IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

CRIMINAL APPEAL No. 6505 of 2024

GOLU

Versus

THE STATE OF MADHYA PRADESH

Appearance:
Shri Mukesh Kumawat, learned counsel for the appellant.
Shri H.S. Rathore, learned Government Advocate for the respondent/ State.

Heard on : 21.08.2024
Pronounced on : 27.09.2024

JUDGMENT

1. The present appeal has been filed on behalf of the appellant under Section 374 being aggrieved by the order dated 08.05.2000 passed in Sessions Trial No. 25/2022, whereby the appellant has been convicted for the offence under Sections 294, 323, 376(1) read with Section 511 and Section 506(2) of the Indian Penal Code, 1860 (hereinafter referred as to 'IPC') and sentenced to undergo for 3 months RI, 6 months R.I., 10 years R.I. and 5 years R.I. with fine of Rs.500/-, Rs.1,000/-, Rs.2,000/- and Rs.1,000/- and default stipulations.

2. The Prosecution case in a nutshell is that on 21.06.2022 at about 02:00 pm, the prosecutrix (PW-1) was returning home after working in her field, when on the way, she met her nephew, appellant Golu, who started to abuse her. On which, the complainant/prosecutrix told him that abusing is not a good thing, so he started saying “wait, let me tell you” and caught hold her both hands with bad intentions and started to beat her, grabbed her hairs, pushed her on the earth and started to pull her clothes. The prosecutrix pushed him and as she managed to save herself. On the basis of the information given by the complainant/prosecutrix, an FIR was lodged bearing Crime No. 215/2022 for the offence punishable under Sections 294, 323, 376, 34 and Section 506-II of IPC at Police Station Bedia, District Khargone.

3. In turn, after completion of investigation, charge-sheet was filed and the case was committed to the Session Judge and thereafter, appellant Golu was charged for offence under Sections 294, 323, 376, 511 and 506(Part-II) of IPC. He abjured his guilt and took a plea that he had been falsely implicated in the present crime and prayed for trial.

4. In order to bring home the charges, the prosecution has adduced as many as 07 witnesses namely the prosecutrix/complainant (PW-1), Omprakash, husband of prosecutrix (PW-2), Dr. Arvind Kushwah, Medical Officer (PW-3), Ranjeet Singh, Head Constable (PW-4), Dr. Dipika Pawar, Medical Officer (PW-5), Karan Borkar, Constable (PW-6) and Sheetal Singhar, Sub-Inspector (PW-7). On behalf of defence, no witness was adduced.

5. Learned trial Court, on appreciation of the evidence and argument adduced by the parties, pronounced the impugned judgment on 08.05.2024 and finally concluded the case and convicted the appellant as mentioned in para 1.

6. Being disgruntled from the findings and conviction of sentence, the appellant has preferred this appeal on various grounds. Learned counsel for the appellant has submitted that there is a major contradiction on the point of date of incident between the statements of prosecutrix before various agencies. The statement of prosecutrix is full of contradictions, omissions and exaggerations. That apart, FIR is also delayed by 6 to 9 days and the delay was nowhere explained by the prosecution. The statement of prosecutrix cannot be believed since no independent witness has corroborated her statement. Since, the FIR was delayed, all proceedings of prosecution including medical examination are delayed. Therefore, the whole prosecution case is suspicious and liable to be rejected. The learned trial Court, glassing over the aforesaid flaws of prosecution case, has erred in passing the order of conviction and sentencing the accused On these grounds, the impugned order deserves and is liable to be set aside and appellant is entitled to be acquitted.

7. Learned counsel for the State on the other hand supports the impugned judgment and prays for dismissal of this appeal. It is submitted that the learned trial court has passed the impugned order after considering each and every aspect of the case and convicted the appellants rightly.

8. In the backdrop of the rival submissions, the point for consideration is as to whether the findings of learned trial Court regarding conviction and sentence of the appellant for the aforesaid offences is correct in the eyes of law and facts?

