for Respondent :- G.A.

Hon'ble Dr. Kaushal Jayendra Thaker,J.
Hon'ble Ajai Tyagi,J.

(Per Dr. K.J. Thaker, J.)

1. Heard Sri Rajesh Yadav, learned counsel for the accused-appellant and Sri Nagendra Srivastava, learned A.G.A. assisted by Sri Akhilesh Kumar Tripathi, learned A.G.A. for the State.

2. This appeal challenges the judgment and order dated 13.6.2017 passed by IIIrd Additional Sessions Judge, Court No.4, Jaunpur in Sessions Trial No.74 of 2011 convicting accused-appellant, Pintu Gupta, under Sections 326 of Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and Section 3 (2) (v) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as SC/ST Act). The accused-appellant was sentenced to rigorous imprisonment of 10 years with fine of Rs. 25,000/- under Section 326 of I.P.C. and was sentenced to imprisonment for life with fine of Rs.10,000/- under Section 3 (2) (v) of SC/ST Act. Default sentences for both the offences were one year rigorous imprisonment each. The date of sentence was 14.6.2017.

3. Brief facts as culled out from the record are that on the basis of the written report, the F.I.R. came to be lodged against the accused on 29.1.2011 by the father of the injured as the injured was

hospitalized. The injured was caused burn injuries by hitting him with a bottle in which there was some liquid which is said to be acid and the injured was taken for medical treatment. The F.I.R. states that the age of the accused-Pintu Gupta was 20 years and that of the injured-Sanju Kumar Benvanshi, namely the son of the informant was 18 years at the time of incident. It was further alleged in the F.I.R. that looking to the incident there was commotion in the public and public started running here and there. As the accused sprinkled acid on the face of the injured, his face was badly burnt and for some time his eyesight was lost. The First Information Report was lodged on 29.1.2011. The incident occurred at 6.30 in the evening when people were sitting in shops and were having their tea. Ladies with their children were purchasing vegetables and other grocery items.

4. The police, after recording statements of P.W.2 namely the injured, medical professionals namely, Dr. Prabha Shankar Chaturvedi who had treated the injured and the police authorities, laid the charge-sheet against the accused on 4.2.2011.

5. The accused was committed to the Court of Session as the case was triable by the Court of Session. The learned Sessions Judge framed charges on the accused on 27.4.2012. The accused pleaded not guilty and wanted to be tried.

6. For bringing home the charge, the prosecution has examined 7 witnesses who are as under :

1	Rajendra Benvanshi	PW1
2	Sanju Kumar Benvanshi	PW2
3	Dr. Prabha Shankar Chaturvedi	PW3
4	Dr. R.A. Chakravarti	PW4

5	Jayantri Lal	PW5
6	Vijendra Giri	PW6
7	Narendra Pratap Singh	PW7

7. In support of ocular version following documents were filed:

1	F.I.R.	Ex.Ka.9
2	Written Report	Ex.Ka.1
3	Recovery Memo of Pieces of Bottle of acid and half burnt grass	Ex. Ka.5
4	Search Memo & Recovery of Pant	Ex.Ka.6
5	Injury Report	Ex.Ka.2
6	Bed Head Ticket	Ex. Ka.3
7	Charge-sheet	Ex. Ka. 12
8	Site Plan with Index	Ex. Ka.11

8. The Court has also examined a witness namely Kayam Mehndi. The accused-appellant was examined under Section 313, Cr.P.C. and the judgment of the Sessions Judge was delivered on 13.6.2017 and the sentence was ordered on 14.6.2017.

9. This appeal came to be filed in July, 2017 and was admitted by this Court. **The accused is in jail since 2.2.2011**, meaning thereby, he was under trial prisoner and during trial he was not enlarged on bail.

10. As far as factual aspects are concerned, learned counsel for the appellant has submitted that Section 326 of IPC is not made out as injuries are not such which would fall within the purview of Section 326 of IPC. It is further submitted by learned counsel for the appellant that even if it is proved that the offence under Section 326IPC is made

out, the punishment is on higher side which requires to be modified.

