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CRA-11209-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

&

HON'BLE SHRI JUSTICE AVANINDRA KUMAR SINGH

ON THE 11th OF JULY, 2025

CRIMINAL APPEAL No. 11209 of 2024

BABBU @ BABU SINGH LODHI

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

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Appearance:

Shri Pramod Singh Tomar, Advocate for the appellant.

Shri S.K. Shrivastava, Public Prosecutor for the respondent-State.
.....

ORDER

Per. Justice Vivek Agarwal

This appeal under Section 374(2) of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.' for short), is filed, being aggrieved of judgment dated 12.09.2024, passed by learned Special Judge (POCSO) Act, 2012/III Additional Session Judge, Damoh (M.P.), in S.C. No.04/2023, whereby, appellant has been convicted for offence under 342 of IPC, for which he is sentenced to undergo R.I. for 06 months and fine of Rs.100/-, Section 376(3) of IPC, he is sentenced to undergo R.I. for 20 years and fine of Rs.3,000/-, Section 506 of IPC, he is sentenced to undergo R.I. for 02 years with fine of Rs.500/- and Section 5/6 of POCSO Act, he is sentenced to R.I. for 22 years, with default stipulations, respectively.

2. Learned counsel for the appellant submits that appellant has been



falsely implicated on account of political rivalry. He is innocent and he has been convicted only on the basis of surmises and conjectures.

3. It is submitted that report of the lady doctor Shraddha Gangele (PW/4), is relevant in which she stated that victim was brought too her for medical examination at about 11:50 P.M. on 10.12.2022. It is mentioned that victim (PW/9) was alert and conscious. She had informed her that Sarpanch Babbu on 08.12.2022, at about 03:00 P.M., had threatened her and under threat caused sexual violence. She had stated that victim (PW/4), had taken bath twice after the incident and was wearing washed cloths at the time of medical examination. It is pointed out that on external examination, no injury was found on any of the parts, namely, face, chest and back. Similarly, on internal examination, no injury marks were found on the private parts of the victim (PW/9). It is further mentioned that Dr. Shraddha Gangele (PW/4), had prepared two vaginal slides and two vaginal swabs along with perennial hairs for examination and had handed them over to the woman constable. In the opinion, she stated that there were no signs of any use of force on the body of the victim. However, sexual ill-treatment cannot be ruled out. Thus, it is submitted that medical report itself is sufficient to set aside the conviction of the appellant.

4. Shri S.K. Shrivastava, learned Public Prosecutor, for the State, in his turn, supports impugned judgment and submits that at the time of the incident, age of the victim was about 12 years and, therefore, looking to the vulnerability of the victim, no indulgence be shown in the matter.

5. After hearing learned counsel for the parties and going through the



record, it is evident that Rajaram (PW/3), Headmaster of the Girls School, proved the date of birth of the victim as 25.10.2010. Incident allegedly took place on 08.12.2022. Thus, age of the victim to be about 12 years is proved by Rajaram (PW/3).

6. Dr. E. Minj (PW/6), examined the appellant and stated that he was capable of performing sexual act. He prepared two slides of his semen and had sealed his undergarments and given to the constable.

7. Bhumika Vishwakarma (PW/7), Sub Inspector, carried investigation and had recorded statements of the witnesses, collected medical and forensic evidence and had also recorded statements under Section 164 Cr.P.C. She admitted that Ex.P/10 report, which is the FIR was recorded by her on the instructions of the SHO Smt. Rajni Shukla. It does not contain signatures of the SHO. She further admitted in para 12, that victim had brought her underwear which she had worn on the date of the incident and that was seized by her. She further admitted that in 161 Cr.P.C., statement of the victim, age is mentioned as 18 years, but admitted that it was a typographical error.

8. PW/9, is the victim. After having said that on 08.12.2022, at about 10:30, when she was going to school, she had purchased certain snacks for Rs.5/- from the shop of the appellant and appellant had taken her inside the 'Chakki' and had smothered her and then started touching her on her body parts. Thereafter, she stated that when she tried to run, then appellant caught hold of her and performed wrong on her. She admits that thereafter she had gone to the school, but she was scared and then on 10th when her mother



asked her, then she narrated story to her mother.

9. In cross-examination, PW/9, victim admitted that appellant is previous Sarpanch of the village. Previous Sarpanch Rajendra Singh is also known to her. She admitted that there is a dispute between Babu Singh and Rajendra Singh on account of the post of Sarpanch of the village and both are not speaking to each other. She further admitted that Rajendra Singh visits her house.

