



IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DEVNARAYAN MISHRA

ON THE 9th OF JANUARY, 2025

CRIMINAL APPEAL No. 161 of 2001

RAJU @ MALLINATH

Versus

THE STATE OF M.P.

.....
Appearance:

Ms. June Choudhary - Senior Advocate with Ms. Jayalaxmi Aiyer
- Advocate for appellant.

Mr. Raghuveer Prajapti - Panel Lawyer for State.

.....
JUDGMENT

This appeal has been preferred being aggrieved with the judgment and sentence passed by the Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 Bhopal in S.T. No.319 of 1999 dated 12.01.2001 by which the appellant has been convicted for an offence punishable under Section 363 of the Indian Penal Code and sentenced to suffer R.I. for 03 years with fine of Rs.10,000/- and in default of depositing the fine amount further R.I. for one year.

2. In nutshell, the prosecution case before the trial Court was that on 10.07.1999, the victim went to visit the house of her school friend along with her two friends and when she was returning from there and



waiting for bus near Central School, Maida Mill, the appellant reached there on scooter and said that he would leave her in her home. Thereafter, the appellant went towards M.P Nagar and said to the victim that he has some work and from there he went to Gufa Mandir area where he committed a sexual assault upon the victim and from there he brought the victim to Sikandrabad. The father of the victim lodged a missing person report on 12.07.1999. After inquiry, the case was registered under Sections 363 and 366 of the Indian Penal Code against the appellant and his relatives. The victim was apprehended, medically examined and charge-sheet was submitted against the appellant and another person for offence punishable under Sections 363, 366-A and 376 of the Indian Penal Code.

3. The trial court after following the due process, passed the impugned judgment and acquitted the appellant for the offence punishable under Sections 366-A and 376 of the Indian Penal Code but convicted him for offence punishable under Section 363 of the IPC and sentenced him as stated in paragraph no.1 of the judgment. Trial Court acquitted the co-accused Satish Sharma from all the charges.

4. Learned counsel for the appellant has submitted that the trial court has wrongly convicted the appellant as no one appeared before the trial Court to prove the age of the victim. Mark-sheet was not proved by any competent authority. Further on what basis, age in mark-sheet Exhibit-6/A has been recorded, not been assigned by the parents of the



victim. On that basis, it is submitted that it was a love affair and on the persuasion of the victim, the appellant permitted to accompany the victim and trial Court himself held that the victim was a consenting party. On that basis the conviction is bad in law and it should be quashed.

5. Learned counsel for the appellant further submitted that if the Court is upheld the conviction, then the incarceration period of the appellant be limited to the period already undergone by him.

6. Learned Panel Lawyer for the State has supported the judgment of trial Court and has submitted that no substance is found in the appeal, hence the appeal be dismissed.

7. Heard the learned counsel for the parties and perused the record.

8. In this case as the trial Court itself has acquitted the appellant on the basis that victim was a consenting party and she went along with the appellant and developed physical relationships on the basis of her consent. Trial Court has also held that when the offence was committed under Section 375 of the Indian Penal Code, the age for consent to relation was 16 years. But on the age for kidnapping of female was less than 18 years and male was of 16 years and on that basis the trial Court has convicted the appellant as the trial Court found that the age of victim was less than 18 years.

9. From the judgment of the trial Court, it is clear that the appellant brought the victim (PW-8) from bus stand Bhopal to Bina,



Jhansi and Sikandrabad and the defence failed to controvert this fact.

10. On the point of age, the victim (PW-8) in the paragraph numbers 8 and 9 of her cross-examination, has clearly stated that she was admitted in Central School, Bhopal in IV class but she was firstly admitted in a Central School, Bina.

11. The mother of the victim PW-7 has clearly stated that her marriage took place in the year 1980 and her first child was born after 1.5 year of the marriage and died. Thus the victim is her eldest daughter. In paragraph number 10, she has stated that the victim was born in the year 1982 but nothing has been brought against this fact.

12. Father of the victim PW-6 has clearly stated that the School Education Certificate is Exhibit-P/6 and has stated that his daughter was minor at the time of incident and in paragraph no.6, he has stated that his marriage took place on 5th March 1979 and after 1.5 years of the marriage, a son was born to his wife and in para number-21 of the cross examination, he has stated that it is wrong to say that the victim was born on 18th of December 1979. From the school record i.e. the mark-sheet issued by the Central Board of Secondary Education, date of birth of the victim had been recorded as 13.9.1982 and this fact was also verified from the statements of parents of the victim i.e. PW-6 and P.W-7. As the marriage was performed on 05th of March, 1979 and first issue would have taken birth in the month of September-October, 1980 but he died and after one and a half year, the victim was born and on that basis



the date of birth of the victim recorded in the school certificate was supported by the statement of the parents of the victim but nothing has been brought against the above fact that the victim was major at the time of incident.

13. Thus, the sole point is that the prosecution had to prove the age of the victim and prosecution beyond reasonable doubt proved that the victim at the time of the offence was minor girl and from the documents and the suggestions given by the defence itself, it is clear that the victim was taken away from the custody of their parents and she was carried by the appellant from Bhopal to Bina, then Jhansi and from there to Sikandrabad and was recovered from the possession of the appellant. Parents have not given any consent and consent of minor has no value

14. On the above discussion, the offence punishable under Section 363 of the Indian Penal Code is proved beyond reasonable doubt, hence, the conviction of the appellant is affirmed by this Court.

15. On the point of sentence, the trial Court has sentenced the appellant for three years of R.I. with fine of Rs.10,000/-

16. Looking to the offence that took place in the year 1999, approximately 25 years have passed and in this period, the appellant would be at the age of 46-47 years and it is also clear from the record that the victim by her own volition accompanied the appellant and they were having the love affair as held by the trial Court.

17. Looking to the period of the offence and the nature in which



circumstances the offence was committed, the jail sentence of the appellant is limited to the period already undergone. Hence, for the offence under Section 363 of the Indian Penal Code keeping the fine amount intact, the appeal is partly allowed and the sentence is modified from three years rigorous imprisonment to the period already undergone by the appellant (period already undergone is 95 days i.e. from 03.08.1999 to 05.11.1999). The fine amount shall be deposited immediately, if not already deposited. In default of deposit of the fine amount, the appellant shall further suffer rigorous imprisonment for one year.

18. With this modification, the appeal is disposed of. Bail bonds of the appellant are discharged.

19. With the copy of the judgment, record of the trial Court be returned back.

(DEVNARAYAN MISHRA)
JUDGE

julie