

**Court No. - 42**

**Case :-** CRIMINAL APPEAL No. - 2590 of 2017

**Appellant :-** Gaurav Yadav @ Phadka

**Respondent :-** State of U.P.

**Counsel for Appellant :-** Govind Saran Hajela

**Counsel for Respondent :-** G.A.

**Hon'ble Ashwani Kumar Mishra, J.**

**Hon'ble Mohd. Azhar Husain Idrisi, J.**

*(Per Ashwani Kumar Mishra, J.)*

1. This appeal is by the accused appellant Gaurav Yadav @ Phadka challenging the judgment and order of conviction and sentence, dated 11.04.2017, passed by the Special Judge, Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act, Agra in Special Session Trial No. 44 of 2011 (State vs. Gaurav Yadav @ Phadka) arising out of Case Crime No. 94 of 2011, Police Station Chhatta, District Agra, whereby he has been convicted and sentenced to life imprisonment under section 376 IPC read with section 3(2) (V) of Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act with fine of Rs.10,000/- and in default of fine he is to undergo six months' additional imprisonment.

2. The prosecution case proceeds on a written report (Ex.Ka.1) given by the informant Bhagwan Das (PW-1), scribed by Deepak Khare, stating that on 3/4.5.2011 at about 10.00 pm the informant was sleeping outside his house alongwith his wife (PW-4) and 8 years old daughter (victim). The informant's wife woke up at about 02.00 in the night and found that her daughter was lying next her in a pool of blood. She (PW-2) screamed as a result of which informant and other family members woke up and rushed to

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the victim, who informed that a person took her while she was sleeping and subjected her to sexual assault and thereafter assaulted her with brickbat, so as to kill her and thinking that victim has died left her alone. Somehow the victim returned and lay next to her mother. The victim thereafter fainted. The victim was taken to emergency wing for treatment after informing the police. Her operation and treatment was going on when request was made to take appropriate action on the report.

3. On the basis of aforesaid written report First Information Report (Ex.Ka.7) got registered as Case Crime No.94 of 2011, under Sections 376, 307 IPC, Police Station Chhatta, District Agra on 04.05.2011 at 02.00 am. Investigation commenced in the matter. Recovery of bloodstain and plain earth was made from the spot vide Ex.Ka.2. Recovery of underwear of victim was also made vide Ex.Ka.3.

4. The victim was medically examined on 04.05.2011 at 04.20 am by the Medical Officer of Women Hospital wherein following condition of victim has been noticed:-

“For external injury referred to ED, SNMC, Agra for medico-legal examination if it has not been done and for admission and management.

G.C.- POOR, Breast not developed.

Internal Examination- Examination done under anaesthesia given by Dr. S. P. Singh. Pubic and axillary hair absent. Hymen torn. Fresh bleeding present. Swelling present. Tenderness present. Hymen and perineal tear present at 5 o'clock and 7 o'clock position including the vaginal mucosa, muscle and skin up to the anus. It is about 3x3cm and about 1 cm deep. 1 abrasion present at 6 o'clock position. Vaginal smear taken on glass slide and sent for examination for spermatozoa. For age she is referred to CMO, District Agra.”

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5. The letter by which the victim was referred for treatment to the hospital is Ex.Ka.5. Vaginal smear was also taken and sent for pathological examination vide Ex.Ka.6. Pathological report is also on record wherein no spermatozoa was seen. Supplementary report of the victim is also on record as per which the injury on the victim was caused by hard and blunt object. The age of victim was determined as about 5 years.

6. The recovered articles were sent for scientific analysis to the Forensic Science Laboratory vide Ex.Ka.13. As per the report of FSL human blood was found on the recovered articles and semen was also found on the underwear of the victim.

7. The victim on account of traumatic experience suffered by her was not able to explain the incident or specify the name of accused. The Investigating Officer took photograph of three suspected accused and shown them to the victim who immediately identified the accused as being the perpetrator of crime. The victim identified the accused as Gaurav Uncle (appellant). Statement of victim (Ex.Ka.14) was also recorded under Section 164 Cr.P.C. wherein she identified the accused appellant as being the person who had committed sexual assault on her.

