

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

**BEFORE**

**HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL**

**ON THE 24<sup>TH</sup> OF MARCH, 2023**

**CRIMINAL REVISION No.4753 of 2022**

**Between:-**

**VINOD AHIRWAR S/O NATHURAM AHIRWAR  
ABOUT 30 YEARS, OCCUPATION  
AGRICULTURIST RESIDENT OF VILLAGE  
BANDIKHEDI THANA GUNGA DISTRICT  
BHOPAL (M.P.).**

**.....APPLICANT**

**(BY SHRI J.L.SONI- ADVOCATE)**

**AND**

**THE STATE OF M.P. THROUGH P.S. GUNGA  
DISTRICT BHOPAL (M.P.).**

**.....RESPONDENT**

**(BY SHRI SANTOSH YADAV – DEPUTY GOVT. ADVOCATE  
AND SHRI AVINASH KUMAR TIWARI – ADVOCATE FOR  
OBJECTOR)**

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RESERVED ON : 15.03.2023

PRONOUNCED ON : 24.03.2023

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*This criminal revision coming on for admission this day, **Hon'ble**  
**Shri Justice Dinesh Kumar Paliwal**, passed the following:*

**ORDER**

This revision under Section 397 read with Section 401 of Cr.P.C has been preferred by the applicant challenging the judgment and order dated 06.12.2022 passed by the Additional Sessions Judge, Berasiya District Bhopal passed in Criminal Appeal No.02/2022 affirming the judgment of conviction and order of sentence dated 07.12.2021 passed by JMFC, Berasiya District Bhopal in RCT Case No.1023/2016 whereby learned JMFC convicted applicant for commission of offence under Sections 456 and 354 of the IPC and sentenced to six months R.I. and fine of Rs.500/- in the first count while One year R.I. and fine of Rs.1000/-in the second count with default stipulation.

2. The prosecution case, in short is that on 25.10.2016 at around 1.20 P.M. 18 years old prosecutrix Jyoti resident of village Bandikhedi lodged an F.I.R. in P.S. Gunga alleging that on 24.10.2016 at around 11.30 P.M of night she was sleeping in her house by closing the doors. At around 11.30 P.M. someone knocked the door of her house, she thought that her father has come, at this she switched-on the bulb and opened the door. But she saw her neighbour Vinod Ahirwar standing there; Vinod pushed her inside, trespassed into her house, caught hold her hand with bad intention and pressed her breasts. When she sounded alarm, he slapped her. Hearing her scream her cousin Rakesh Ahirwar (P.W.3) reached there, seeing him, applicant Vinod Ahirwar fled away from there. F.I.R was lodged next day. On the basis of said F.I.R. offence under section 456 and 354 of IPC was registered. After completion of investigation, charge sheet was filed.

3. The learned JMFC framed the charges against the accused/applicant for commission of offence under Section 456 and 354 of IPC. Accused/ applicant pleaded not guilty. In order to prove its case,

prosecution examined four witnesses, while accused/applicant in his defence examined Jitendra Kumar Ahirwar (D.W.1). In his statement recorded under Section 313 Cr.P.C, accused/applicant stated false implication. On appreciation of evidence, learned JMFC came to the conclusion that both the charges under Section 456 and 354 of IPC were proved against the applicant but acquitted him for commission of offence under section 323 of IPC. Thus, the applicant was convicted and sentenced to imprisonment as mentioned hereinabove.

4. Applicant challenged the judgment of conviction and order of sentence by filing criminal appeal in the court of Sessions Judge, Bhopal. The learned Additional Sessions Judge found no fault with the findings of the learned trial court and affirmed the judgment of conviction and order of sentence dated 07.12.2021 passed by learned JMFC, Berasiya District Bhopal vide impugned judgment dated 06.12.2022 passed in Cr.A.No.02/2022.

5. Being aggrieved, the applicant has challenged the impugned judgment dated 06.12.2022 passed by the learned Additional Sessions Judge by filing this criminal revision mainly on the following grounds :-

(i) The learned Additional Sessions Judge did not appreciate the evidence of complainant Jyoti (P.w.1) and his cousin Rakesh (P.W.3) in proper perspective. The learned Additional Sessions Judge has also not considered the evidence of defence witness Jitendra Kumar Ahirwar (D.W.1) and admission of prosecutrix Jyoti (P.W.1) and Rakesh (P.W.3) that Article A-1 & A-2, the photographs, are of Jyoti and applicant/accused, which shows that they were having love affairs but as father of the prosecutrix Jyoti wanted to marry her somewhere else, they have falsely implicated him by lodging a false and manufactured report.

(ii) The learned Additional Sessions Judge has not appreciated the fact that in the room in which alleged incident is stated to have taken place, three brothers of prosecutrix Jyoti were sleeping. Out of them, one was around 25 years old but none of them have been produced before the court as witness which itself falsifies the veracity of prosecution story.