9. In view of the aforesaid statements, I have gone through the record of trial Court and the statement of prosecutrix as well as other materials available on record. In this regard the statement of prosecutrix under Section 164 is material, wherein it is clearly stated that the said incident was happened on 18th and the day was Tuesday while in the FIR (Ex.P-2) and the statement recorded under Section 161 of CrPC, the date of incident is mentioned as 21.6.2022. The FIR was lodged by the prosecutrix herself. Likewise, in the MLC (Ex.P-7) wherein prosecutrix was examined and her statement was recorded by the said Doctor in the first part of the MLC. In this report, the Doctor has clearly mentioned that "As per victim, accused named Golu s/o Dwarkilal is her relative. Accused tried to had sexual intercourse with her without her consent on 20.6.2022, but anyhow she run away. There was no intercourse commenced by the accused".

10. The aforesaid contradictions regarding date is very material specially when the prosecutrix PW-1 has not stated anything regarding the date of incident in the Court statement. Learned Govt. Advocate is also **unable to explain the fact as to why, in the prosecution, case three dates of incident have been mentioned. First is 18th, Second is 20th and Third is 21st of June.** This contradiction is actually going to the substratum of the case as it relates to the occurrence of the incident.

11. On this aspect the law laid down in the case of **Rohtesh Kumar Vs. State of Haryana (2013) 14 SCC 434** is worth to mention here:-

> *24. It is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters which do not affect the core of the case of the prosecution, must not prompt the court to reject the evidence in its entirety. Therefore, unless irrelevant, details which do not in any way corrode the credibility of a witness should be ignored. The court has to examine whether evidence read as a whole appears to have a ring of truth.*
> *Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies. drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witnesses and whether the earlier*

evaluation of the evidence is shaken, as to render it unworthy of belief. Thus, the court is not supposed to give undue importance to omissions, contradictions and discrepancies which do not go to the heart of the matter, and shake the basic version of the prosecution witness. Thus, the court must read the evidence of a witness as a whole, and consider the case in light of the entirety of the circumstances, ignoring the minor discrepancies with respect to trivial matters, which do not affect the core of the case of the prosecution. The said discrepancies as mentioned above, should not be taken into consideration, as they cannot form grounds for rejecting the evidence on record as a whole.

12. Certainly, in view of the aforesaid law, minor discrepancies on trivial matters do not erode the prosecution case but when the contradictions are material like on date of incident, the Court is bound to consider the importance of contradictions. In this regard para No. 28 of ***Mritunjoy Biswas Vs. Pranab alias Kuti Biswas and Another (2013) 12 SCC 796*** is worth to quote here :-

" *[28] As is evincible, the High Court has also taken note of certain omissions and discrepancies treating them to be material omissions and irreconcilable discrepancies. It is worthy to note that the High Court has referred to the some discrepancies which we find are absolutely in the realm of minor discrepancies. It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the court.* ***If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies.*** *It needs no special emphasis to state that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission."*

13. Further in the case of ***K.K. Kotrappa Reddy and Another Vs. Rayra Manjunatha Reddy alias N R Manjunatha and Others 2015 Law Suit (SC) 1048*** it is held that:-

" *12] We have given our careful and anxious consideration to the rival contentions put forward by either sides and also scanned through the entire*

materials available on record including the impugned judgment. We are of the opinion that the prosecution has failed to prove its case beyond reasonable doubt against accused Nos.1 to 10 and the High Court was justified im doubting the veracity of the prosecution case and consequently recording the verdict of acquittal which does not suffer from the vice of perversity. As against accused Nos.11 and 12, their alibi is sufficiently proved and the prosecution has not been able to rebut the voluminous documents and the testimonies of independent witnesses. The Trial Court and the High Court have arrived at a concurrent and correct finding that accused Nos.11 and 12were not present in the village at the relevant point of time,then the parrot-like eye witness account given by PWs.1, 2, 5, 10 and 11 becomes suspicious as to its truthfulness."