8. On the basis of evidence collected during the course of investigation charge sheet came to be submitted against the accused appellant under Sections 376, 307 IPC read with section 3(2)(V) SC/ST Act. The concerned Special Judge SC/ST Act took cognizance and framed charges against the accused appellant under aforesaid sections on 16.08.2011. The charges were explained to the accused appellant, who denied the same and demanded trial. Trial commenced

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accordingly.

9. The informant (father of victim) has appeared as PW-1 and has fully supported the prosecution case. He has explained that on coming to know of the incident he rushed his daughter and admitted her in emergency wing where she was operated and regained her consciousness. She disclosed the name of accused as Gaurav Yadav. PW-1 has proved the written report. PW-1 has disclosed that he is Dhobi by caste and thus belongs to scheduled caste. In the cross-examination, PW-1 has stated that house of accused Gaurav Yadav is around 20-25 paces from his house. He had normal relations with him till the incident. They used to visit each other on social occasions. He woke up in the night hearing his wife's cries. Victim's face was crushed and she was bleeding. The Investigating Officer had asked all relatives to leave and inform him about the identify of accused, as is disclosed by victim. Victim tried to tell something but she was not clear and the Investigating Officer could not follow her initially. After 2-3 days of the incident the victim could disclose the name of accused. Three photographs were shown to the victim out of which the victim identified the accused appellant. PW-1 has admitted that in the FIR name of accused is not specified since it was not known to him as to who has committed the offence.

10. PW-2 is Satish, who is the neighbour of PW-1. In his testimony, he has stated that at around 02.00 in the night he heard screams of PW-1. On coming he found that the victim was lying in pool of blood and calling the name of Gaurav and later she fainted. They found bloodstains near the hand-pump close to Tara Niwas. Victim's underwear was also lying there.

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In the cross-examination, PW-2 has stated that there is a gap of only one house between the house of informant and his own house. His signatures were obtained by the Investigating Officer on various papers. His statement was recorded by police on the next morning. He was with the informant when the victim was taken to the hospital.

11. The victim has been produced as PW-3, who has identified the accused as being Gaurav Yadav. He lives in her neighbourhood. She has specifically disclosed that accused took her in the night and when she resisted and asked the accused to leave her the accused gagged her mouth. She called accused as uncle since he lives in the neighbourhood. Accused had taken the victim to the corner of house of Babuji and caused injuries by brickbat and committed sexual assault upon the victim. She later returned on her own. In the cross-examination, she disclosed that her mother memorized her to speak clearly and state that the accused Gaurav had committed rape on her. She was also told to identify and recognize the accused appellant. She alleged that when accused assaulted her with brickbat she screamed but none came to her rescue. She had not woken up her parents. She disclosed the name of accused to her mother in the hospital. Her father had shown the photograph of accused and told her to recognize accused as being Gaurav Yadav. At the time when Investigating Officer enquired from the victim about the identity of accused her grandfather, and grandmother and father were present. She was specifically told that on the asking she must disclose the name of Gaurav as being the person who committed rape on her. Her grandmother and father also told her to take the name of Gaurav Yadav. She has denied the suggestion that on the asking of family

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members she has falsely implicated the accused. She has proved her statement under Section 164 Cr.P.C.

12. The mother of victim has been produced as PW-4. She has stated that her daughter was sleeping next to her and when she touched her at around 02.00 pm she found her wet and felt cold. She woke up and switched on the light and found blood on the head of victim. The victim was semi-conscious and saying "Gau Gau". She was actually referring to accused. The accused was identified by the victim from his photograph. Photograph was shown of 4-5 persons to the victim but she identified accused Gaurav. She has denied the suggestion that on the instigation of corporator Deepak Khare she has falsely implicated the accused Gaurav.