(iii) The learned Additional Sessions Judge, erred in affirming the judgment of conviction and order of sentence passed by learned JMFC without taking into consideration the evidence of defence witness and appreciating the facts stated in cross examination of prosecutrix Jyoti (P.W.1) and Rakesh (P.W.3) in proper perspective.

(iv) During pendency of this criminal revision, complainant Jyoti and applicant/accused had filed I.A.No.3141/2023 and I.No.3142/2023 under Section 320 Cr.P.C seeking permission to compound the offence. Both the applications were dismissed by this court vide order dated 08.02.2023 holding that the offences are not compoundable under Section 320 of Cr.P.C.

6. I have heard the learned counsel for the applicant/accused and learned Deputy Govt. Advocate for the respondent/State.

7. Before dwelling into the matter, it will be apposite to mention that the revisional power of the High Court under section 397 and 401 Cr.P.C are well defined. In ***State of Maharashtra Vs. Jagmohan Singh Kuldip Singh Anand and others-AIR 2004 SC 4412***, Hon'ble Supreme Court has held as under :-

*“21. In embarking upon the minutest re-examination of the whole evidence at the revisional stage, the learned Judge of the High Court was totally oblivious of the self-restraint that he was*

*required to exercise in a revision under Section 397 CrPC. On behalf of the accused, reliance is placed on the decision of this Court to which one of us (Justice Sabharwal) is a party, i.e. Criminal Appeal No. 523 of 1997 decided on 9.3.2004 [Ram Briksh v. Ambika Yadav]. That was the case in which the High Court interfered in revision because material evidence was overlooked by the courts below.*

*22. The Revisional Court is empowered to exercise all the powers conferred on the Appellate Court by virtue of the provisions contained in Section 401 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of Appellate Court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be,*

*"for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceeding of such inferior court."*

*It is for the above purpose, if necessary, the High Court or Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of Appellate Court on the Revisional Court*

*is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power. ”*

8. Learned counsel for the applicant has taken this court to the evidence of prosecution witnesses Jyoti (P.W.1) and her cousin Rakesh (P.W.3). Jyoti (P.w.1) in her evidence has deposed that two years ago at around 11 P.M. she alongwith her brother Rajeev and Deepak was sleeping in her home. Her father, brother Vinod, Rajesh and Mahesh were not at home. In the night someone knocked her door, when she opened the door, accused/applicant Vinod trespassed into her room, caught hold her hand with bad intention and pressed her breasts. Rakesh (P.W.3) had reached there. Next day she had lodged F.I.R. (Ex.P/1). In her cross examination, she has admitted that she is having six brothers and at the time of incident, her three brothers were at home and were sleeping in the same room in which incident took place. She further admitted that accused/applicant Vinod Ahirwar is her neighbour. She admitted that Articles A-1 and A-2, photographs are of her and accused Vinod. She stated that when door was knocked, her brothers had not awakened. She stated that her father works in PWD office and also runs a Tea Stall in the village. She admitted that in the village Tea Stall and other shops are often closed at around 7-8 P.M. She has admitted that 7-8 houses are adjacent to her house. It is surprising to note that in the room in which accused Vinod is alleged to have trespassed after knocking the door, three brothers of the prosecutrix who were sleeping in the same room but did not woke-up despite alarm sounded by prosecutrix, after

pressing of her breasts and manhandling by accused. Thus, the evidence of prosecutrix Jyoti (P.W.1) being doubtful does not inspire confidence.

9. It also cannot be over looked that Rakesh Ahirwar (P.W.3) in his evidence has narrated a different story. According to him, accused Vinod was manhandling and beating the prosecutrix. He nowhere stated that accused/applicant Vinod trespassed into the house and pressed prosecutrix breasts. In cross-examination Rakesh (P.W.3) has not denied the suggestion offered by the defence that prosecutrix and accused Vinod were having love relations. He has stated that Jyoti's brothers were sleeping in another room while as per Jyoti (P.W.1) her brothers were sleeping in the same room in which incident had taken place. Rakesh (P.W.3) has admitted that Article A-1 and A-2 photographs are of the prosecutrix and accused/applicant Vinod. He has clearly stated that his uncle i.e prosecutrix father do not run any Tea Stall or shop in the village while prosecutrix Jyoti in her statement has clearly stated that her father runs a Tea stall in the village. It is apparent that Jyoti (P.W.1) and Rakesh (P.W.3) have concealed truth from the court. As such, the false statement regarding running or not running of tea stall by father of the prosecutrix who is P.W.D. employee in the village creates a serious doubt on the veracity of their evidence rendering the same unacceptable.