11. As far as commission of offence under Section 3 (2) (v) of SC/ST Act is concerned, it is submitted by learned counsel that the F.I.R. nowhere states that the injured belongs to a particular community. No documentary evidence to prove the same is there. The documentary evidence, so as to prove that the injured belongs to Scheduled Caste or Scheduled Tribe, has not been produced either before Investigating Officer or Sessions Court. The F.I.R. also according to the counsel for the appellant does not state anything about the same though the incident is said to have occurred it was in public place. No independent witness has been examined by the prosecution except the father of the injured whose presence at the place of incident is very doubtful as in his examination-in-chief, he has opined that he does not know why the incident had occurred. In his statement, he has mentioned that he is not aware whether accused-appellant, Pintu was also injured. It is his categorical statement that the police officer inquired of his son but he has denied the fact, in his oral testimony, he has not mentioned that as he belongs to a particular community, the incident had occurred. It is further submitted that P.W.2, the injured has also not mentioned that the incident occurred because of his community. It is further submitted that P.W.2, in his oral testimony, has opined that before the said incident, the accused-appellant used to meet him regularly. He has also opined that when the incident occurred, there were people who were having tea in shop and ladies were buying vegetables at the place of incident. It is stated that before the police authority, under Section 161 of Cr.P.C., P.W.2 has only stated that accused-appellant, Pintu Gupta, had beaten him and, therefore also, no case is made out under Section 3 (2) (v) of SC/ST Act. It is further submitted that the finding of fact by the learned Sessions Judge is based on surmises and conjectures.

12. Learned counsel for the appellant has relied on decisions of the Apex Court in Criminal Appeal No. 707 of 2020 **Hitesh Verma Vs. State of Uttarkakhand and another** decided on 5.11.2020 and on Criminal Appeal No. 1283 of 2019 (**Khuman Singh vs. State of Madhya Pradesh)** decided on 27.8.2019 & learned counsel for the for the appellant has also pressed the decisions of this Court in Criminal Appeal No. 8196 of 2008 **(Jai Karan @ Pappu vs. State of U.P.)** decided on 10.11.2021 and in Criminal Appeal No. 204 of 2021 **(Vishnu vs. State of U.P.)** decided on 28.1.2021 so as to contend that provisions of Section 3 (2) (v) of SC/ST Act are not made out and accused requires to be acquitted as there is no mention either in F.I.R. or testimony that the incident occurred because the injured belonged to Scheduled Caste. Learned counsel further submitted that the ingredients to invoke Section 3 (2) (v) of SC/ST Act are not proved and decision only holds that the accused guilty as injured belongs to Scheduled Caste.

13. Learned A.G.A. has taken us through the testimony of P.W.2 & P.W.3 so as to contend that provisions of Section 3 (2) (v) of SC/ST Act is made out as the injured and the father of the injured belong to scheduled caste and, therefore conviction under the aforesaid section is just and proper and the judgment cited by counsel for the appellant in **Khuman Singh, Jai Karan & Vishnu (Supra)** would not apply to the facts of this case and the conviction under SC/ST Act be maintained.

14. Section 3 (2) (v) of SC/ST Act reads as under:

> *"3.* ***Punishments for offences of atrocities.—***
> ***(1).....xx.....xx.....***
> *(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—*
> ***(i).....xxx.....***
> ***(ii).....xx.....***
> ***(iii).....xxx.....***
> ***(iv).....xxx.....***

> *(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."*

15. Normally, we do not discuss the importance of F.I.R. but, this is a classic case where discussion on contents and importance of F.I.R. is necessary. Section 154 of Cr.P.C. will be necessary which reads as under:

> *" **154. Information in cognizable cases.***
>
> *(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read Over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.*
>
> *(2) A copy of the information as recorded under sub- section (1) shall be given forthwith, free of cost, to the informant.*
>
> *(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in subsection (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence."*

16. The F.I.R., in the case at hand, was lodged by the father of the injured. Whether it can be said that the incident which occurred in broad day light was on the ground that the injured belong to a particular community falling in the term 'Scheduled Castes' or 'Scheduled Tribes' so as to attract the provision of Section 3 (2) (v) of SC/ST Act. **The F.I.R. is silent about this aspect.** Documentary evidence showing what caste to the offender and the injured belong has not been brought on record. For attracting the provisions of Section 3 (2) (v) of SC/ST Act, there should be corroboration by way of documentary evidence to prove that the injured, on whom the act is committed, belongs to 'Scheduled Castes' or 'Scheduled Tribes'. Just because a person belongs to and says so, will it be a piece of

evidence? It is nobody's case that the appellant committed this crime on the ground that the injured belong to a particular community. Even if we believe that there is no documentary evidence and that the injured belongs to the community which he states then also can it be said that the offence has been committed as he belongs to a particular community? This is moot question which arises before us.

17. In **Ram Das vs. State of U.P., AIR 2007 SC 155** wherein there was rape on woman belonging to Scheduled Caste, it was held that these could be no ground to convict the accused under Section 3 (2) (v) when there was no evidence to support the charge under Section 3 (2) (v) of SC/ST Act. Mere fact that victim happened to be a girl belonging to Scheduled Caste did not attract provisions of SC/ST Act.