13. PW-5 is Dr. Chhaya Upadhyaya, who has proved the injury report and other medical papers of victim. She was examined under anaesthesia and her hymen was torned and fresh bleeding was present. Swelling and tenderness was also present. Hymen was torned in the position of 5 o'clock and 7 o'clock. There was tear stretch from vagina mucosa upto anus. She has stated that injuries on the victim could have been caused by hard and blunt object. As per the doctor these injuries could have come from male organ. In the cross-examination, PW-5 has stated that injuries on private parts could have been caused by blunt object also apart from male organ. She denied the suggestion that such injuries could not be caused by male organ.

14. PW-6 is Ram Sewak Verma, who was posted as Sub Inspector at the police station and was the Investigating Officer of the case. He has proved the document of recovery. He had recorded the statement of victim in the hospital on

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06.05.2011. No permission was taken from doctor to record her statement. The victim was not in a condition to speak on 04.05.2011. SHO Rakesh Kumar was with him when he visited the victim. The accused was identified by the victim from photograph. Photograph of accused was given by victim's mother. On 06.05.2011 the victim took the name of accused and has also identified the accused. He has also proved the arrest of accused appellant on 06.05.2011.

15. PW-7 is S. I. Indrapal Singh, who has proved the G.D. entries. PW-8 (Ravindra Kumar Singh) was posted as Circle Officer and conducted the investigation in the matter from 09.11.2011 onwards since allegation was also made under SC/ST Act. He has proved the charge-sheet. He, however, has not recorded the statement of witnesses.

16. Upendra Singh has been produced as Court Witness, who is the Principal of school where Gaurav Yadav studied. He has stated that accused's date of birth was 30.06.1995. He was admitted in the school on 05.07.1999. Accused passed 5<sup>th</sup> class on 07.05.2004. His name is mentioned in the scholar's register. In the cross-examination, CW-1 has admitted that there are cuttings in the date of birth. Transfer certificate was issued on 27.05.2015.

17. On the basis of evidence led in the matter the statement of accused appellant has been recorded under Section 313 Cr.P.C. wherein he has denied the accusations made against him. He has stated that the investigation is false and witnesses have made false statement against him. He has been falsely implicated due to enmity. In reply to question no.14 he has stated that he had differences with the local politician Deepak Khare, who had illicit relations with the

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victim's mother and that is why he has been falsely implicated in the matter.

18. The defence has also produced Kanta Yadav as DW-1, who has alleged that only on the basis of suspicion the accused appellant had been apprehended and later released by the police. He has stated that the accused appellant is innocent and has been falsely implicated and that the accused is a tempo driver and is a man of good character. He has no criminal antecedents. He has further stated that near the place of occurrence there is famous Pt. Tea shop and since transporters have their offices located nearby it remains open till 1-2 in the night. Truck drivers and conductors come to the tea shop to have tea. He has alleged that no incident was reported in the night. It was after 4-5 days that the accused appellant has been implicated under Section 376 IPC. In the cross-examination, DW-1 has admitted that she has been brought by the mother of accused and he has good relations with the family members of accused Gaurav.

19. Manish Bhardwaj has been produced as DW-2. Accused appellant and his father both are auto drivers with clean antecedents. The concerned police station had interrogated 13-14 persons including father of accused appellant and later accused was apprehended. There are offices of transporters where accused appellant lives. 40-50 persons, engaged as labourers, keep moving in the area as they work for the transporters.

20. On the basis of evidence so led in the matter the trial court has found the complicity of accused appellant to be established beyond reasonable doubt and consequently, the accused appellant has been convicted and sentenced vide



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impugned judgment and order of conviction and sentence.

21. Ms. Zia Naz Zaidi, learned counsel for the accused appellant submits that accused appellant has been falsely implicated in the present case; evidence on record has not been carefully scrutinized by the trial court; the accused appellant has been implicated merely on the strength of suspicion and on account of enmity with the scribe; victim in the facts of the present case was tutored as is clearly reflected from her testimony; the manner in which incident is said to have occurred is wholly improbable, inasmuch as in a densely populated area the victim was thrashed with bricks and she raised an alarm but none heard her screams. This is highly improbable that no one would respond or come to the rescue of victim in such densely populated area. The fact that the victim came back on her own, did not wake up her mother and slept next to her mother is most unnatural. It is also submitted that the accused appellant in his statement under Section 313 Cr.P.C. has stated that he has been falsely implicated on account of enmity with the scribe. Learned counsel with reference to offence under Section 3(2)(V) SC/ST Act submits that there is no evidence on record to show that offence of rape upon the victim has been committed on account of her caste identity and, therefore, accused appellant's conviction under SC/ST Act is wholly without any evidence.

