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**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE  
BEFORE  
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH**

**CRIMINAL APPEAL No. 1157 of 1999**

**BETWEEN:-**

**CHANDRAKANT S/O UMRAOSINGH PATIDAR, AGE 36  
YEARS R/O MUSADDIPURA UJJAIN DISTRICT UJJAIN  
(MADHYA PRADESH)**

**.....APPELLANT**

**(BY SHRI VIVEK SINGH, ADVOCATE)**

**AND**

**THE STATE OF M.P. THROUGH P.S. MAKSI, DISTRICT  
UJJAIN (MADHYA PRADESH)**

**.....RESPONDENT**

**(BY SHRI RAJESH JOSHI, GOVERNMENT ADVOCATE)**

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**Heard on : 28.02.2024**

**Pronounced on : 13.03.2024**  
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*This criminal appeal having been heard and reserved for  
judgment, coming on for pronouncement this day, the Court passed the  
following :*

**JUDGMENT**

The appellant has preferred this appeal under Section 374 of the Code of Criminal Procedure, 1973 (for short 'the Code') being aggrieved and disgruntled by the judgment dated 31.08.1999 passed by learned 2<sup>nd</sup> Additional Sessions Judge, District Ujjain (M.P.) in Sessions Trial No. 96/1998, whereby the learned trial Court has convicted the appellant for the offence under Sections 366 and 376 of the Indian Penal Code, 1860 (hereinafter referred as to "IPC") and

sentenced him to undergo 5 years R.I. and 7 years R.I. with fine of Rs.500/- and Rs.1,000/- and default stipulations.

2. As per prosecution story, on 06.06.1998 at about 04:30, the accused Chandrakant and his mother Geetabai kidnapped the daughter of complainant (Subhash Patidar) whose age of about 16 years from Village Maksi Sarkari Kundi, District Shajapur and when the prosecutrix found, it was revealed that the accused Chandrakant committed rape upon prosecutrix. Initially, the father of prosecutrix, filed an FIR No. 115/1998 against the accused Chandrakant and his mother Geetabai for the offence under Sections 363 & 366/34 of IPC and thereafter, when the prosecutrix was found, Section 376 of IPC was enhanced. After due investigation, charge sheet was filed before the Court of Judicial Magistrate First Class, Shajapur.

3. In turn, the case was committed to the Court of Sessions and thereafter, appellant was charged for offence under Sections 363, 366/34 and 376 of I.P.C. He abjured his guilt and took a plea that he had been falsely implicated in the present crime and prayed for trial.

4. In support of the case, the prosecution has examined as many as 11 witnesses namely Subhashchandra (PW-1), Mahesh Patidar (PW-2), Narendra Jain (PW-3), Sharad Rawal (PW-4), Dr. Smt. Aruna Vyas (PW-5), Dr. S.K. Soni (PW-6), Prosecutrix (PW-7), Vijay Kumar Jain (PW-8), Rasheedkha (PW-9), C.K. Mishra (PW-10) & Hawasingh (PW-11). In defense, 6 witnesses namely C.K. Mishra, Asstt. Sub-Inspector (DW-1), Vishnuprasad Patidar (DW-2), Gayatribai (DW-3), Dr. Ramesh Shiva (DW-4), Ramprasad (DW-5), Seema Patidar (DW-6) have been adduced by the appellant.

5. Learned trial Court, on appreciation of the evidence and argument adduced by the parties, pronounced the impugned judgment on 31.08.1999 and

finally concluded the case and convicted the appellant for commission of the said offence under the provisions of Section 366 and 376 of I.P.C.

6. Learned counsel for the appellant submits that the appellant is innocent and the learned trial Court has convicted the appellant wrongly without considering the evidence available on record. Counsel for the appellant further submits that the appellant has not committed any offence because the prosecutrix was a consenting party as she remained in the relationship with the appellant, she herself went with the appellant. Even, she visited many places with the appellant and other persons and also took photographs. It is also submitted that the appellant had never forced her to make physical relation. It is also submitted that during the time of visiting places, she has not made any alarm or tried to call his relatives. There are some letters given by prosecutrix to the appellant when they were in relationship by which, it can be established that the prosecutrix was a consenting party. It is submitted that no injury was found on the body of prosecutrix. There are material contradictions and omissions in the statements of prosecution witnesses but the learned trial Court has erred in ignoring the same and in convicting the appellant. On these grounds, counsel prayed to set aside the impugned order in favour of appellant.

7. Learned Government Advocate has opposed the prayer, inviting attention of the Court towards the conclusive paragraphs of the impugned judgment and statement of prosecutrix. He has further submitted that the learned trial Court has rightly convicted the appellant by sentencing him appropriately. Hence, he prays for dismissal of the appeal.

8. In the backdrop of rival submissions, the question for determination for deciding this appeal is, as to whether the finding of learned trial Court

regarding conviction and punishment of the appellant under Sections 366 & 376 of I.P.C. is incorrect in the eyes of law and facts or not.