18. In **Dharmendra vs. State of U.P., 2011 Cri LJ 204 (All),** the Court has held that there was no evidence on record to show that incident was caused by the accused on the ground that victim belonged to Scheduled Caste. Fact of victim, belonging to Scheduled Caste by itself was not sufficient ground to bring case within the purview of Section 3 (2) (v) of Act. Conviction under Section 3 (2) (v) was improper.

19. In **State of Gujarat v. Munna, 2016 Cri LJ 4097 (Guj),** the Court held as under:

> *"In the instant case, so far as the charge against the accused for the offence punishable under Section 3 (2) (v) of the Atrocity Act, 1989 was concerned, from the deposition of the witnesses it had not come out that the accused committed the offence against the deceased on the ground that deceased was a member of Scheduled Caste or Scheduled Tribe. In absence of such evidence it could not be said that the original accused had committed the offence punishable under Section 3 (2) (v) of the Atrocity Act, 1989. Under the circumstances on the basis of the evidence of record the accused could not be held guilty for the aforesaid offence."*

20. Decision of the Division Bench of this Court in case of **Vishnu (Supra)** penned by one of us (Dr. K.J. Thaker, J.) held as under :

> *"38. Section 3(2)(v) of Scheduled Casts and Scheduled Tribes*

(Prevention of Atrocities) Act, 1989 is concerned, the FIR and the evidence though suggests that any one or any act was done by the accused on the basis that the prosecutrix was a member of Scheduled Castes and Scheduled Tribes then the accused can be convicted for commission of offence under the said provision. The learned Trial Judge has materially erred as he has not discuss what is the evidence that the act was committed because of the caste of the prosecutrix. The sister-in-law of the prosecutrix had filed such cases, her husband and father-in-law had also filed complaints. We are unable to accept the submission of learned AGA that the accused knowing fully well that the prosecutrix belongd to lower strata of life and therefore had caused her such mental agony which would attract the provision of Section 3(2)(v) of the Atrocities Act. The reasoning of the learned Judge are against the record and are perverse as the learned Judge without any evidence on record on his own has felt that the heinous crime was committed because the accused had captured the will of the prosecutrix and because the police officer had investigated the matter as a attrocities case which would not be undertaken within the purview of Section 3(2)(v) of Atrocities Act and has recorded conviction under Section 3(2)(v) of Act which cannot be sustained. We are supported in our view by the judgment of Gujarat High Court in Criminal Appeal No.74 of 2006 in the case of ***Pudav Bhai Anjana Patel Versus State of Gujarat*** *decided on 8.9.2015 by Justice M.R. Shah and Justice Kaushal Jayendra Thaker (as he then was).*

39. Learned Judge comes to the conclusion that as the prosecutrix belonged to community falling in the scheduled caste and the appellant falling in upper caste the provision of SC/ST Act are attracted in the present case.

40. While perusing the entire evidence beginning from FIR to the statements of PWs-1, 2 and 3 we do not find that commission of offence was there because of the fact that the prosecutrix belonged to a certain community.

41. The learned Judge further has not put any question in the statement recorded under Section 313 of the accused relating to rape or statement which is against him.

42. In view of the facts and evidence on record, we are convinced that the accused has been wrongly convicted, hence, the judgment and order impugned is reversed and the accused is acquitted. The accused appellant, if not warranted in any other case, be set free forthwith."

21. In the case at hand, no independent witness have been examined who would depose that the accused committed the offence on the ground that injured belonged to a community covered under SC/ST Act. This omission proves fatal for the prosecution in such a vital matter where punishment is for life imprisonment. The learned Judge has not even discussed the evidence and only on the basis of caste, he held that the offence was deemed to be committed. There is no deeming provision under SC/ST Act. In view of the above, we cannot concur with the learned Sessions Judge as the evidence which has

been laid before the learned judge has been misread by learned Sessions Judge and he has misconstrued the provision of Section 3 (2) (v) of SC/ST Act. Conviction and sentence under Section 3 (2) (v) of the accused-appellant is, therefore, set aside

22. This takes us to the commission of offence under Section 326. Section 326 of IPC reads as under :

> "***326. Voluntarily causing grievous hurt by dangerous weapons or means***—*Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."*

23. The evidence in this matter of P.W.1 and P.W.2 coupled with the medical evidence and the fact that the injured had sustained burn injuries on the face, show that the injures had sustained grievous injuries. The provisions of Section 326 of IPC relates to voluntary causing grievous hurts by dangerous weapons or means. In this case the glass bottle filled with acid was used as weapon of offence and/or substance which is deleterious to the human body and, therefore, ingredients of Section 326 of IPC are made out. Section 320, Sixthly, designate "Permanent disfiguration of the head or face" as 'grievous hurt' which is punishable under Section 326 of IPC. The present offence falls in the said category and, therefore, we are unable to subscribe to the submission of the counsel for the appellant that no case is made out under Section 326 of IPC.

