



IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE SUBODH ABHYANKAR
ON THE 22nd OF AUGUST, 2024
CRIMINAL APPEAL No. 9582 of 2018
BHAIDAS
Versus
THE STATE OF MADHYA PRADESH

Appearance:

Ms. Sharmila Sharma- Advocate for the appellant.

Shri Madhusudan Yadav- G.A. for the State.

JUDGEMENT

1] Heard finally, with the consent of the parties as the appellant has already been released from jail, around two years ago, after completing his sentence.

2] This criminal appeal has been filed by the appellant – Bhaidas, under Section 374 of Cr.P.C. against the judgement dated 10.07.2015 passed in Special Sessions Case No.30/2013 by II, A.S.J., Sendhwa, District Barwani (M.P.) whereby finding the appellant guilty, the learned Judge of the trial Court has convicted him as under:-

Conviction		Sentence		
Section	Act	Imprisonment	Fine	Imprisonment in lieu of Fine
376(2)(f)(i)/511	IPC	10 years	Rs.1,000/-	3 months R.I.
5 (m-n)/18	POCSO Act	10 years	Rs.1,000/-	3 months R.I.

3] In brief, the facts of the case are that the FIR in the present case



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was lodged on 22.11.2013, at around 12:15 p.m., under Sections 376(2)(f)(i)/511 of the IPC, in respect of an incident which took place on 21.11.2013, at around 9 o'clock in the night, alleging an attempt to rape of the victim/daughter of the complainant, aged five years. It is an undisputed fact that the appellant happens to be the younger brother of the complainant PW-1 Fofa. It is alleged that in the night when the wife of the complainant was preparing for dinner, at that time, when the complainant came to the house, as he did not see his younger daughter, he asked the other daughter about her, to which she informed that the victim was playing with the present appellant, however, after searching in the surrounding areas, they heard the voice of the victim, who was crying and when they approached towards the voice, they found that the appellant Bhaidas, who was completely naked, had also undressed the victim, and was trying to force himself on her, and after seeing the complainant, the appellant ran away from the spot. On the said FIR, the investigation ensued, and after the charge-sheet was filed, the learned Judge of the Trial Court, after recording the evidence, has convicted the appellant as aforesaid, holding him guilty inter alia, of an offence of attempting to commit rape.

4] Counsel for the appellant has submitted that the appellant happens to be the younger brother of the complainant, and a property dispute was already going on between them, which has led to the false implication of the appellant in the said case. It is submitted that in the night of 21.11.2013, a dispute took place between the appellant and the complainant, in which the appellant also suffered a head injury and



because of which, he had gone to the police station on the next day to lodge the report, and when the complainant came to know about the same, he also went to the police station with a false case that the appellant had tried to violate his five years old daughter.

5] Counsel has also submitted that admittedly, the prosecutrix has not been examined in the Trial Court, as she was only five years old, however, the complainant PW-1 Fofa in para 8 of his cross-examination has also been suggested that he wanted to get hold of the land of the appellant, and wanted to give it to his other daughter and son-in-law, to which he has denied, and in para 27, he has admitted that he had assaulted the appellant with a stone and thereafter, the appellant had come with an axe in his hand. Whereas, the mother of the victim, PW-2 has admitted in para 12 that when they went to the police station to lodge the report, they also found the appellant to be sitting in the police station, and he was also bleeding from his head, and she has also stated that in the next morning of the incident, they had assaulted the appellant with a stone, because of which, he had suffered a head injury, and she has also admitted that her mother-in-law had also come to the police station. Thus, it is submitted that the learned Judge of the Trial Court has erred in not appreciating the aforesaid evidence on record, and has given too much emphasis on the fact that the appellant has not produced any evidence in his defence, and has also not taken any such specific plea in his (accused) statement recorded under Section 313 of the Cr.P.C. Thus, it is submitted that the impugned judgement be set aside and appeal be allowed.



6] Counsel for the respondent/State, on the other hand, has opposed the prayer and it is submitted that no case for interference is made out.

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

8] Having considered the rival submissions and on perusal of the record this Court finds that it is a case of oral evidence only, as admittedly, there is no MLC in the case to support the case of the prosecution, and the victim has also not been examined in the Trial Court due to her tender age. In such circumstances, this court is of the considered opinion that it was incumbent upon the learned Judge of the Trial Court to sift the evidence on record with great circumspection. On a careful reading of the evidence, it is found that according to the prosecution witnesses, the appellant was already in the police station at the time when the complainant reached their to lodge the report, and PW-2, the wife of the complainant has also admitted that the appellant was already in the police station when they went to the police station to lodge the FIR. The other witnesses have also admitted that the mother of the complainant is residing with the appellant, and also that the appellant is tilling the field of his mother. PW-3 Dr. R. R. Bhojane has certified that the appellant had a six hour old head injury and apart from that, the sister of the prosecutrix, PW-8 has admitted that in the night when the appellant was assaulted by her father, the appellant had gone to the police station in the night only and along with him, the mother of the appellant and complainant had also gone to the police station. Whereas, the complainant and her mother went to the police station on the next day, at around 10



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o'clock, and when they reached the police station, the appellant was already present in the police station along with his mother.

9] In the light of the aforesaid evidence on record, it is apparent that the appellant had already reached the police station even prior to the complainant, and he also had a head injury admittedly inflicted by the complainant, and considering the fact that a property dispute is also going on between the complainant and the appellant, this court is of the considered opinion that looking to the close relationship of the appellant and the complainant it would not be safe to rely upon the testimony of the prosecution witnesses without seeking any further corroboration . In such circumstances, this Court is of the considered opinion that the impugned judgement dated 10.07.2015, cannot be sustained in the eyes of law and the same is liable to be and is hereby set aside.

10] Accordingly, the appeal stands **allowed** and the appellant stands acquitted.

(SUBODH ABHYANKAR)
JUDGE

Bahar