



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

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 23rd OF OCTOBER, 2024

CRIMINAL APPEAL No. 2292 of 2022

JITENDRA

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Shri Bheemsen Soni - Advocate for the appellant.

Shri Vishal Singh Panwar – G.A./P.L. for respondent/State

JUDGEMENT

- 1] Heard finally, with the consent of the parties.
- 2] This criminal appeal has been filed by the appellant Jitendra, under Section 374(2) of Cr.P.C. against the judgement dated 28.01.2022 passed in Special Case No.187/2019 by 13th Additional Sessions Judge & Special Judge (POCSO Act, 2012), Indore (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
354	IPC	5 years R.I.	Rs.3,000/-	1 year R.I.
354A	IPC	3 years R.I.	Rs.2,000/-	6 months R.I.
09 read with	POCSO	5 years R.I.	Rs.3,000/-	1year R.I.



Section 10	Act, 2012			
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3] In brief, the facts giving rise to the present appeal are that the FIR in the present case was lodged on 04.06.2019 at 20:45 hours in respect of an incident, which took place on 03.06.2019 at 23:00 hours. It is alleged in the FIR that the victim, a girl, aged around 16 years was molested by her father, the present appellant Jitendra in the night of 03.06.2019 when she was sleeping along with her younger brother Yuvraj and sister Kajal, at that time, his father asked her to bring water and when she got out of the room to fill the water from the tap, his father caught hold of her from behind, and when she opposed, he told her that since her mother has already left him, hence, she should make such relations with him as her mother used to make. According to the victim, she was scared in the night, hence, she informed this incident to one Kripal Baretha, who she used to call her grand-father. The charge-sheet was filed, and the learned Judge of the trial Court, after recording the evidence of the prosecution witnesses, convicted the appellant as aforesaid, and being aggrieved the appeal has been preferred.

4] Counsel for the appellant has submitted that there was a dispute going on between the appellant and his wife, and only at the instance of his wife, a false case has been registered against him, which is also apparent from the deposition of PW-1 Tanuja, the wife of the appellant, who has stated that she was assaulted by the appellant, which led her to leave him. It is also submitted that there are material omissions and contradictions in the statements of the other witnesses,



including that of the victim, and thus, it is submitted that the appellant be acquitted.

5] Counsel for the State has opposed the prayer.

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

7] From the record, the FIR has been filed almost after a day's delay. It is also found that in his accused statement under Section 313 of Cr.P.C., the appellant has taken a defence that he was having a dispute with his wife, and she had also abused him and his father, and at the instance of his wife only, a false case has been registered against him, as she wants to grab his property. Although, he has not examined any witness in his defence.

8] From the perusal of statement of victim PW-2, it is found that she has reiterated the story of the prosecution as aforesaid and has also stated that all the three siblings, including herself, her sister and younger brother, along with grand-father Kripal Baretha had gone to the police to lodge the report. She has denied in her cross-examination that she was tutored by her mother and her parents. She has admitted that a dispute was going on between the appellant and her mother, and the appellant used to quarrel with her mother after coming to the house in a drunken state. She has also admitted that her mother left the house around 15 days prior to the incident and has also admitted that they did not visit their mother's house in the last 15 days.

9] It is also found that PW1-the mother of the victim has also tried to exaggerate the incident by saying that the appellant who is also her husband got undressed at the time of incident, and also that when he tried to force himself on her daughter, she told him that she would die



if he force himself on her, however, these material particulars are missing from the victim's testimony.

10] On a close scrutiny of the record, it is also found that surprisingly the two material witnesses, namely, Kajal, the sister of the victim and her younger brother Yuvraj, have not been examined by the prosecution, and apart from that the other witness Kripal Baretha has also not been examined, which leads this Court to doubt the veracity of the case of the prosecution, as there is also a delay of 23 hours and 45 minutes in lodging the FIR, for which there is no explanation, and there is no MLC on record also.

11] In such facts and circumstances of the case, the defence taken by the appellant does not appear improbable, and thus, he deserves to be given the benefit of doubt.

12] Resultantly, the appeal is hereby allowed and the impugned judgement dated 28.01.2022 is hereby set aside and the appellant is acquitted. The appellant is lodged in jail, he be released forthwith, if not required in any other case.

13] With the aforesaid, appeal stands *allowed* and *disposed of*.

(SUBODH ABHYANKAR)
JUDGE

Pankaj