



**THE HIGH COURT OF ORISSA AT CUTTACK**

**CRA No.271 of 1994**

(In the matter of an application under Section 374 of the Criminal Procedure Code, 1973)

***Iswar Chandra Mahanta @ Iswar Mahanta*** ..... ***Appellant***

***-Versus-***

***State of Orissa*** ..... ***Respondent***

For the Appellant : Ms. Chetna Prakash, Advocate

For the Respondent : Mr. Sobhan Panigrahi, ASC

**CORAM:**

**THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA**

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Date of Hearing: 26.03.2026     ::     Date of Judgment: 16.04.2026

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***S.S. Mishra, J.***     The present Criminal Appeal, filed by the appellant is directed against the judgment and order dated 25.07.1994 passed by the learned Special Judge-cum-Sessions Judge, Koraput- Jeypore in Sessions Case No.205 of 1993, whereby the appellant has been convicted for the



offence under Section 3(1)(xi) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter called as “SC & ST (PoA) Act” for brevity). On that count, he has been sentenced to undergo R.I. for six months and to pay a fine of Rs.50/-, in default to undergo R.I. for one week.

2. Heard Ms. Chetna Prakash, learned counsel for the appellant and Mr. Sobhan Panigrahi, learned Additional Standing Counsel for the State.

3. The prosecution case, in brief, is that on 12.03.1993, during the forenoon hours, the victim along with other female labourers, who were engaged under a contractor (the brother of the accused), demanded issuance of identity/employment cards. The accused, who was supervising the work on behalf of his brother, directed them to continue with their work. The victim, however, asserted that they would not resume work unless such cards were issued. This led to an altercation, during which the accused allegedly became annoyed and pushed the victim, causing her to fall to the ground. It is alleged that, in the process, her clothes were displaced, resulting her being exposed, thereby



outraging her modesty and causing humiliation to her and the other female labourers present. Subsequently, the victim lodged a written report at the Police Station, on the basis of which a case was registered. Upon completion of investigation, charge-sheet was submitted against the accused under the relevant provisions of the SC & ST (Prevention of Atrocities) Act.

The defence of the accused is one of complete denial. Claiming false implication, the accused has stated that the victim did not raise any such demand before him. Rather, according to him, one Jugal Satapathy instigated the labourers not to work on the pretext of a strike. It is further contended that when the labourers insisted upon issuance of employment cards, he expressed his inability and asked them to return home if they were unwilling to work. The accused has alleged that thereafter he was assaulted by Jugal Satapathy, Gani Swain, Suresh Biswal, Minaketan Senapathy and Nihar Patnaik (P.W.5), and was paraded in the market in a naked condition. In support of his defence, the accused has examined Haribandhu Biswal as D.W.1 and has produced certified copies of the injury report in Damanjodi P.S. Case No.221 of 1993, the charge-sheet



therein, the complaint petition in II.C.C. No.46 of 1993, and depositions recorded in the said case, which have been marked as Exts. A to E.

4. In order to substantiate its case, the prosecution has examined five witnesses. P.W.1 was the victim, who has deposed regarding the entire occurrence. P.Ws.2 and 3 were the eye-witnesses, who have also supported the prosecution case by narrating the incident. P.W.4 was the then Sub-Inspector of Police of Damanjodi Police Station, who conducted the investigation and submitted the charge-sheet. P.W.5 was the scribe of the written report, which was prepared at the instance of P.W.1 and subsequently lodged at the Police Station.

5. The learned trial Court, upon a careful analysis and appreciation of the oral evidence adduced by the prosecution, particularly that of P.Ws. 1, 2 and 3, undertook a detailed examination of the factual matrix surrounding the alleged occurrence. The Court assessed the consistency, credibility and probative value of their testimonies in the backdrop of the surrounding circumstances and the defence plea. In that context, the learned trial Court recorded the following findings:-



*“14. On going through the evidence of P.Ws.1, 2 and 3, it is clear that as usual they had taken the “Belcha” from the store room and wanted to work subject to the issue of employment cards to them. It is clear that the accused did not take away the “Belcha” from other workers including P.Ws. 2 and 3. Their evidence is that since P.W.1 insisted to work and also for issue of employment cards, the accused got annoyed caught hold of her hand, pushed her, took away the “Belcha” on which she was sitting and due to this push she fell down and became naked in presence of others. In these circumstances, it cannot be presumed that intention of the accused was to take the “Belcha” which belongs to the Contractor. Further, the defence plea does not show that the ‘belcha’s were taken away by the workers illegally. There is no cross-examination to the evidence of P.Ws.1, 2 and 3 that they took the ‘Belcha’ from the store room of the Contractor as usual. Thus, it is clear that the possession of ‘Belchas’ by them was legal and with the knowledge of the Contractor. In this circumstance, the accused has got no right to forcibly remove the ‘Belcha’ from them and in the facts and circumstances of the case, it cannot be believed that the accused intended to take away the ‘Belchas’ from the workers. There is no evidence much less any suggestion to the effect that the workers wanted to take away the ‘Belchas’ to their house, rather the uniform and cogent evidence is that the workers sat near the store room and insisted for issuance of employment cards, so that they would work. This part of evidence has not been shattered in the cross-examination of P.Ws.1, 2 and 3. The evidence of these witnesses is that when P.W.1 among the workers insisted that they would not go to their house when the accused asked them to go to their houses if they would not work and*



