



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

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 16th OF OCTOBER, 2024

CRIMINAL APPEAL No. 550 of 2020

MUKESH AHIRWAR

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Shri Himanshu Joshi - advocate for the appellant.

Shri Vishal Singh Panwar, advocate for the State.

JUDGMENT

1] This appeal has been preferred by the appellant Mukesh Ahirwar under Section 374 of Cr.P.C. against the judgement dated 28/12/2019 passed in Sessions Trial No.443/2015 by the Additional Sessions Judge, Sarangpur, District Rajgarh (M.P.) whereby finding the appellant guilty, the learned Judge of the Trial Court has convicted him as under:-

Conviction		Sentence		
Section	Act	Imprisonment	Fine	Imprisonment in lieu of fine
376(1)	IPC	10 years RI	1,000/-	6 month RI
450	IPC	3 years RI	500/- each	2 month RI



2] Admittedly, the appellant has already suffered 5 years and 2 months of sentence.

3] In brief, the facts of the case are that the FIR in the present case was lodged by the prosecutrix, aged around 18 years, on 25/10/2014, at around 11 O'clock in the morning in respect of the incident which took place on 20/10/2014, at around 2:00 O'clock in the afternoon. It was alleged by her that while she was alone in her house, at that time, appellant barged in and closed the door behind him, and committed rape on her. She did not inform this incident to her parents, however, when her mother came back a day prior to lodging of the FIR, only then she came to the police station to lodge the FIR. On such FIR, investigation ensued and the charge sheet was filed. The learned Judge of the trial Court, after recording the evidence, convicted the appellant as aforesaid, hence, this appeal.

4] Learned counsel for the appellant has submitted that the FIR in the present case has been lodged after a period of four days and thus, cannot be relied upon. It is also submitted that there was a dispute going on between the father of the prosecutrix and the appellant in respect of the construction of his house as both their houses have a common wall which has also been admitted by PW/3 Rukmabai, the mother of the prosecutrix. It is also submitted that the FSL report is also negative and the age of the prosecutrix has also not been proved, and in such circumstances, the appellant deserves to 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 (Ex.P/2) in the present case was lodged on 25/10/2014, in respect of an incident which took place on 20/10/2014, and the reason for delay is stated to be that the mother of the prosecutrix had gone to her elder daughter's house, and after she came back, the prosecutrix narrated the story to her and thus, the FIR has been lodged. This court is also of the considered opinion that the delay in lodging the FIR has been properly explained.

8] Admittedly, there is no DNA report available and the FSL report is also negative, however, PW/8 Dr. Lata Banoliya, who had examined the prosecutrix on 25/10/2014, has mentioned her age to be 14 years and found that her hymen was old torn, hence, so far as the involvement of the present appellant is concerned, the prosecutrix, who is examined as PW/2, has stated that her age to be 15 years and has also stated that on the date of incident when she was alone at her home, and was sweeping the outside compound of the house, which is enclosed by walls, the appellant came and after pressing her mouth, he removed her *Salwar* and committed rape, and also threatened her with a knife that he would kill her if she informs this incident to anybody. However, the incident was narrated by her to her mother after 3-4 days when she came back from her daughter's house.

9] On careful perusal of the deposition of prosecutrix, this Court sees no reason to discard her testimony and although she has been suggested that a dispute was going on between the appellant and her father regarding construction of his house, but she has denied that there was any dispute existed between them. The appellant has also not examined any person in his defence. The story of the prosecutrix finds support by the medical evidence as the Doctor Dr. Lata Banoliya, PW/18 who has also found the



hymen of the prosecutrix to be old torn. So far as the delay in lodging the FIR is concerned, it is trite that in the cases involving rape, the delay in lodging the FIR is inconsequential due to fear of social stigma. She has also been suggested that the appellant was not present in the village on the date of incident, to which, she has also denied and the appellant has also not led any evidence regarding his plea of alibi.

10] The mother of the prosecutrix PW/3 has also supported the case of the prosecution, she has also been suggested that a dispute is going on between appellant and her husband, to which she has denied. Otherwise also, on overall scrutiny of the statements of the family members of the prosecutrix, this court is of the considered opinion that the family of the prosecutrix is not such as to falsely implicate a person owing to a dispute of house construction, that too in an offence of rape of their daughter, which is a social stigma in the society.

11] Thus, on the basis of the aforesaid evidence, this Court is of the considered opinion that the prosecutrix was subjected to rape by the present appellant only. However, so far as the age of the prosecutrix is concerned, the prosecution has brought on record Ex.P/13, which is a certificate issued by the Head Master of Government Middle School, Sultaniya and has given certificate Ex.P/13 wherein, as per the scholar register of the school, the date of birth of the prosecutrix is stated to be 05/07/1997, copy of the scholar register is also filed on record. Although, he has admitted that he has recorded the date of birth of the girl on the basis of her transfer certificate in the other school from which, the prosecutrix had taken the transfer certificate. It is also found that the name of the prosecutrix is mentioned as "L" whereas in the FIR and the deposition sheet of the trial Court is stated to be "K". Regarding her age,



the mother of the prosecutrix PW/3 has admitted that she has never written the date of birth of her daughter and there is also no *Janpatri* of her daughter, and has admitted that she has mentioned the date of birth of daughter by guesstimate. In such circumstances, when there is no documents like ossification test report or date of birth certificate issued by the competent authority, it is difficult to hold that the prosecutrix was less than 16 years at the time of the incident. Thus, the appellant cannot be convicted with the aid of Sub Section 2 of Section 376 of IPC as it stood prior to amendment, but even though, the appellant is held liable to be punished under Section 376(1) of IPC.

12] However, considering the fact that the prosecutrix was still of a tender age and was not a consenting party, this Court does not find any mitigating circumstances available to the appellant to reduce the sentence to 7 years, because such offences and offenders are required to be treated with iron hand, taking into account the trauma suffered by the victims and the scar it leaves on their mind for the rest of their lives.

13] Accordingly, the criminal appeal being devoid of merits is hereby *dismissed*.

Sd/-

(SUBODH ABHYANKAR)
JUDGE

krjoshi