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CRA-1698-2018

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE GAJENDRA SINGH

ON THE 20th OF JUNE, 2025

CRIMINAL APPEAL No. 1698 of 2018

BABLU

Versus

THE STATE OF MADHYA PRADESH

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Appearance:

Shri Pranay Joshi - Advocate for the appellant.

Shri Rajesh Joshi- Government Advocate for the respondents State.

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Reserved on :- 20.06.2025

Posted on :- 30.06.2025

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J U D G M E N T

Heard on the question of admission.

The appeal is admitted.

IA No. 1362 of 2018 which is an application for suspension of sentence is dismissed as infructuous.

Heard finally with the consent of the parties.

This Criminal Appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 is preferred being aggrieved by the judgment dated



06.10.2015 passed in Special Sessions Case No. 33/2014 by Special Judge SC & ST (POA) Act, 1989, West Nimar, Mandleshwar, whereby the appellant accused has been convicted under Section 363, 366, 376 of the IPC and Section 4 read with Section 3 of the POCSO Act, 2012 and has been sentenced to 4 years rigorous imprisonment and Rs. 1000/- fine, 3 years rigorous imprisonment and Rs.1000/- fine, 7 years rigorous imprisonment and Rs. 1000/- fine, 7 years rigorous imprisonment and Rs. 1000/- fine with default stipulations of two months for each default payment of fine and sentences of imprisonment are to be run concurrently.

2. Prosecution put the case before trial Court that victim PW-1 borne on 20.07.1998 and aged 15 years on 22.10.2013 was missing. She belongs to scheduled caste category. She could not be traced till 25.10.2013 and FIR was lodged against the present appellant. A crime No. 196 of 2013 was registered at Police Station Karahi District Khargone. The victim was recovered on 23.02.2014. She was medically examined . The appellant accused was taken into custody on 23.02.2014 after completing the investigation. A report was submitted to the Court of Special Judge (SC & ST) Act, 1959.

3. The appellant accused was tried under Section 363, 366, 376 of IPC and Section 3 (2) (5), 3(1) (xii) of SC & ST (POA) Act, 1989 and Section 4 read with Section 3 of the POCSO Act, 2012. The appellant accused abjured guilt and claimed for trial.



4. To bring home the guilt, the prosecution examined as many as 11 witnesses including the victim (PW-1). Her father (PW-2). Mohd. Rafeeq (PW-3), Medical Officer Doctor Varsha (PW-4), Medical Officer Doctor Rajesh (PW-5), Sister of the victim (PW-6), Praveen Guriya (PW-7), Assistant Sub Inspector Sunil Patil (PW-8), H.S. Horiya (PW-9), Head Constable Sanjay Barwi (PW-10) and Sub-Divisional Officer (Revenue) and Anukul Jain (PW-11).

5. In examination under Section 313 the Code of Criminal Procedure, the appellant accused denied all the facts and circumstances appearing against him. He did not adduced any evidence in his defence.

6. Appreciating the testimony of Mohd, Rafeeq Khan (PW-3) and extract of Scholar Register (Exhibit-P-6), trial Court concluded that the date of birth of the prosecutrix is 20.07.1998 and she was 15 years 3 months old on the date of incident i.e 25.10.2013.

7. Appreciating the testimony of father (PW-2) prosecutrix (PW-1) Sunil Patil (PW-8), H.S. Horiya (PW-9) and Doctor Varsha (PW-4) trial Court found proved that victim was taken from the custody lawful guardian without their consent by the appellant and the victim was subjected to penetrative sexual assault and convicted and sentenced the appellant accused as per paragraph-1 of the judgment.

8. Challenging the conviction and sentence, this appeal has been preferred on the ground that trial Court recorded the findings that victim was



below the age of 18 years ignoring the statement of prosecutrix PW-1 herself. Trial Court also ignored the testimony of prosecutrix (PW-1) in which she stated that appellant did not take her anywhere and her father has lodged the report against the appellant because his father did not like the appellant. Trial Court ignored the material omissions and contradictions.

Heard.

10. Learned counsel for the respondent/State has opposed the appeal submitting that the the age of the victim is proved by Scholar Register. The consent of defence is not available to the appellant accused. Presumption under Section 29 of the POCSO Act, 2012 is not rebutted merely on the suggestions given to the prosecution witnesses.

Perused the record.

11. Victim (PW-1) has stated that she studied upto 8th Class. On 15.06.2015, she stated that her age was 17 years. Mohd. Rafeeq Khan (PW-3) is the Assistant Teacher of that School in which victim (PW-1) has stated that she has studied and this Mohd. Rafeeq Khan (PW-3) has stated the date of birth of the prosecutrix as 20.07.1998 as recorded in the Scholar Register (Exhibit-P-6) i.e the extract of entry at Page No. 67 regarding the student of Scholar No. 1793. Merely suggestions that father of PW-1 that he has disclosed the age of her daughter only on guess and some lines of victim (PW-1) does not rendered the entries of scholar register (Exhibit-P-6) as unreliable. Hence, findings of the trial Court regarding the date of birth of



the victim (PW-1) and her age as 15 years 3 months on the date of offence are based on proper appreciation of evidence and does not require any interference and the challenge of the appellant accused does not succeed.

12. Now come to the other findings of the trial Court. The statement of victim (PW-1) is clear as day light that appellant was the person who took the prosecutrix (PW-1) from her house when she was going to purchase cosmetics from a shop and kept the victim at different places including Khajarana Indore, village Limbodi, village Dudiya upto her recovery vide Exhibit-P-1 on 23.02.2014. The appellant accused was apprehended on the same day at Police Station Karahi District Khargone vide Exhibit -P-17. Testimony of Doctor Varsha (PW-4) and report of Regional Forensic Science Laboratories, Indore Exhibit-P-20 establish that victim (PW-1) was subjected to penetrative sexual assault. When the victim PW-1 is below the age of 18 years then her company with the appellant for a long period of four months does not provide any defence to the appellant accused. Hence, the conviction of the appellant under Section 363, 366, 376 of IPC and Section 3 (2) (5), 3(1) (xii) of SC & ST (POA) Act, 1989 is based on proper appreciation of evidence. No interference is required for. Hence, it is affirmed.

13. Now come to the question of sentence, report of Superintendent Sub jail Maheshwar District Khargone dated 03.12.2023 discloses that the appellant accused has completed his sentence and has been released on 14.10.2019. Accordingly, the sentence also does not requires interference.



Hence, this appeal being devoid of merit is dismissed.

14. Copy of the judgment shall be supplied to the appellant/accused through concerned Superintendent of Jail. Copy of the judgment shall be supplied to the victim (PW-1) in the light of **Aparna Bhat vs. State of M.P - AIR 2021 SC 1492** .

(GAJENDRA SINGH)
JUDGE

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