*P.W.1 insisted to work subject to issue of employment cards, the accused got annoyed, caught hold of her hand, pushed her and took the 'Belcha' upon which she was sitting. At the cost of re-petition, I am to again mention that the accused did not want to take the 'Belcha' from others for the reasons that they were not insisting for issue of employment cards and P.W.1 on behalf of the workers was raising her voice."*

6. Aggrieved by the findings recorded by the learned trial Court on the basis of which the accused has been convicted and sentenced, the present appeal has been filed assailing the same.

7. P.W.1 is the informant and victim in the present case. She in her evidence has deposed that she was working under one Contractor, namely, K.C. Mahanta, who is the brother of the accused. On the date of occurrence at about 10 A.M., she was sitting along with other labourers in the office verandah. The accused came and asked them as to why they were sitting instead of working. She retorted that unless they were issued with employment card, they would not be working. Then the accused lost the temper and told that he did not know anything about such card and pointedly asked them as to whether they would work or not. She insisted for the employment card. Thereafter, the accused caught hold of



her left hand and dragged her telling that why she was showing much temper and provoking other labourers. She fell down and her wearing saree came up to her thigh, therefore, she felt ashamed. Thereafter, she got a report scribed by P.W.5 and filed written report before the Police Station. The police sent her for medical examination. She has also deposed that she is a Harijan.

P.W.4, being the Investigating Officer of the case, has deposed that on 12.03.1993 at about 1:00 P.M., P.W.1 submitted a written report before the I.I.C., Damanjodi P.S., which disclosed a cognizable offence. Upon receipt of the said report, the case was registered and he was directed to take up the investigation. During the course of investigation, he examined P.W.1 and issued an injury requisition to the Medical Officer, Mathalpur P.H.C., in respect of P.W.1, which has been marked as Ext.2.

**8.** Reading of the evidence of P.W.4 reveals that no effort was made by him to collect any documentary evidence to establish the caste of the victim (P.W.1). Furthermore, P.W.4 did not take any steps to bring on record either ocular or documentary evidence to establish that the



appellant does not belong to a Scheduled Caste or Scheduled Tribe. In that contest, learned counsel for the appellant has placed reliance on the judgment of this Court in the case of ***Daitari Prasad Sahu and others vrs. Harihar Behera and another*** in ***CRA No.301 of 1999***, wherein this Court in paragraphs-15 and 16, held as under:-

*“15. To satisfy the ingredients of any offence under SC & ST Act, it is obligatory on the part of the prosecution to bring on record the evidence to prove the caste of the victim. The evidence is not only to be cogent but also reliable document issued by the competent authority, rather than mere oral deposition of the witnesses required to be brought on record. The Hon“ble Madhya Pradesh High Court in the matter of ***Prahalad and another vrs. The State of M.P.***, (Criminal Appeal No.50 of 2004) has ruled that “if prosecution fails to prove the caste of victim by any cogent and reliable document issued by the competent authority, then mere oral deposition of witness would not deem to be proved”.*

*The Madhya Pradesh High Court in another judgment reported in **2012 MP 1309, Chalaniya Dheemar vrs. State of M.P.** has also held as under:-*

*“On a close scrutiny of the evidence of aforesaid witnesses, it is clearly established that accused caught the hand of complainant Hiriya (PW-1) in the Nala with a view to outrage her modesty while she was going to fetch greenery. However, on scanning the evidence of all the prosecution witnesses. I find that there is absolutely no legal evidence*



*to establish that complainant Hiriya belonged to scheduled caste or scheduled tribe. No certificate of any competent authority to that effect was produced or proved before the Court. Neither Hiriya (PW-1) nor any other witness including head constable Devideen (PW-4) deposed in the Court that she belonged to scheduled caste. It is true that in the first information report Ex P/1 and Ex.P/2 the name of complainant has been mentioned as Hiriya Ahirwar, but merely from that it cannot be held that she belonged to scheduled caste in the absence of legal evidence in the Court. First Information Report cannot be treated as a part of substantive evidence. It can be used only for corroboration or contradiction of its maker. It is also important to note that police registered the offence under section 354 of Indian Penal Code only and not under the provisions of SC & ST (Prevention of Atrocities) Act. Trial Court recorded the finding that it was established that accused outraged modesty of the complainant who belonged to scheduled caste but it appears to have been based on no legal and substantive evidence.”*

*16. Relying upon the aforementioned two judgments of Madhya Pradesh High Court, this Court in the matter of **Ajay Kumar Singh vrs. State of Orissa** in **CRA No. 315 of 1995** has held as under:-*

