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

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

CRIMINAL APPEAL No. 12017 of 2023

BETWEEN:-

**REEHAN S/O AZIM KHAN, AGED ABOUT 28 YEARS,
OCCUPATION: BUSINESS R/O VILLAGE ALORI
GARWADA RATANGARH DISTT (MADHYA PRADESH)**

.....APPELLANT

(SHRI VIKAS YADAV, ADVOCATE).

AND

- 1. THE STATE OF MADHYA PRADESH STATION
HOUSE OFFICER THROUGH POLICE STATION
JAWAD DISTT. NEEMUCH (MADHYA PRADESH)**
- 2. VICTIM X THROUGH P.S. JAWAD DIST. NEEMUCH
(MADHYA PRADESH)**

.....RESPONDENTS

(SHRI RAJESH JOSHI - GOVT. ADVOCATE).

Reserved on : 01.11.2023

Pronounced on :05.12.2023

*This criminal appeal having been heard and reserved for judgments,
coming on for pronouncement this day, the court passed the following:*

JUDGMENT

With consent of the parties heard finally.

1. This criminal appeal under Section 374 of Cr.P.C. has been filed by the appellant being aggrieved by the judgment dated 06.09.2023 passed by the learned Sessions Judge, Jawad, District Neemuch, in Sessions Trial No.26/2022, whereby the appellant has been convicted for the offences U/S 5

of Madhya Pradesh Freedom of Religion Act, 2021 (hereinafter referred as " the Act, 2021 ") and sentenced him to undergo for 2 Years imprisonment with fine of Rs 25,000/-.

2. As per the case of prosecution, the prosecutrix gave a written application on 30.11.2022 at Police Station Javad in which she stated that she get married to Paras on 11.12.2021. After marriage, Prosecutrix and her husband both had quarrels. Before marriage when prosecutrix had gone to work as a labour on Rehan Khan's Farm, she get connected to Rehan on Instagram. They started talking on mobile. On 29.11.2022, Rehan came to meet the prosecutrix and took her with him to Sukma, Chhatisgarh and kept her in a rented house. Thereafter, the appellant pressurized her to convert her religion and to marry with him and became a Muslim and forcefully made sexual relations with her. When the prosecutrix refused to change her religion, the appellant gave threat to kill her family. Thereafter, the police recovered the prosecutrix from Sukma on 07.02.2023. Thereafter, on the basis of aforesaid, she lodged an FIR against the appellant. After due investigation, charge-sheet was filed.

3. In turn, the case was committed to the Court of Sessions and thereafter, appellant was charged for offence under Sections 366, 376(2)(n), 506 of IPC and 3/5 of the Act by the learned Trial Court. He abjured his guilt and took a plea that he has been falsely implicated in the present crime and prayed for trial.

4. Learned trial Court, on appreciation of the evidence and argument adduced by the parties, pronounced the impugned judgment on 06.09.2023 and finally concluded the case and convicted the appellant for commission of the offence punishable under Section 5 of the Freedom of Religion Act, 2021.

5. Learned counsel for the appellant submitted that the order of conviction and sentence passed by the Trial Court is contrary to law and fact of record. The Trial Court has ignored the material omissions and contradictions in the Court statements of the prosecution witnesses. The complainant/prosecutrix was in love affair with the appellant and before marriage, she was well aware that the appellant was a Muslim. The prosecutrix was a consenting party and she was in continuous contact with the appellant. The allegation against the appellant regarding pressurizing her to change her religion is false and there is no evidence in support of this fact. Counsel for the appellant has also alternatively submitted that since the appellant has already undergone approximately **09 months** in jail incarceration out of the 02 years R.I., his sentence be reduced to the period already undergone. It is further submitted that the appellant deserves some leniency as the appellant already suffered the ordeal of the trial for more than one year. It is further submitted that this appeal be partly allowed and the sentence awarded to the appellant be reduced to the period already undergone. सत्यमेव जयते

6. Learned counsel for the 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 judgement after considering each and every circumstances of the case and convicted the appellant rightly.

7. In view of the aforesaid contentions, the point for determination is as to whether the learned Trial Court judgment regarding conviction and sentence is incorrect in the eyes of law and fact?

8. Before dwelling upon the point, it is worth referring that in this case,

the charges were framed against the appellant under Sections 366, 376(2)(n), 506 of IPC and 3/5 of the Act, 2021. Out of the aforesaid charges, the appellant was convicted only under Section 5 of the Act, 2021 and acquitted from remaining sections. Since, no appeal has been filed by the State or any other party before this Court regarding acquittal, there is no need for consideration regarding the acquittal of the appellant under those Sections.

9. In order to bring home, the testimony of the prosecutrix (PW-1), mother of the prosecutrix (PW-2), Shoukeen (PW-3), Lakhan Pratap Singh (PW-4), Dr. Payal Goyal (PW-5), Shashi Kala Chouhan (PW-6), Hari Singh Sisodiya (PW-7), Sumit Mishra (PW-8), Paras Dhakad (PW-9), Chitranjan Pandey (PW-10) are required to be considered. Out of these witnesses, the prosecutrix herself clearly has articulated in para No.3 that the appellant has told her that if she changes her religion, he would marry her. Further, she states that when she denied for changing the religion, the appellant threatened her to kill her family members. The prosecutrix has been cross-examined in nearly 20 paragraphs and 6 pages but the aforesaid statement of the prosecutrix has not been rebutted in any way.

