

1
**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH**

ON THE 25th OF JANUARY, 2024

CRIMINAL APPEAL No. 1540 of 2017

BETWEEN:-

**KANTABAI W/O VIJAYSINGH HARIJAN, AGED ABOUT 35
YEARS, OCCUPATION: HOUSEWIFE GRAM GHODA
KHEDA THANA KHUJNER (MADHYA PRADESH)**

.....APPELLANT

(SHRI HARSHVARDHAN PATHAK, ADVOCATE).

AND

**THE STATE OF MADHYA PRADESH STATION HOUSE
OFFICER THRU.P.S.KUJNER (MADHYA PRADESH)**

.....RESPONDENTS

(MS. VINITA DWIVEDI PL FOR STATE)

.....
*This appeal coming on for orders this day, the court passed the
following:*

JUDGMENT

With the consent of the parties heard finally.

1.This criminal appeal has been filed on behalf of the appellant under Section 374(2) of Cr.P.C. being aggrieved by the judgment dated 05.08.2017, delivered by learned Additional Judge, Rajgarh to the Court of First Additional Sessions Judge, District-Rajgarh, in Sessions Court No.339/2016, wherein learned Judge has convicted the appellant for the offence under Section 323 of the Indian Penal Code, 1860 and sentenced to undergo 1 year S.I.

2. As per prosecution case, on 05.02.2016 at about 07:30 pm, when the complainant along with two persons were on the way of agriculture land, the

appellant restrained the way of Mohan and abuse them and asked that why did he indulge her husband in gambling and thereafter she caused injuries by means of Hasia to the complainant on the head and back. The appellant herself lodged the FIR against the complainant Mohan that he along with other persons came to her home and asked for husband and caught her hand in order to outrage her modesty and said abusive words to her. In order to save her, she thrown wooden part of broken Hasia on the complainant. Complainant Mohan also lodged a complaint in the police station Khujner against the appellant.

3. During investigation, injured Mohan was sent for medical examination, spot map was prepared, seizure memos were prepared and statements of the witnesses were recorded. After completion of investigation, charge-sheet was filed before the ASJ, Rajgarh against the accused for offence under Section 323 of IPC and the Court has framed charges accordingly.

4. The prosecution has examined total 8 witnesses namely the Mohan (PW-1), Narendrasingh Gurjar (PW-2), Mangilal (PW-3), Vikram (PW-4), Anandilal (PW-5) and Rajeev Hariodh (PW-6). No witness has been examined in support of the defence by the appellant. The appellant abjured his guilt and he took a plea that he is innocent.

5. The appellant was tried and charged under Section 323 of IPC. The learned Court below, after considering the evidence and material available on record has convicted the appellant, as stated above in para No.1 of this order.

6. Learned counsel for the appellant expressly gave up his challenge to the findings of the Court below so far as the conviction of the appellant is concerned under Section 323 of IPC, 1860. In other words, the learned counsel for the appellant accepted the finding of conviction on merits, however, he challenged the quantum of punishment (1 year S.I) awarded to the appellant

under Sections 323 of IPC, 1860.

7. Counsel for the appellant submitted that the appellant herself got molested by the complainant. Counsel assures that the appellant will not involve in such criminal activities in future. He also submitted that having regard to all circumstances which resulted in appellant's conviction and further keeping in view the fact that the appellant was facing the trial before the concerned Court for more than 08 years and has already undergone approximately one month imprisonment therefore, the term of imprisonment be reduced to the period already been undergone by the appellant and the compensation amount be imposed suitably.

8. Learned Government Advocate for the respondent/State on the other hand supports the impugned judgment and prays for dismissal of this appeal. It is further submitted that the learned trial Court has passed the impugned judgment after considering each and every circumstances of the case and convicted the appellant rightly.

9. Having considered the rival submissions and on perusal of the record, the submission of the learned counsel for the appellant appears to be just and proper.

10. However, the learned trial Court has not committed any error in appreciation of evidence available on record. Further, it is found that the prosecution case has been well supported by the injured namely Mohan coupled with medical testimony. The Court below has well considered the material available on record, hence, no infirmity is found in the impugned order of conviction passed by the Court below, and accordingly, the same is upheld.

11. So far as the sentence part is concerned, considering the fact that the

appellant is facing the trial for more than 08 years and she has already suffered jail sentence of almost one month and looking to the injury of the injured, the judgment of learned trial Court is required to be ameliorated and it would be proper to impose the substantial compensation amount upon accused.

12. As a result thereof, having partly allowed the appeal, the jail sentence of appellant is set aside and in lieu thereof compensation of Rs.1,000/- is imposed upon appellant which shall be paid by the appellant before releasing from the jail. The bail bond of the appellant shall be discharged after depositing of the compensation amount. If the appellant fails to deposit the compensation amount of Rs.1,000/- before the Court below as stipulated above, the appellant shall further undergo 2 months S.I. and thereafter completion of the same, he shall be released from the jail, if not required in any other case. The whole compensation amount, if deposited, shall be paid to the complainant-Mohan as compensation under Section 357(3) of Cr.P.C.

13. With the aforesaid observations and directions, the appeal stands disposed of.

14. A copy of this order be sent to the concerned Court for necessary information.

15. The order of the trial Court regarding disposal of the seized article, if any, stands confirmed.

Certified copy, as per rules.

(PREM NARAYAN SINGH)
JUDGE