



**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL
&
HON'BLE SHRI JUSTICE DEVNARAYAN MISHRA
ON THE 30th OF APRIL, 2025
CRIMINAL APPEAL No. 6454 of 2023
MAYUR KHAN
Versus
*THE STATE OF MADHYA PRADESH AND OTHERS***

Appearance:

Shri Sunil Kumar Pandey - Advocate for the appellant.

Shri Manas Mani Verma- Government Advocate for the
respondent/State.

JUDGMENT

Per: Justice Vivek Agarwal

With the consent the case is taken up for final disposal in motion hearing.

2. Accordingly, I.A. No. 12716/2024, is dismissed as withdrawn.
3. Learned counsel for the appellant submits that appellant is aggrieved of judgment dated 28.04.2023 passed by learned Special Judge, POCSO Act, Seoni in SCATR No. 22/2020 convicting the appellant under Section 366 of IPC with 5 years R.I. and fine of Rs.500/- with default stipulation of 1 month simple imprisonment. Appellant has also been convicted under Section 5L/6 read with Section 3/4 of POCSO Act, so also under Sections 376, 376 (2)(n) of IPC and sentenced under Section 5L/6 of POCSO Act with 20 years R.I. and fine of Rs.1500/- with default stipulation of 2



months simple imprisonment. He has also been convicted under Section 3(2)(5) of SC/ST (Prevention of Atrocities) Act with life imprisonment and fine of Rs.2000/- with default stipulation of 2 months simple imprisonment. Appellant is also convicted under Section 3(1)(w)(i) of SC/ST (Prevention of Atrocities) Act with 2 years R.I. and fine of Rs.500/- with default stipulation of 1 month simple imprisonment. All sentences to run concurrently.

4. Learned counsel for the appellant submits that the appellant is innocent. Prosecutrix on her own volition had left her home to be in company of the present appellant. It is submitted that they travelled from one place to another in Maharashtra and then to Gujarat but nowhere prosecutrix complained about violation of her privacy against her will nor said that she was kidnapped by the appellant. He, therefore, prays that his conviction be set aside.

5. Learned Government Advocate for the respondent/State supports the impugned judgment and submits that record of the case speaks against the appellant and, therefore, no indulgence be shown in the matter.

6. Reading from the evidence of P.W.-1, mother of the prosecutrix, it is submitted that mother of the prosecutrix has admitted that when her marriage was solemnized, she was 17-18 years of age and after one year of her marriage, prosecutrix was born. She has stated that at present her age is 42 years. When this is taken into consideration, then marriage of the mother of the prosecutrix was performed about 20 years prior to the date of her deposition i.e. 30.10.2021 and prosecutrix was born one year after that marriage, which would mean that age on the date of deposition was 23 years i.e. at the time of incident her age was about 20 years. This fact is



corroborated by P.W.-2, father of the prosecutrix, who admitted that he is illiterate and he had given age of the prosecutrix by estimation as he does not know the actual age of the prosecutrix or any of his younger children. This witness P.W.-2 further admitted that he does not remember date of his marriage but it was performed 22-23 years prior at Village Gopewani and after one year, prosecutrix was born. Thus, on this estimation given by the father of the prosecutrix, she was major at the time of the incident. This fact is corroborated by school teacher Shri Santlal Nagwanshi (P.W.9), who has admitted in his cross-examination that whenever parents come then they give date of birth by estimation. Many a times, parents ask the teacher to write date of birth on estimation. He has admitted that except for *Dakhil Kharij* Register, no birth certificate was provided by the parents of the prosecutrix at the time of her admission.

7. Prosecutrix (P.W.-3) has admitted that appellant is known to her. On the date of incident, appellant had called her at about 09:00 PM. She had taken her to Keolari and from Keolari to Nagpur and then from Nagpur to Badlapur Mumbai by train. They stayed at Badlapur for 3 days. Appellant was working at Badlapur. He had taken her to Rajkot (Gujarat). They had established relationship in the name of performance of marriage. She has further admitted in para-6 of her cross-examination that on the date of incident, there was an altercation and dispute with her *Nani* on the aspect of preparation of meal and on such provocation given by her *Nani*, she had left her home on her own. She has also stated that she had stayed at Keolari Bus Stand along with the appellant for 10-15 minutes and had travelled by Bus to Nagpur. Bus was crowded. There were several persons in the Bus including some police personnel at Seoni Bus Stand. They had walked



from Nagpur Bus Stand towards Railway Station on foot and after obtaining ticket they had gone inside the platform. There was police personnel at platform also.

8. Thus, it is evident that, firstly, prosecution has failed to prove the age of the prosecutrix to be minor. Secondly, Dr. G. Lakra (P.W.-7) has stated that there were no injury marks on the internal parts of the body. Hyman was old torned and healed. Secondary sexual characters of the prosecutrix were fully developed. There were no external injury marks and if all these facts are taken into consideration, then mere a fact that DNA is positive is not sufficient to uphold the conviction of the appellant in the light of the judgment of Gujarat High Court in **Premjibhai Bachubhai Khasiya Vs. State of Gujrat and Anr., 2009 Cri LJ. 2888**. Even otherwise, in light of the judgment passed by the Supreme Court in **Birad Mal Singhvi Vs. Anand Birad Mal Singhvi Vs. Anand Purohit, AIR 1988 SC 1796**, the prosecution has failed to prove the age of the prosecutrix and has also failed to prove that she was not a consenting party. Whereas, prosecutrix herself admitted that on account of altercation with her *Nani*, she had left her house on her own and had moved with the appellant from place to place and despite presence of police personnel and public she had never informed that she was either kidnapped or her privacy was violated against her wish.

9. In view of the aforesaid, the conviction of the appellant under Section 366 of IPC, under Section 5L/6 read with Section 3/4 of POCSO Act, so also under Sections 376, 376 (2)(n) of IPC and under Section 3(2)(5) of SC/ST (Prevention of Atrocities) Act, under Section 3(1)(w)(i)



of SC/ST (Prevention of Atrocities) Act, can be sustained in the eyes of law.

10. Accordingly, impugned judgment of conviction and sentence dated 28.04.2023 passed by learned Special Judge, POCSO Act, Seoni in SCATR No. 22/2020 is **set aside**.

11. Appeal is **allowed**.

12. If the appellant is not required in any other case, he be released forthwith.

13. Fine amount, if deposited by him, be returned back to him.

14. Case property be disposed of in terms of the order of the trial Court.

15. Record of the Court below be sent back

(VIVEK AGARWAL)
JUDGE

(DEVNARAYAN MISHRA)
JUDGE

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