22. Shri R. P. Rajan, learned Amicus Curiae for the informant and Shri G. P. Singh, learned A.G.A. for the State have strongly opposed the appeal on the ground that the victim is five years old minor girl, who has been brutally assaulted and the nature of injuries caused to her has to be viewed with

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utmost disdain. It is argued that the victim had to suffer injuries beyond imagination at such young age which has virtually ruined her life and, therefore, the accused appellant deserves extreme punishment.

23. We have heard learned counsel for the parties and perused the material brought on record, including the original records of the trial court.

24. Five year old minor has been subjected to brutal sexual assault in this case while she was sleeping next to her parents. The incident has occurred at about 02.00 in the night. In sleep the mother touched the victim lying next to her and felt wet. She got up and switched on the light to find that victim had sustained injuries on her head and was bleeding both from her head and also from her private parts. The incident has been promptly reported to the police at about 02.30 in the night. At 02.30 itself a reference letter was prepared for the victim to be sent to the hospital. The victim has been medically examined and is found to have serious injuries on her private parts. There was tear stretch from vagina mucosa upto victim's anus. The victim had to be operated upon by the doctors. The doctor who has examined the victim has been produced as PW-5. She has fully supported the prosecution case with regard to sexual assault on the victim. Although the doctor has stated that injuries could have been caused by hard and blunt object but she has also categorically stated that such injuries on the victim could have been caused by male organ. Although it is faintly suggested that the incident could have occurred as a result of accident but we are not impressed by such argument. The injury report shows no injuries on the outer private parts of

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the victim. It would be difficult to conceive that an accidental injury could be caused tearing hymen; fresh bleeding; hymen and perineal tear present at 5 o'clock and 7 o'clock position including vaginal mucosa, muscle and skin up to the anus of size of 3x3cm and 1 cm deep, without any visible marks of injury on the outer parts of victim's private region. The medical opinion clearly suggests that the injury could be caused by male organ. The plea of injury being accidentally caused is thus rejected. Semen was also found on the victim's underwear. The evidence on record, therefore, clearly indicates it to be a case of sexual assault on the minor.

25. In the facts of the case, the witnesses have also claimed that the victim was assaulted by brickbat and that she sustained multiple injuries on head and she fainted on account of it. The accused appellant has been charge-sheeted also under section 307 IPC since the prosecution case is that the accused having committed offence of sexual assault on the minor victim also caused her injuries by brickbat so that she may not depose against the accused. As per the prosecution case the accused left her under the belief that victim has died. The prosecution witnesses are consistent on this count. The medical evidence in this regard, however, is absolutely lacking. There is nothing on record to show that any injuries were sustained by the victim on her face or head/scalp. Although prosecution witnesses have alleged that on account of such injuries caused on her head the victim suffered great pain but the medical report is conspicuously silent on this count. There is no reason why other injuries on the victim would not be noticed by the doctor or indicated in any of the reports. It is for this reason that the accused appellant has been acquitted under Section 307 IPC. This part of the

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prosecution case has been disbelieved by the trial court and we find no reason to doubt the conclusions drawn by the trial judge.

26. The thrust of submission of Ms. Zaidi on behalf of accused appellant is that the accused appellant has been falsely implicated and it is on the instigation of the family members that she had identified the accused appellant. This argument on behalf of appellant is based on the testimony of victim, who has admitted that her mother had told her to speak clearly and disclose in the court that the accused Gaurav committed the offence with her. She was also told to identify the accused appellant when he appears in the dock. The accused appellant was also got identified by the parents of the victim. She has also stated that her parents have told her to take the name of accused Gaurav as being the person who committed sexual assault on her.

