



**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**ON THE 13<sup>th</sup> OF NOVEMBER, 2024**

**CRIMINAL APPEAL No. 456 of 2001**

***NIKHILESH S/O RAMCHANDRA***

*Versus*

***THE STATE OF M.P.***

---

**Appearance:**

*Shri Mukul Kumar Mandloi - Advocate for the appellant.*

*Ms. Mradula Sen – G.A./P.L. for respondent/State.*

---

**JUDGEMENT**

- 1] Heard finally, with the consent of the parties.
- 2] This criminal appeal has been filed by the appellant Nikhilesh, under Section 374(2) of Cr.P.C. against the judgement dated 10.04.2001 passed in S.T. No.470/2000 by 7<sup>th</sup> Additional Sessions Judge, Indore (M.P.) whereby, finding the appellant guilty, the learned Judge of the trial Court has convicted them as under:-

Conviction		Sentence		
Section	Act	Imprisonment	Fine	Imprisonment in lieu of Fine
363	IPC	3 years R.I.	Rs.500/-	1 month S.I.

- 3] The story of the prosecution is that on 24.02.2000, a missing person report was lodged by the complainant Bhagwan Das regarding his daughter Vandana, who was subsequently recovered on 26.02.2000, when the FIR Ex.P/9 was lodged. The investigation



ensued and the appellant was arrested, and finally, after the charge-sheet was filed, the learned Judge of the trial Court, after recording the evidence has convicted the appellant as aforesaid, and being aggrieved, the present appeal has been preferred.

4] Counsel for the appellant has submitted that the appellant has been falsely implicated in the case as the prosecution has not been able to prove its case beyond reasonable doubt. It is submitted that the age of the victim has not been proved to be less than 18 years, which is also apparent from the fact that her Class 5<sup>th</sup> mark-sheet has been filed to demonstrate that she was born on 26.03.1986 and his Class 8<sup>th</sup> mark-sheet is article – A, whereas Class 5<sup>th</sup> mark-sheet is article –B. It is also submitted that no other cogent document has been filed in support of the age of the victim, and in such circumstances, it cannot be said that she was less than 18 years old, and thus, the conviction of the appellant under Section 363 of IPC cannot be sustained.

5] Counsel for the State, on the other hand, has opposed the prayer and it is submitted that no case for interference is made out, looking to the fact that the appellant had abducted the victim with an intent to marry her.

6] Heard. Having considered the rival submissions, considering the fact that the age of the victim has not been proved by the prosecution to be less than 18 years, as the mark-sheets of Class 8<sup>th</sup> and 5<sup>th</sup> filed on record, cannot be used as the authentic source of date of birth, they are also not supported by any other cogent documents like birth certificate and scholar register. Apart from that, there is no ossification report is available to demonstrate the approximate age of the victim.

7] In such circumstances, it cannot be assumed that it was the appellant, who had enticed the victim away from her parents and it is



also found that he has not taken any advantage of the victim, who resided with him for a night at his friend's house. It is also found that the prosecutrix had gone with the appellant after he called her to come to *Anoop* Talkies, Indore and thereafter, both of them had also strolled in the market for around one and half hours.

8] In such circumstances, this Court is of the considered opinion that the prosecution has not been able to prove its case beyond reasonable doubt, and, accordingly, the impugned judgement dated 10.04.2001 is hereby set aside. The appellant is acquitted. Appellant is already on bail. His bail bonds stand discharged.

9] With the aforesaid, appeal stands *allowed* and *disposed of*.

**(SUBODH ABHYANKAR)**  
**JUDGE**

**Pankaj**