10. Mother of the prosecutrix (PW-2) has also deposed in paragraph No. 5 that when her daughter met with her, she told that the appellant pressurized her for changing her religion. Witness Shoukeen (PW-3) has also supported the aforesaid fact in his examination-in-chief and the statement has not been rebutted in cross-examination. Lakhan Pratap Singh (PW-4) has also fortified the prosecution case. Dr. Payal Goyal (PW-5) is a witness of MLC but even then in para No.2 of her examination-in-chief, she has narrated that the prosecutrix has stated her that the accused told to change her religion. The statement of this witness is relevant under Section 8 of the Evidence Act.

11. Shashi Kala Chouhan (PW-6) S.I, is a witness of FIR as well as investigation and the prosecution case also finds support from the testimony of this witness. Husband of the prosecutrix has also supported the prosecution case regarding changing of religion.

12. So far as the contentions regarding omissions, contradictions and embellishment in testimonies of prosecution witnesses are concerned, learned counsel for the petitioner has not adverted any material regarding contradiction, omission and embellishment which can hit the root of the case. In this regard, the attention of this Court has been drawn towards the Judgment of the Hon'ble Supreme Court in the case of **Takdir Samsuddin Sheikh vs. State of Gujrat and another AIR 2012 SC 37**, wherein the Hon'ble Apex Court, **endorsing its earlier Judgment, held as under:-**

"9. We are of the view that all omissions/contradictions pointed out by the appellants' counsel had been trivial in nature, which do not go to the root of the cause. It is settled legal proposition that while appreciating the evidence, the court has to take into consideration whether the contradictions/ omissions/ improvements/ embellishments etc. had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, omissions or improvements on trivial matters without affecting the case of the prosecution should not be made the court to reject the evidence in its entirety. The court after going through the entire evidence must form an opinion about the credibility of the witnesses and the appellate court in natural course would not be justified in reviewing the same again without justifiable reasons. (**Vide: Sunil 8 Kumar Sambhudayal Gupta (Dr.) & Ors. v. State of Maharashtra, (2010) 13 SCC 657.**)"

13. In this regard, the following ratio held by the Hon'ble Supreme

Court in **Pundappa Yankappa Pujari v. State of Karnataka, 2014**

LawSuit (SC) 516, is worth to quote here-

"[9] xxx The evidence on record has to be read as a whole and it is not proper to reject one or other evidence on the ground of certain contradictions and omissions which do not go the roots of the case. If the testimony of the eye-witnesses are found trustworthy and remained unchanged, ignorance of such testimony can be held to be perverse."

14. In view of the aforesaid settled position of law, the testimonies of prosecutrix as well as other witnesses cannot be wiped out on the basis of trivial contradictions. Virtually, the testimony of prosecutrix should be regarded as an injured witness of the case and it is well settled that criminal jurisprudence attaches great weightage to the evidence of a person injured in the incidence. Such a testimony comes with a in-built guarantee of truth, specially, when it is a case of sexual assault which is also related to forcible change of religion. Such type of witness cannot spare the actual culprit in order to foist an innocent person. In this way, on the basis of evidence furnished by the prosecution, the finding of Trial Court against the appellant that he is liable to be convicted under Section 5 of the Act, 2021 does not appear to be purverse and therefore, does not warrant any interference.

15. So far as the sentencing part is concerned, this case is related to forcible change of religion which touches the sensitivity of people who have their faith upon their respective religion. Certainly, no criminal record has been shown by the prosecution against the appellant and he is also facing trial nearly from one and half years. On the basis of this mitigating circumstance, some lenient view can be adopted in favour of the appellant. However, looking to the nature of offence, I am not inclined to let off the appellant with the sentence

already undergone. It is also pertinent to mention that the concerning offence punishable under Section 5 of the Act, 2021 also provides minimum sentence of one year with fine of Rs. 25,000/-. Hence, in view of the above, this Court is of the considering opinion that the appellant should be punished accordingly with the aforesaid substantive punishment.

16. In upshot of the aforesaid analysis in entirety, this appeal is partly allowed and accordingly, conviction under Section 5 of the Freedom of Religion Act, 2021 is hereby affirmed but the sentence of two years is reduced to one year with fine of Rs. 25,000/-. Apart that, the undergone period will be adjusted under Section 428 of CrPC and if the appellant fails to deposit the fine, he will suffer three months RI in default.

17. In view of the provisions under Section 357 of CrPC, if the fine amount is deposited Rs. 10,000/- would be payable to the prosecutrix as compensation.

18. A copy of this order be sent to the concerned trial Court for necessary compliance.

19. Pending application, if any, stands closed.

Certified copy, as per rules.

(PREM NARAYAN SINGH)
JUDGE