27. In the facts of the case, we find that the victim is minor girl of five years, who has suffered brutally sexual assault. The tear of her private part extended right upto her anus. She was not only hospitalized but the witnesses have testified that she had to be operated. In such extreme sufferings of minor child some support of the family members would be natural and obvious. Though it is settled that a minor child may be prone to tutoring but that in itself may not be decisive in the facts of the present case.

28. We have carefully examined the testimony of victim and it is apparent that she has disclosed in detail about the incident suffered by her. From the questions posed to her the Court has recorded its satisfaction that the victim is capable of understanding the answers given by her. At the relevant time

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when she was produced in court she was studying in class 1<sup>st</sup>. She has been honest in acknowledging the assistance that she got from her family members in making her version clear and categorical to the court. She has, however, specifically recognized the accused appellant as being the person who committed sexual assault on her. She has denied the suggestion that it was someone else who had done such heinous act on her. She has also denied the suggestion that under family pressures she has implicated the accused appellant. The victim has also proved her statement recorded before the Magistrate under Section 164 Cr.P.C. wherein also she has specifically implicated the accused appellant.

29. The prosecution has also explained the manner in which the identity of accused appellant came to be established during the course of investigation. Though the victim took the name as 'Gau Gau' when she regained consciousness but complete identity of accused could not be ascertained then. The police took photographs of various persons and all such photographs were shown to minor who identified the accused appellant. This is specifically recorded by the Investigating Officer in the case diary and explained in the testimony of Investigating Officer during trial. The process of identification cannot be said to be doubtful when we examine the age of victim and the extreme brutality which she has suffered. The trial court has ensured the competence of the PW-3 (the child victim) to depose before the court. She has clearly deposed that the accused appellant has committed sexual assault upon her. This fact finds support from the medical evidence on record. Parents of the victim as also the neighbours have supported the version of victim as per which she sustained injuries and was found bleeding from her private parts. The

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Investigating Officer during investigation collected bloodstained underwear of victim on which semen was also found. The bloodstained underwear has also been produced in court as material exhibit. We otherwise find that there is no specific reason furnished by the accused appellant for falsely implicating him in the matter. Though it is suggested that he had inimical relations with the scribe, but apart from saying so in his statement under section 313 Cr.P.C. no other credible evidence has been led in that regard. The defence witnesses although have suggested enmity but no reasons of such differences or enmity with the scribe have been furnished.

30. Taking into consideration the totality of circumstances we are not inclined to accept the argument on behalf of appellant that since the the victim has stated that her parents had told her to take name of the accused appellant or identify him in court would lessen the evidentiary value of prosecution evidence. The place of occurrence as well as presence of witnesses in night are not questioned. It is otherwise settled that the evidence of rape victim stands at par with the testimony of injured witness. The accused appellant otherwise lives close-by and his presence at the place of occurrence cannot be easily doubted.

31. It is also settled that if statement of rape victim inspires confidence and is found trustworthy and reliable no further corroboration is required. In the case of Ganga singh vs. State of Madhya Pradesh (2013) 7 SCC 278 the Supreme Court held that the victim of rape has to be given same weight as is given to injured witness and her testimony needs no corroboration. The prompt lodging of FIR; reference of victim to the hospital at 02.30 in the night; her medical examination

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soon thereafter by the doctor clearly persuades the Court not to doubt the veracity of prosecution case.

32. From the analysis of testimony of prosecution witnesses it is clear that the prosecution on the strength of evidence led by it has successfully established its case beyond reasonable doubts against the accused appellant. The medical evidence also corroborates oral testimony of victim. There is also no serious discrepancies in the testimony of PW-3 (victim) which may effect her reliability. In such circumstances, there is no reason to disbelieve the victim. The trial court has analysed the evidence on record in proper manner and has recorded the finding of guilt of accused appellant. The finding of trial court is, therefore, not shown to have suffered from any illegality or perversity. Consequently, the conviction of accused appellant under Section 376 IPC is sustained.