14. As such, if such type of contentions comes in the way of analysis of the evidence which are going to the root of the case, they make the whole prosecution case suspicious.

15. Now coming to the another important omissions. In the statement recorded under Sections 161 and 164 of CrPC the words "*Randi and Chhinal*" are not mentioned. Hence, the statement of prosecutrix will be considered as exaggerated statement. Which reveals the tendency of implicating the appellant in a false case. That apart, in this case, **FIR is also delayed. It was lodged on 27.6.2023 which is delayed by nine days as per the statements recorded under Section 164 of CrPC, it is delayed by six days as per date of incident mentioned in FIR, and as per the MLC report it is delayed by seven days.** The said delay is nowhere explained. Actually, before this Court also learned Govt. Advocate has failed to explain the said delay.

16. Further, in the case of ***Boddela Babul Reddy Public High Court of Andhra Pradesh (2010) 3 SCC 648***, wherein in the opinion of the trial court there was deliberate delay in lodging the FIR so as to implicate the applicant falsely, hence trial court also held that the offence was not established. In the circumstances of the case, the judgment of acquittal was passed by the Trial Court which was challenged in the High Court and order of conviction was passed by the High. Court. Further when it was challenged before the Hon'ble Apex Court, the same was allowed and the trial court's judgement was affirmed because there was no justification in delay of lodging of the FIR. recently in the case of ***Harendrajeet Singh Vs. State of Madhya Pradesh ILR 2023 MP 1616*** wherein it is held by the coordinate bench of this court, that if

prosecution fails to give any reasonable justification for lodging delayed. FIR and the testimony of complainant is doubtful, it cannot be relied upon.

17. So far as the injuries on the person of prosecutrix is concerned, since the FIR was lodged by delay of six to nine days from the incident, such injuries of scratches has no meaning. Certainly, it is a case of attempt to rape and delay of one or two days is possible, but delay of 6 to 9 days by a major prosecutrix is unnatural. It is worth to mention here that the appellant is the nephew of the husband of the prosecutrix.

18. In the light of aforesaid discussion, where the sole testimony of prosecutirx is having contradictions and material exaggerations, there is previous enmity of land dispute between the parties, no specific FSL or DNA regarding attempt to rape is produced by the prosecution, the MLC report is also delayed by seven days, the incident has neither supported by any independent witness nor supported by medical testimony, the FIR is also delayed by six to nine days, this Court observes that the case of prosecution is suffering from scepticism, misgivings, deficiencies and distrust. So far as the other offences punishable under Sections 294, 323 and Section 506(2) of the Indian Penal Code are concerned, in view of the aforesaid analysis, where the date of incident is having no certainty and FIR is delayed by six to nine days, sole testimony of prosecutrix is full of exaggeration, there is no need to elaborate discussion on the finding of the learned Trial Court regarding conviction under the these offences. Since the prosecution has failed to prove these offences under Sections 294, 323 and 506(2) of the Indian Penal Code beyond reasonable doubt, the finding regarding conviction and sentencing is also unsustainable in this regard.

19. In view of the aforesaid discussion in entirety and surrounding circumstances, the prosecution measerably failed to prove its case beyon reasonable doubt, hence, appeal filed by the appellant is allowed and accordingly, having set aside the impugned judgment, the appellant is acquitted from the charge under Sections 294, 323, 376(1) read with Section 511 and Section 506(2) of the Indian Penal Code, 1860. The appellant is in jail, he be set at liberty forthwith immediately, if not required in jail in any other case. If any fine amount is deposited, it will be returned accordingly.

20. A copy of this judgment be sent to the concerned trial Court for information and necessary compliance.

21. The order of the learned trial Court regarding disposal of the seized property stands confirmed.

22. Pending application, if any, stands closed.

23. With the aforesaid, the appeal is allowed and disposed of.

(PREM NARAYAN SINGH)
JUDGE

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