10. In para 8, victim (PW/9), she admitted that Rajendra Singh had accompanied them to the place of police personnel and she had narrated her story as was tutored to her by Rajendra Singh. In para 9, she admits that Rajendra Singh had asked her to narrate her story in police station that wrong was committed to her. When both asked her as to what wrong was done, then she had narrated only that some wrong was done to her in the police station.

11. Victim (PW/9), further admits that grand-daughters of the appellant are known to her and she plays with them. She admits in para 12, that Rajendra Singh had come to her school to pick her up as her mother had sent him. She also admits that she cannot say as to whether at the time of recording of her statements under Section 164 Cr.P.C., whether she had given the timing of the incident at 03:00 P.M. (on perusal of Section 164 Cr.P.C. statement, it is evident that timing is mentioned as 03:00 P.M.). In para 15, she admits that for the first time, she had narrated her vows to Sarpanch Rajendra, because she was afraid of her mother. This is again contradictory, because in the FIR it is mentioned that she first narrated the



story to her mother. She admitted that police had though inquired from her, but had not taken anything in writing.

12. PW/12, is the mother of the victim. She admitted that Ex-Sarpanch of the village is frequently visiting her home. She also admitted in para 2 of her cross-examination that intimation of the incident was given by Ex-Sarpanch to her. She also admitted in para 3, that Ex-Sarpanch had brought the victim to her house. She also admits that Ex-Sarpanch had asked her to lodge report against Babu Singh at Police Station Patharia. She admits that she had called her sister and brother over telephone and then they had gone to the police station for lodging report along with the Ex-Sarpanch of Patharia. In para 5, this witness admits that at police station Patharia, Incharge SHO madam had obtained signatures on 2-3 papers.

13. PW/12, mother of the victim also admits that when statements of the victim and of this witness were recorded, then videography was not carried out. She admits that she had not gone to police station Patharia, but had gone to her parents house. She further admits that after lodging of report, police personnel had dropped them to their house and, thereafter, nobody ever visited them at their village. In para 9, she admits that victim is mentally ill and, therefore, Ex-Sarpanch of the village got the report lodged. She further admits that after recording of the report, it was not read over to her. She further admits that whatever was narrated to her by the Ex-Sarpanch, has been narrated by her in the Court.

14. PW/13, is the grand-father of the victim. In para 4, he admits that victim is mentally weak. He has given totally different version as compared



to other witnesses.

15. PW/14, is the SHO of the case, who had arrested the appellant.

16. Thus, it is evident that firstly, FIR Ex.P/10, is not lodged as per the version of the victim. Her mother (PW/12), admitted that she was deposing in the Court as per the version of the Ex-Sarpanch and not what was narrated to her by her daughter i.e. the victim. Ex.P/25, is the FSL report which is negative and shows that no semen was found on the underwear, vaginal slides, vaginal swab, or pubic hair of the victim.

17. Victim (PW/9), admits that whole report was lodged at the instance of Ex-Sarpanch Rajendra Singh who was familiar with their family. She further admits that Rajendra Singh had brought her from school at the instance of her mother and at the instance of Rajendra Singh, who was having enmity with the present appellant, report was lodged. This fact is corroborated by PW/12, mother of the victim.

18. Prosecution has not examined Rajendra Singh. PW/4, lady doctor Shraddha Gangele has categorically stated that there were no signs of any forceful violation of privacy. Though she has created a doubt in regard to there may be forceful sexual ill-treatment, but that is not substantiated through any independent piece of evidence. PW/12, mother of the victim as well as PW/13, have admitted that victim is mentally weak.

19. Thus, it is evident that with a view to settle political scores with the present appellant Rajendra Singh used victim and her mother with whom he was familiar to settle his personal scores and that being apparent from face of record, especially in view of the statements of victim and her mother



PW/12, duly corroborated with the medical evidence of PW/4, Dr. Shraddha Gangele, we are of the opinion that no case for conviction is made out and conviction is based on improper appreciation of evidence. Judgment of conviction is passed on surmises and conjectures without having any basis and accordingly, there is no hesitation to set aside the judgment of conviction.

20. Accordingly, appeal is allowed. Judgment of conviction is, hereby, set aside. Case property be disposed off in terms of the order of the trial Court.

21. Record of trial Court be sent back.

(VIVEK AGARWAL)
JUDGE

(AVANINDRA KUMAR SINGH)
JUDGE

A.Praj.