9. At the outset, at the time of incident, the actual age of the prosecutrix is required to be reckoned. As per prosecution case, at the time of incident, the age of prosecutrix is only 16 years. However, in this regard, Shri C.K. Mishra, ASI (DW-1) has categorically stated in his statement as defence witness that as per mark-sheet of prosecutrix, the date of birth of prosecutrix is 07.08.1979. The learned trial Court after considering the statement of C.K. Mishra, (DW-1), Ramesh Shiva (DW-4) and X-Ray report (Exhibit-D/13) viewed that at the time of incident, the age of the prosecutrix was more than 18 years. Since no appeal has been filed by the State against the accused as to that finding, it would not be proper to appreciate further in this regard. Now, the question is as to whether the offence of kidnapping or abduction was committed with intent that the prosecutrix may be compelled to marry with the appellant or any other person or she may be forced or seduced to make illicit intercourse with the appellant or any other person.

10. As such, in order to bring home, the offence punishable under Section 366 of IPC and offence of rape punishable under Section 376 required to be examined. In this regard, the statement of prosecutrix (PW-3) is worth to be mentioned wherein she has narrated in her examination-in-chief that when she was alone at home, the appellant Chandrakant came and stated to her that her in-laws are harassing her and not keeping her properly. He also stated that if she came with him, he would keep her well, but she declined his proposal, on which appellant stated that she had to come with him, otherwise, he would kill her and also her brother. In this sequence, she further stated that due to that threat, she came out from her home with the appellant where the mother of

appellant/Geetabai was standing, who has also stated that her son would keep her well. Thereafter, she went with them due to that threat. If any prudent man will go through the whole testimony of prosecutrix, it seems unnatural. How a person and his mother can compel a major girl to come with them by only using threat. In this regard, other materials available on record are also requisite for proper appreciation. In para 24, she has clearly admitted that she has written letter from Exhibit-D/1 and Exhibit-D/11 in her writing. Although, later on, she stated that she was compelled by the appellant to go with him.

11. After going through the letters Exhibit-D/1 and D/11, the statement that the prosecutrix was forced by the appellant to write the letters, is also evidently found unnatural.

12. In this regard, photographs Exhibit-D/1 to Exhibit-D/11 are also worth to be visualized. There is no sign of force, seen in the photographs and it appears that she was not under any pressure when the photographs were being taken. As per statement, she went to Biaora, Guna, Haridwar, Badrinath, again Haridwar, Abhaypur and then Ujjain with appellant and two others.

13. In para 64, she also deposed that so many times, the bus was checked by police personnel and army, but even then, she did not raise any alarm. On this aspect, the law laid down in the case of *State of Rajasthan Vs. Kishanlal*, [(2002) 5 SCC 424]. Relevant portion of the judgment is worth to mention here:-

Para 24.....

It is rather surprising that the accused entered the house at night and though the brother-in-law of the prosecutrix and his wife were sleeping only 20-25 feet away, the prosecutrix could not raise alarm so as to attract their attention. It further appears that

the prosecutrix was known to the accused and that is why the first question asked by her was as to why he had come in the night.

26. Having regard to these features of the case, the probability of the accused having had sexual intercourse with the prosecutrix with her consent cannot be ruled out. The features that we have noticed above probablise the defence of the respondent, and we entertain serious doubt about the truthfulness of the prosecution case that the accused had sexual intercourse with the prosecutrix without her consent.

27. In the facts and circumstances of the case, we are of the view that the respondent is entitled to the benefit of doubt. In the result this appeal is disposed of with a finding that though the sentence imposed by the High Court was illegal, having considered the evidence on record, we are satisfied that the respondent is entitled to the benefit of doubt. The appeal is, therefore, dismissed and the respondent is acquitted of all the charges levelled against him. The bail bonds of the respondent are discharged.

14. As per version of prosecutrix, certainly she was alone at her home and thereafter without using any force, only on the basis of threatening, she went with the appellant and his mother. It is pertinent to mention here the mother of the appellant/Geetabai has been acquitted by the learned trial Court. In this case, as per medical examination, no injury was found on the person of prosecutrix.

15. On this aspect, the statement of Dr. Smt. Aruna Vyas (PW-5) is significant wherein she has clearly stated that no sign of injury was found on the face, stomach, back, breast, thighs, hands, leg, upper limb and lower limb of the prosecutrix. Even, no injury was found in private parts and hymen was

found old ruptured and uterus was normal.

16. Witness Narendra Jain (PW-3) deposed that he had seen the prosecutrix sitting on the bus but the question is as to why he had not objected. Witness Mahesh Patidar (PW-2) has also stated that the prosecutrix was talking with appellant Chandrakant and his mother but he has not stated that anything regarding any alarm raised by the prosecutrix.