*“A careful reading of both the aforesaid judgments reveals that the principle laid down is consistent and unequivocal, in prosecutions under the Act of 1989, the caste*



*status of the victim is an essential ingredient of all the offence under the Act and must be proved by cogent and reliable evidence, preferably through a certificate issued by the competent authority. Mere oral assertions, unaccompanied by any such documentary proof, cannot be treated as sufficient to establish this foundational fact. In both Prahalad (supra) and Chalaniya Dheemar(supra), the Hon'ble Madhya Pradesh High Court held that in the absence of such proof, the charge under the provisions of the Act cannot be sustained, even if other aspects of the prosecution case are otherwise proved. This legal position, when applied to the present case, clearly fortifies the defence contention that the prosecution has failed to discharge its burden of proving the caste status of the informant beyond reasonable doubt.”*

9. From the evidence placed on record by the prosecution in the present case exactly reveals the similar factual scenario as reflected in the judgment of ***Daitari Prasad*** (supra) cited by the learned counsel for the appellant. Therefore, the case of the appellant is directly covered by the said judgment.

10. Reading of the evidence of P.W.1 and other witnesses also reveals that the appellant insisted P.W.1 and other labourers to work without



issuing the employment card. Since the victim (P.W.1) and other labourers refused to work, the appellant got enraged and dragged P.W.1 by holding her hand. The appellant had not committed the said overt act because P.W.1 belongs to Scheduled caste. Moreover, it is not coming forth in the evidence as to whether the appellant knew that the P.W.1 belongs to SC or ST. In this context, reliance placed on the judgment of the Hon'ble Supreme Court in the case of ***Dashrath Sahu vrs. State of Chhattisgarh***, reported in **2024 INSC 68** appears to be apposite. The Hon'ble Supreme Court in paragraphs-8, 9 and 10 of the said judgment has held as under:-

*“8. A plain reading of the section makes it clear that the offence of outraging the modesty should be committed with the intention that the victim belonged to the Scheduled Caste category.*

*9. We have gone through the FIR and the sworn testimony of the prosecutrix/complainant as extracted in the judgments of the High Court as well as that of the trial Court. The case as projected in the FIR and the sworn testimony of the prosecutrix would reveal that the prosecutrix/complainant was engaged for doing household jobs in the house of the accused appellant who tried to outrage her modesty while the prosecutrix/complainant was doing the household chores. Apparently thus, even from the highest allegations of the prosecutrix, the offending act was*



*not committed by the accused with the intention that he was doing so upon a person belonging to the Scheduled Caste. This issue was dealt with by this Court in the case of **Masumsha Hasanasha Musalman Vs. State of Maharashtra** wherein it was held as below:-*

*“9. Section 3(2)(v) of the Act provides that whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, commits any offence under the Penal Code, 1860 punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine. In the present case, there is no evidence at all to the effect that the appellant committed the offence alleged against him on the ground that the deceased is a member of a Scheduled Caste or a Scheduled Tribe. To attract the provisions of Section 3(2)(v) of the Act, the sine qua non is that the victim should be a person who belongs to a Scheduled Caste or a Scheduled Tribe **and that the offence under the Penal Code, 1860 is committed against him on the basis that such a person belongs to a Scheduled Caste or a Scheduled Tribe.** In the absence of such ingredients, no offence under Section 3(2)(v) of the Act arises. In that view of the matter, we think, both the trial court and the High Court missed the essence of this aspect. In these circumstances, the conviction under the aforesaid provision by the trial court as well as by the High Court ought to be set aside.”*

*(Emphasis supplied)*

*10. In the said judgment, this Court dealt with a case involving offence under Section 3(2)(v) of the SC/ST*



*Act. The language of Section 3(1)(xi) of the SC/ST Act is pari materia as the same also provides that the offence must be committed upon a person belonging to Scheduled Castes or Scheduled Tribes with the intention that it was being done on the ground of caste."*

**11.** It is imperative for attracting the offence under SC & ST (PoA) Act to establish that the act is committed by the accused with an intention and on the ground that the victim belongs to SC or ST. This elementary ingredient required to bring the offence under the SC & ST Act is missing in the present case as from reading of the evidence of P.W.1. Therefore, on that count also, the appeal succeeds.

**12.** Upon a comprehensive analysis of the evidence on record in the light of the aforesaid judgment, this Court is of the considered view that the prosecution has failed to prove its case beyond reasonable doubt. Accordingly, the judgment and order dated 25.07.1994 passed by the learned Special Judge-cum-Sessions Judge, Koraput- Jeypore in Sessions Case No.205 of 1993 are hereby set aside. The appellant is acquitted of all the charges. The bail bonds furnished by the appellant stand discharged.



13. Accordingly, the CRA is allowed and disposed of.

***(S.S. Mishra)***  
***Judge***

The High Court of Orissa, Cuttack.  
Dated the 16<sup>th</sup> April, 2026/ Swarna