33. So far as the conviction and sentence of accused appellant under Section 3(2)(V) of SC/ST Act is concerned, we find that none of the witnesses have anywhere alleged that the offence of rape was committed upon the victim on account of her caste identity. Except to state that the victim belongs to scheduled caste, there is absolutely no evidence on record to even remotely suggest that the offence has been committed by the accused appellant upon the victim on account of her caste identity.

34. In what manner an offence under Section 3(2)(v) SC/ST Act can be established has been dealt with extensively by the Supreme Court in Patan Jamal Vali Vs. The State of Andhra Pradesh, reported in (2021) 16 SCC 225. In para 62 to 64 of the report, the Supreme Court has clearly laid down that the prosecution must prove that the offence was committed on

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account of caste identity by the accused appellant. The observations of the Court are reproduced hereinafter:-

"62. The issue as to whether the offence was committed against a person on the ground that such person is a member of an SC or ST or such property belongs to such member is to be established by the prosecution on the basis of the evidence at the trial. We agree with the Sessions Judge that the prosecution's case would not fail merely because PW 1 did not mention in her statement to the police that the offence was committed against her daughter because she was a Scheduled Caste woman. However, there is no separate evidence led by the prosecution to show that the accused committed the offence on the basis of the caste identity of PW 2. While it would be reasonable to presume that the accused knew the caste of PW 2 since village communities are tightly knit and the accused was also an acquaintance of PW 2's family, the knowledge by itself cannot be said to be the basis of the commission of offence, having regard to the language of Section 3(2)(v) as it stood at the time when the offence in the present case was committed. As we have discussed above, due to the intersectional nature of oppression PW 2 faces, it becomes difficult to establish what led to the commission of offence — whether it was her caste, gender or disability. This highlights the limitation of a provision where causation of a wrongful act arises from a single ground or what we refer to as the single axis model.

63. It is pertinent to mention that Section 3(2)(v) was amended by the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, which came into effect on 26-1-2016. The words "on the ground of" under Section 3(2)(v) have been substituted with "knowing that such person is a member of a Scheduled Caste or Scheduled Tribe". This has decreased the threshold of proving that a crime was committed on the basis of the caste identity to a threshold where mere knowledge is sufficient to sustain a conviction. Section 8 which deals with presumptions as to offences was also amended to include clause (c) to provide that if the accused was acquainted with the victim or his family, the court shall presume that the accused was aware of the caste or tribal identity of the victim unless proved otherwise. The amended Section 8 reads as follows:

"8. Presumption as to offences.—In a prosecution for an offence under this Chapter, if it is proved that—

(a) the accused rendered any financial assistance in relation to the offences committed by a person accused of, or reasonably suspected of, committing, an offence



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under this Chapter, the Special Court shall presume, unless the contrary is proved, that such person had abetted the offence;

(b) a group of persons committed an offence under this Chapter and if it is proved that the offence committed was a sequel to any existing dispute regarding land or any other matter, it shall be presumed that the offence was committed in furtherance of the common intention or in prosecution of the common object.

(c) the accused was having personal knowledge of the victim or his family, the Court shall presume that the accused was aware of the caste or tribal identity of the victim, unless the contrary is proved."

64. The Parliament Standing Committee Report on Atrocities Against Women and Children has observed that, "high acquittal rate motivates and boosts the confidence of dominant and powerful communities for continued perpetration" and recommends inclusion of provisions of the SC & ST Act while registering cases of gendered violence against women from the SC & ST communities. However, as we have noted, one of the ways in which offences against SC & ST women fall through the cracks is due to the evidentiary burden that becomes almost impossible to meet in cases of intersectional oppression. This is especially the case when courts tend to read the requirement of "on the ground" under Section 3(2)(v) as "only on the ground of". The current regime under the SC & ST Act, post the amendment, has facilitated the conduct of an intersectional analysis under the Act by replacing the causation requirement under Section 3(2)(v) of the Act with a knowledge requirement making the regime sensitive to the kind of evidence that is likely to be generated in cases such as these."

