



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

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 1st OF MAY, 2025

CRIMINAL APPEAL No. 524 of 2001

PREM S/O BADRILAL

Versus

THE STATE OF M.P.

Appearance:

Shri Iqbal Khan along with Mohammed Imran Khan - advocate for the appellant.

Dr. Amit Bhatia – G.A. appearing on behalf of Advocate General/respondents.

JUDGMENT

1] This appeal has been preferred by the appellant Prem S/o Badrilal under Section 374 of Cr.P.C. against the judgement dated 19/04/2001 passed in Sessions Case No.157/2000 by the Sessions Judge, Dewas, District Dewas (M.P.) whereby finding the appellant guilty, the learned Judge of the Trial Court has convicted the appellant as under:-

Conviction		Sentence		
Section	Act	Imprisonment	Fine	Imprisonment in lieu of fine
376, 506 and 451	IPC	7 years RI	500/-	2 and 1 year RI

2] In brief, the facts of the case are that the FIR in the present case was lodged by the prosecutrix on 01/05/2000, at Crime No.102/2000 under Section 376, 506 and 452 of IPC in respect of the incident which took place



in the noon at around 12:30 of the said day. It is alleged that the appellant came to her house and asked about her husband and when she informed him that her husband is not at home, at that time, he entered into the house, closing the doors behind and thereafter committed rape on her, at that time, she also tried to raise an alarm, to which PW/4 Ramprasad also came, and the appellant fled from the spot. After the FIR was lodged, the investigation ensued and subsequently the Charge Sheet was filed in the trial Court, and the learned Judge of the trial Court after recording the evidence, found the appellant guilty and convicted him as aforesaid. Hence, this appeal.

3] Learned counsel for the appellant has submitted that there is no evidence adduced by the prosecution to the effect that the appellant forced himself on the prosecutrix, as admittedly, the prosecutrix was a married woman aged 28 years, having two children, and the report of the doctor (PW/1) has also certify that no internal or external injuries were found on the person of the victim. It is also submitted that although in the FSL report, some traces of human spermatozoa have been found but that itself cannot be said to be sufficient to connect the appellant with the offence in the absence of any DNA report as admittedly the victim was a married lady and was residing with her husband.

4] Counsel has also submitted that the independent witness Ramprasad (PW/4) has turned hostile and has also deposed in his cross examination that when he got into the house of the prosecutrix, at that time, he had seen that the appellant and the prosecutrix both were naked and were lying on the bed and after seeing him, the appellant put on his underwear and fled from the spot, however, his other cloths were left behind by him before fleeing from the spot. Thus, it is submitted that it was a clear case of consent and the prosecution has not been able to prove its case beyond reasonable doubt,



hence the appeal be allowed and the appellant be acquitted.

5] On the other hand, learned counsel for the respondent/State has opposed the prayer and it is submitted that no case for interference is made out.

6] Heard learned counsel for the parties and perused the record.

7] Having considered the rival submissions and on perusal of the record, it is found that the FIR (Exhibit P/5) in the present case has been lodged with promptitude after around 5 hours of the incident considering the fact that the police station was around 12 km away and the prosecutrix (PW/7) has also stated that to lodge the FIR, she had to walk to the police station, and has also stated that after her husband came back to home at around 6:00 O'clock, in the evening, they went to lodge the FIR.

8] It is also found that the defence of the appellant is one of consent and it has been suggested to the prosecutrix that she was having an illicit affair with the appellant, to which she has empathetically denied. It is also found that in respect of the FSL report which was positive, there is no cross examination of the prosecutrix that she being a married woman had intercourse with her husband prior to the incident.

9] It is also found that PW/4 Ramprasad had initially supported the case of the prosecution when his examination-in-chief was recorded on 28/11/2000, as it was stated by him that he went to the house of Gabbulal, the husband of the prosecutrix as he heard loud noises of Gabbu's wife, and when he got in after opening the door, the appellant ran away from the spot, however, in his cross examination which took place on 27/03/2001 i.e. after a period of around 4 months, he has turned hostile and has stated that when he got in to the house of the prosecutrix, he saw both the appellant and the prosecutrix were naked and in compromising position. He has also admitted



that the prosecutrix had earlier ran away with many persons. In the considered opinion of this Court, the considerable gap of around four months between his cross examination-in-chief and cross examination has clearly made all the difference and his testimony cannot be relied upon so far as his cross examination is concerned. On the other hand, on a close scrutiny, it is found that the PW/4 Ramprasad entered into the house of the prosecutrix only after hearing her cries, and if she was a consenting party, there was no reason for her to call for help and invite anyone's attention. Thus, the PW/4 Ramprasad's testimony can be used to corroborate the incident.

10] So far as the prosecutrix PW/7 is concerned, she has supported the case of the prosecution, and stated that when the appellant was violating her in her house, she also cried for help, at that time, PW/4 Ramprasad also came when the appellant was also present in the house, and after seeing him, the appellant ran away from the spot. This statement corroborates with the examination-in-chief of PW/4 Ramprasad, and she has also denied of the suggestion that she was a consenting party or that she was having any differences with her husband.

11] Thus Court is of the considered opinion that the prosecution has been able to prove its case beyond reasonable doubt and there is no reason for this Court to doubt the story of the prosecution, In view of the same, no case for interference in the impugned judgement is made out.

12] Accordingly, criminal appeal being devoid of merits is hereby *dismissed*. The appellant is on bail. He bail bond and personal bond stand cancelled. He is directed to surrender before the trial Court within 15 days.

Sd/-

(SUBODH ABHYANKAR)
JUDGE

krjoshi

