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

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

**ON THE 22<sup>nd</sup> OF AUGUST, 2023**

**CRIMINAL APPEAL No. 1476 of 2022**

**BETWEEN:-**

**RITESH SAPLE S/O TOTARAM BARELA, AGED ABOUT 22  
YEARS, VILLAGE KOLKI, POLICE STATION WARLA  
(MADHYA PRADESH)**

**.....APPELLANT**

***(SHRI AAKASH BALODIYA, LEARNED COUNSEL FOR THE APPELLANT.***

**AND**

**THE STATE OF MADHYA PRADESH STATION HOUSE  
OFFICER THROUGH POLICE STATION WARLA  
(MADHYA PRADESH)**

**.....RESPONDENTS**

***(SHRI PRASHANT JAIN APPEARING ON BEHALF OF ADVOCATE  
GENERAL.***

.....  
*This appeal coming on for orders this day, heard with the consent of  
parties and the court passed the following:*

**JUDGMENT**

The present appeal is filed against the judgment conviction and sentence dated 217.09.2021 passed by the learned 1st ASJ, Sendhwa, District Barwani in ST No.132/2019, whereby, appellant has been convicted for the offence punishable under Sections 452, 354, 354(a)(1)(i), 363/511, 366/511 and 323 of IPC and sentenced him to undergo for 02, 01, 01, 03 and 05 years RI with fine of Rs.500/- for each offences respectively with default stipulations.

2. As per the prosecution story, on 08.07.2019, she lodged a report by submitting that prior to 04-5 days of the incident, she went her maternal house

alongwith her husband. Her husband went to agriculture field with his brother Rakesh. She alongwith her sister and mother was at home. At about 5:00PM, the applicant alongwith his 3 friends came in front of her house, the applicant entered in her house and two were standing out of the house, the appellat told her that you are my lady and caught hold her hand with wrong intention, her sister and mother tried to intervene, the appellat beat them by kicks and torn her cloths. When they all cried, the neighbors came to the spot and saved them and on being interrogation by the villagers, the appellat and co-accused told their names as Akash, Raidas and Pintiya. When the neighbors dialed 100, they fled away from the spot by threatening that next time they will kill them. Thereafter, the police has lodged the report against the appellat and other co-accused persons under Sections 452, 354, 354(a)(1)(i), 363/511, 366/511 and 323 of IPC. After following the due process of law, the police has filed the charge-sheet.

3. Learned counsel for the appellat submits that the the learned trial Court has convicted the appellat only on the basis of statements of three interested witnesses who are relatives of the prosecutrix namely Jakabai PW-2 and Rahabai PW-3. It is further submitted that in defense, the appellat has also examined DW-1 in his favour but the learned trial Court has discarded the version of DW-1 whereas he was the only eye-witness of the incident and no independent witness has been examined in the present case. It is further submitted that the prosecutrix in para no.14 of his cross-examination admitted that her father has usually used to visit the police station, hence, the police has registered the case under influence of father of the prosecutrix. It is further submitted that in the MLC report, no mark of injury is found on the person of the prosecutrix. The FIR was also delayed by one day and no plausible

explanation was given for the aforesaid delay. It is further submitted that the appellant has already undergone 3 years and 11 months out of the five years of his jail sentence.

4 . Alternatively, learned counsel for the appellant submits that the appellant has already undergone approximately 03 years and 11 months of his incarceration period of the out the sentence of five years awarded by the learned trial Court. It is further submitted that the appellant deserves some leniency as the appellant already suffered the ordeal of the trial since 2019 i.e. for a period of 05 years. It is further submitted that this appeal be partly allowed and the sentence awarded to the appellant be reduced to the period already undergone.

5. Learned counsel for the respondent/State has opposed the prayer and supported the impugned judgment by submitting that the appellant has committed the offence and tried to outrage the modesty of the prosecutrix. It is further submitted that in the MLC report, the prosecutrix has complained the doctor about pain in her thighs. Therefore, it cannot be said that no injury was received by her. Hence, he is not entitled for any benefit from this Court and prays for dismissal of the appeal.

6. I have heard the learned counsel for the parties and perused the record.

7. From the bare perusal of the record, it is crystal clear that the learned trial Court has considered the evidence very elaborately and the learned trial Court has found the case of the prosecution proved which is well corroborated by the evidence of witnesses who are the injured in the instant case.

8. the contention of learned counsel regarding relative witnesses, is also required to be pondered. Certainly, all eye-witnesses are relatives of injured, however, the defence failed to evince the submission regarding their

interestedness against the appellant. On this aspect, the decision laid down by Hon'ble Apex Court in the case of **Laltu Ghosh vs. State of West Bengal AIR 2019 SC 1058** is relevant to be referred here:

*"This Court has elucidated the difference between 'interested' and 'related' witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused".*

9. So far as the arguments regarding non-availability of independent witnesses is concerned, it is well settled that no criminal case can be overboarded due to non-availability of independent prosecution witnesses. In this regard, the following verdict of landmark judgment of the Hon'ble Apex Court rendered in the case of **Appa Bhai vs. State of Gujarat AIR 1988 SC 696** is worth referring here as under:

*"10.....Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there*

*everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The court, therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability if any, suggested by the accused....."*

10. The testimony of these witnesses have been supported by injured. Actually, in many of the criminal cases, it is quiet often that the offence is witnessed by close relatives of the victim whose presence on the spot of the incident would be natural. The evidence of such witnesses cannot automatically be discarded by leveling them as interested witnesses. In order to arrive at the conclusion of the guilt, the Court has to judge the testimony of the witnesses by the yardstick of the probabilities and their intrinsic worth. In view of the aforesaid propositions of law, the finding of learned trial Court regarding conviction of the appellant under Sections 452, 354, 354(a)(1)(i), 363/511, 366/511 and 323 of IPC, is found immaculate and infallible.

11. So far as the sentence part is concerned, certainly, the appellant is facing the trial since 2019 and the period of more than four years have already been lapsed and the appellant is in jail and suffering the sentence so awarded by learned trial Court. Hence, the sentence part of the accuse is required to be modified to some extent.

12. On this aspect, the following excerpt of the judgment of Hon'ble Apex Court rendered in **Bhagwan Narayan Gaikwad vs. State of Maharashtra; [2021 (4) Crimes 42 (SC)** which is as under:-

"28. Giving punishment to the wrongdoer is the heart of the criminal delivery system, but we do not find any legislative or judicially laid down guidelines to assess the trial Court in meeting out the just punishment to the accused facing trial before it after he is held guilty of the charges. Nonetheless, if one goes through the decisions of this Court, it would appear that this Court takes into account a combination of different factors while exercising discretion in sentencing, that is proportionality, deterrence, rehabilitation, etc."

13. In conspectus of aforesaid proposition of law and mitigating circumstances of the case, this appeal is partly allowed. The finding of the learned trial Court regarding conviction and sentence under Section 452, 354, 354(a)(1)(i), 363/511 and 323 of IPC is affirmed while the conviction for the offence under Section 366/511 of IPC is also affirmed with modification of sentence to the extent of 04 years instead of 05 years of R.I. and with fine of Rs.500/-. The appellant shall undergo 04 years of jail sentence in place of 05 years. In case of default of payment of fine amount, the appellant shall undergo further one month Simple Imprisonment.

14. He be set at liberty forthwith if not required in jail in any case immediately after completion of four years of jail sentence subject to depositing the fine amount. The judgment regarding disposal of the seized property stands confirmed.

15. A copy of this order be sent the learned Court below concerned for information.

Pending application, if any, stands closed.

Certified copy, as per rules.

amit