35. There is no evidence on record to show that the offence of rape was committed by the accused appellant on account of the caste identity of the victim. In the absence of any evidence in that regard, we are persuaded to accept the appellant's contention that the offence under Section 3(2)(v) SC/ST Act is not established against the accused appellant. The conviction and sentence of the accused appellant under Section 3(2)(v) SC/ST Act is, therefore, reversed and he has been acquitted in this offence.

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36. Coming to the question of quantum of punishment under Section 376 IPC, learned counsel for the appellant submits that at the time when the incident occurred the minimum punishment for the offence under Section 376 IPC was 10 years and maximum punishment was life. Learned counsel has produced custody certificate of accused appellant as per which the actual custody undergone by him is 12 years 8 months 29 days as on 05.02.2024. Together with remission the period of incarceration is nearly 15 years as on date, which is above the minimum period of punishment prescribed for the offence of rape on a victim below 12 years of age. The accused appellant was around 25 years of age when his statement was recorded under Section 313 Cr.P.C. on 19.09.2016 and he was around 18-19 years at the time of incident. Argument is that considering the period of incarceration undergone by the accused appellant and the offence committed by him, his sentence be modified to the sentence already undergone by him.

37. Learned A.G.A. for the State, on the other hand, submits that in the facts of the case the accused appellant has committed heinous crime inasmuch as the victim has been subjected to brutal sexual assault on account of which she had to suffer immense pain and suffering. It is, therefore, submitted that the punishment of life imposed by the trial court is adequate and requires no interference.

38. Learned counsel for the appellant, in reply, submits that the accused appellant was only around 18-19 years of age at the time when incident occurred. He was a auto rickshaw driver and has no criminal antecedents. The mother of accused appellant is a vegetable seller and is extremely poor

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lady. Apart from the appellant there is no other earning member in the family. It is also submitted that though offence is serious for which the accused appellant has to be adequately punished, yet, the Court may also show leniency on account of abject poverty faced by the accused appellant as also his age at the time of incident. Learned counsel for the appellant has placed reliance upon a judgment of this Court in the case of Gopal Rana vs. State of U.P. being Criminal Appeal No.6934 of 2010 wherein the Court observed as under in paragraph nos.29 and 30:-

29. Reliance is also place upon a Division Bench judgment of this Court in Criminal Appeal No. 2433 of 2008 (Munawwar Vs. State of U.P.), wherein this court after sustaining the finding of guilt and consequently conviction of the accused appellant modified the sentence to the period actually undergone by the accused appellant. Reliance is also placed upon the judgments of Supreme Court in the cases of G.V. Siddaramesh v. State of Karnataka 2010 (3) SCC 152 and Hem Chand v. State of Haryana 1994 (6) SCC 727, wherein sentence of life awarded by the courts below was modified by the Supreme Court and reduced the sentence to the period already undergone of over 10 years. to sentence already undergone.

30. Having considered the facts of the present case as also the applicable judgments on the issue as well as the nature of offence committed by the accused appellant and the sentence already undergone by him, we are of the considered view that in the facts of the case, the sentence awarded to the accused appellant be modified and that ends of justice will be served if the appellant be punished with period of sentence already undergone by him. The sentence awarded to the accused-appellant by the court below is modified to the above extent and the appeal is liable to be allowed, in part, to such extent.

39. Considering the above facts and circumstances, we are of the considered view that the accused appellant must be made to undergo punishment commensurate with the nature of guilt established against him. Considering the age of the accused appellant at the time of incident; his precarious financial position wherein his mother is a vegetable seller;

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there is no earning member in the family; accused is a first offender and possibility of his reformation cannot be ruled out, the sentence of 14 years rigorous imprisonment would adequately serve the purpose. Since the period of sentence undergone by the accused appellant with remission is nearly 15 years the life punishment imposed can be substituted with the sentenced already undergone by him under Section 376 IPC.

40. Consequently, the appeal succeeds and is allowed in part. The punishment of life imposed upon accused appellant under Section 376 IPC is modified with the sentence already undergone by him. The accused appellant is reported to be in jail, he shall be released forthwith, unless is wanted in any other case, subject to compliance of Section 437A Cr.P.C.

**Order Date:-** 29.05.2024  
Ashok Kr.