17. Father of the prosecutrix (PW-1)/complainant of the case has simply stated that his daughter left the house on 06.06.1998, the date of incident, but nothing came with regard to raise alarm.

18. So far as the para 39 of the statement of prosecutrix, she clearly deposed that the appellant took her forcibly. Further, she stated that due to fear, she has not made complaint to any person but this version of prosecutrix's statement herself, does not inspire by confidence. Again in para 74 of her statement, she stated that due to the threat to kill her and her brother by appellant, she went with him, but this statement has not been mentioned in her police statement (Exhibit-D/12). This is a material contradiction/omission which goes to the root of the case because it was said to be the main threat, owing to that she went with appellant and his mother. Thus, her statement regarding threat is found falsified and accordingly, it creates cloud on this whole prosecution story.

19. In the case at hand, the alleged incident of kidnapping or abduction is said to be occurred in day time and prosecutrix has not raise any alarm and also no one has objected on seeing the prosecutrix with the appellant, which increases the possibilities of the fact that the prosecutrix was a consenting party.

20. On this aspect, the observation of the Hon'ble Shri Justice S.K. Palo

in the case of *Premal Yadav Vs. State of M.P., 2016 LawSuit (MP), 647*, endorsing landmark judgment of Hon'ble Apex Court, is condign to quote here:-

"18. This being so, in such cases where the statement of the prosecutrix suffers from basic infirmities and probabilities factor does not support the allegation of rape, then only relying on the statement of the prosecutrix, conviction cannot be based. Applying the above test to the facts of the incident, the statement of the prosecutrix itself suffers from numerous infirmities and even does not find corroboration by medical evidence. In the case of *Bharwada Bhogin Bhai Vs. State of Gujarat, 1983 AIR (SC) 753*, the Hon'ble Apex Court has expressed the opinion that "corroboration may be insisted upon when a woman having attained majority is found in a compromising position and there is likelihood of her having leveled such an accusation on account of the instinct of self preservation or when the probabilities factor is found to be out of tune."

21. In view of the aforesaid proposition and analysis in entirety, it is crystal clear that the physical relations between the prosecutrix and appellant were made with consent. It can also be safely articulated that the prosecutrix was not compelled to go with the appellant due to threatening. Since, the appellant has not forced the prosecutrix to go with the appellant, the allegation of kidnapping and abduction can not be established. The prosecutrix is a major lady, she had not raised any alarm at the time of visiting places with the appellant and also when the police personnel and Army officials were nearby her. Hence, necessary ingredients of rape as required by Section 375 of IPC are not established and the prosecution case regarding committal of rape has not



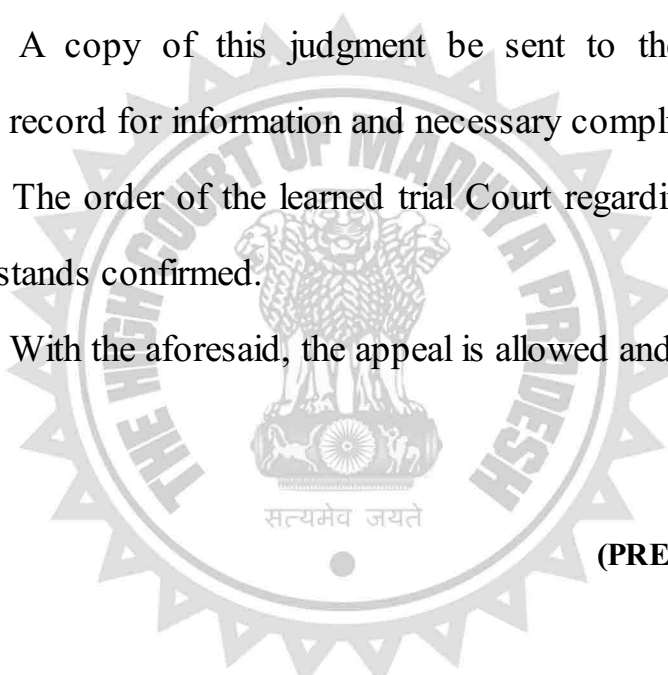
been proved beyond any reasonable doubt.

22. In the wake of the aforesaid analysis, the findings of the learned trial Court regarding conviction of the appellant under Sections 366 & 376 of IPC is perverse and deserves to be set aside. In the result thereof, the present appeal filed by the appellant is hereby allowed, having set aside the impugned judgment, the appellant is acquitted from the charge under Sections 366 & 376 of IPC. The appellant is on bail, hence, his bail bond and surety stand discharged. The appellant is entitled to receive back the fine amount deposited by him from the learned trial Court.

23. A copy of this judgment be sent to the concerned trial Court alongwith record for information and necessary compliance.

24. The order of the learned trial Court regarding disposal of the seized property stands confirmed.

25. With the aforesaid, the appeal is allowed and disposed of.



**(PREM NARAYAN SINGH)**  
**JUDGE**