24. This takes us to the alternative submission of learned counsel for the appellant that the quantum of sentence is too harsh and requires to be modified. In this regard, we have to analyse the theory of punishment prevailing in India.

25. In ***Mohd. Giasuddin Vs. State of AP, [AIR 1977 SC 1926]***, explaining rehabilitary & reformative aspects in sentencing it has been observed by the Supreme Court:

> *"Crime is a pathological aberration. The criminal can ordinarily be redeemed and the state has to rehabilitate rather than avenge. The sub-culture that leads to ante-social behaviour has to be countered not by undue cruelty but by reculturization. Therefore, the focus of interest in penology in the individual and the goal is salvaging him for the society. The infliction of harsh and savage punishment is thus a relic of past and regressive times. The human today vies sentencing as a process of reshaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of a social defence. Hence a therapeutic, rather than an 'in terrorem' outlook should prevail in our criminal courts, since brutal incarceration of the person merely produces laceration of his mind. If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him and, men are not improved by injuries."*

26. 'Proper Sentence' was explained in ***Deo Narain Mandal Vs. State of UP [(2004) 7 SCC 257]*** by observing that Sentence should not be either excessively harsh or ridiculously low. While determining the quantum of sentence, the court should bear in mind the 'principle of proportionality'. Sentence should be based on facts of a given case. Gravity of offence, manner of commission of crime, age and sex of accused should be taken into account. Discretion of Court in awarding sentence cannot be exercised arbitrarily or whimsically.

27. In ***Ravada Sasikala vs. State of A.P. AIR 2017 SC 1166,*** the Supreme Court referred the judgments in ***Jameel vs State of UP [(2010) 12 SCC 532], Guru Basavraj vs State of Karnatak, [(2012) 8 SCC 734], Sumer Singh vs Surajbhan Singh, [(2014) 7 SCC 323], State of Punjab vs Bawa Singh, [(2015) 3 SCC 441], and Raj Bala vs State of Haryana, [(2016) 1 SCC 463]*** and has reiterated that, in operating the sentencing system, law should adopt corrective machinery or deterrence based on factual matrix. Facts and given circumstances in each case, nature of crime, manner in which it was planned and committed, motive for commission of crime, conduct of

accused, nature of weapons used and all other attending circumstances are relevant facts which would enter into area of consideration. Further, undue sympathy in sentencing would do more harm to justice dispensations and would undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to nature of offence and manner of its commission. The supreme court further said that courts must not only keep in view the right of victim of crime but also society at large. While considering imposition of appropriate punishment, the impact of crime on the society as a whole and rule of law needs to be balanced. The judicial trend in the country has been towards striking a balance between reform and punishment. The protection of society and stamping out criminal proclivity must be the object of law which can be achieved by imposing appropriate sentence on criminals and wrongdoers. Law, as a tool to maintain order and peace, should effectively meet challenges confronting the society, as society could not long endure and develop under serious threats of crime and disharmony. It is therefore, necessary to avoid undue leniency in imposition of sentence. Thus, the criminal justice jurisprudence adopted in the country is not retributive but reformative and corrective. At the same time, undue harshness should also be avoided keeping in view the reformative approach underlying in our criminal justice system.

28. Keeping in view the facts and circumstances of the case and also keeping in view criminal jurisprudence in our country which is reformative and corrective and not retributive, this Court considers that no accused person is incapable of being reformed and therefore, all measures should be applied to give them an opportunity of reformation in order to bring them in the social stream.

29. As discussed above, 'reformative theory of punishment' is to be

adopted and for that reason, it is necessary to impose punishment keeping in view the 'doctrine of proportionality'. It appears from perusal of impugned judgment that sentence awarded by learned trial court for life term is very harsh keeping in view the entirety of facts and circumstances of the case and gravity of offence. Hon'ble Apex Court, as discussed above, has held that undue harshness should be avoided taking into account the reformative approach underlying in criminal justice system.

30. In view of the above, as far as offence under Section 326 of IPC is concerned, punishment of 10 years imprisonment is too harsh and the fine of Rs.25000/- is also too harsh. We reduce the sentence to 9 years' incarceration and fine to Rs.2000/-, reason being, the complainant and the injured would have been adequately compensated by the Government as they have invoked provisions of Section 3 (2) (v) of SC/ST Act. We do not direct refund of the said amount though we record clean acquittal under Section 3 (2) (v) of SC/ST Act. We also reduce the default sentence to one month.

31. The accused-appellant is in jail. If 9 years of incarceration is over, he shall be set free immediately, if not warranted in any other offence. The default sentence will be given effect to after completion of 9th year of incarceration and if the period of default sentence is also over, he need not pay fine. Record be transmitted to Trial Court.

Order Date :- 28.7.2022
DKS