10. Jyoti's father has not been produced in the evidence to support the truthfulness of the prosecution story. According to Rakesh (P.W.3) F.I.R. could not be lodged in the night as Jyoti's father was not at home while according to Jyoti (P.W.1) her father had arrived the house within 15-20 minutes of the alleged incident. Aforesaid material contradiction in the evidence of Rakesh (P.W.3) who is Jyoti's cousin makes it clear that he is not a reliable and truthful witness. As per Rakesh (P.W.3), he had seen

accused Vinod causing voluntary hurt to Jyoti ,while Jyoti (P.W.1) has nowhere stated that accused had beaten her or had caused any injury to her. Thus, there are material omissions and discrepancies in the evidence of these two witnesses making their evidence unbelievable.

11. It is worth mentioning that on hearing commotion, Rakesh (P.W.3) cousin of the prosecutrix who resides in another house in the neighborhood reached on the spot but the three brothers of the prosecutrix who were sleeping in the same room and house did not listen any noise, alarm or sound by sister and did not wake-up to witness the incident or to rescue their prosecutrix sister is beyond comprehension. According to Rakesh (P.W.3), Soudan, Kallu, Gullo Bai and some other residents of village had also reached on the spot but none of them were examined by the prosecution as witness which also creates doubt on the reliability and truthfulness of the prosecution story.

12. In this case, it also cannot be over looked that police station is only 8-9 K.M. away from the place of incident but F.I.R has been lodged almost after twelve hours of the incident, while father of the prosecutrix alongwith three other brothers was at home. Therefore, the explanation offered by Rakesh (P.W.3) and Jyoti (P.W.1) that brothers and father of the prosecutrix were not at home and F.I.R was lodged after their arrival also creates serious suspicion on the truthfulness and credibility of prosecution story.

13. The defence witness Jitendra Ahirwar (D.W.1) in his evidence has clearly stated that Jyoti and Vinod were having love relations for last 8-10 years and Jyoti use to call accused/applicant Vinod and Vinod frequently use to go to Jyoti's house on her invite. From Article A-1 and A-2 photographs, it is clear that applicant/ accused and complainant were



having some intimate relations. As prosecutrix father and brother were not inclined to get her married with the applicant/accused, possibility of applicant's false implication cannot be ruled out.

14. In this case, the evidence of Jyoti (P.W.1) and Rakesh (P.W.3) is contradictory on some material points. There are discrepancies in their evidence about beating of Jyoti and pressing of her breasts by the accused. Three brothers of the so called victim who were sleeping in the same room have not appeared in the court to support the factum of trespassing of the house and any act of outraging the modesty of their sister by accused which is the gravamen of an offence punishable under section 354 of IPC.

15. In the instant case, indisputably the accused/ applicant is the next door neighbour of the victim and they were having love affairs. Accused/ applicant had access to her house. Therefore, in absence of evidence of victim's brothers who were present in the same room, allegation that accused forcibly trespassed or entered into her room by knocking door does not transpires confidence. In this case, it is clear that no witness except prosecutrix and her cousin who are interested witnesses has supported the occurrence of the incident. Her three brothers who were present in the same room and father who reached within 10 to 20 minutes of the incident at home have neither witnessed the incident nor supported the prosecution story. In these peculiar circumstances, the learned trial court as well as appellate court ought to have accepted the version of the accused that he has been falsely implicated.

16. The statement of witnesses made out in the cross examination is an integral part of the testimony of witnesses and same is required to be minutely and meticulously examined taking into consideration all facts

and surrounding circumstances. The purpose of cross-examination of witnesses is to test veracity of statement of witnesses made out in examination-in chief. Therefore, equal importance should be given by the court to cross-examination of witness during evaluation of the evidence of such witness. In this case, it is apparent that learned trial court as well as the appellate court have not considered the material discrepancies and inconsistency appeared in the evidence of the prosecutrix and her cousin Rakesh (P.W.3). Thus, the learned trial court as well as the appellate court were not justified in accepting their evidence which is full of material discrepancies, contradictions and falsehood.

17. In view of what has been discussed above, this court is of the view that the case against the accused is doubtful and benefit of such doubt should be given to the accused. Resultantly, this criminal revision stands allowed. The judgment of the appellate court dated 6.12.2022 passed in Criminal Appeal No.2/22 by Additional Sessions Judge, Berasiya District Bhopal affirming the judgment dated 07.12.2021 passed in RCT No.1023/2016 by learned JMFC Berasiya District Bhopal, is hereby set aside. The accused/ applicant Vinod is acquitted of offences under section 456 and 354 of the IPC. The Registry/ trial court is directed to issue release order making it clear that if applicant is not required in any other offence, he be released in this case forthwith. The trial court record along with a copy of this order be sent down to the court concerned through Sessions Judge, Bhopal.

**(DINESH KUMAR PALIWAL)**  
**JUDGE**

