



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

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 23rd OF OCTOBER, 2024

CRIMINAL APPEAL No. 4802 of 2021

MUNSINGH @ MUNASHYA

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Ms. Geetanjali Chaurasiya- Advocate for the appellant.

Ms. Mradula Sen- G.A. for the State.

JUDGEMENT

- 1] Heard finally, with the consent of the parties.
- 2] This criminal appeal has been filed by the appellant – Munsingh, under Section 14(A) (1) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the judgement dated 05.04.2021 passed in SC ATR Case No.112/2017 by Special Judge (SC/ST Act), West Nimad, Mandleshwar, (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
363	IPC	7years R.I.	Rs.500/-	1 year R.I.
366	IPC	7yearsR.I.	Rs.500/-	1 year R.I.
344	IPC	3 years R.I.	Rs.500/-	9 months R.I.
376(2)(n)	IPC	10 years R.I.	Rs.1,000/-	2 years R.I.



5/6	Protection of Children from Sexual Offences Act, 2012	10 years R.I.	Rs.1,000/-	2 years R.I.
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3] The allegation against the appellant is that on 26.09.2017, an FIR was lodged at around 14:22 hours, in respect of an incident which took place on 21.09.2017, at around 21:00 hours. It was alleged that the complainant Gangaram Barela's daughter has gone missing from the same day and Chini, the daughter of Khumsingh Mankar, a resident of *Satipadavas* is also missing from his house. On such FIR, the investigation ensued, the appellant Munsingh, aged 26 years was arrested, and the charge-sheet was filed. The learned Judge of the Trial Court, after recording the evidence has convicted the appellant as aforesaid and being aggrieved, the present appeal has been preferred.

4] Counsel for the appellant has submitted that the appellant has been falsely implicated in the case, as the age of the prosecutrix is also not proved positively to be less than 18 years and the learned judge of the trial court has erred in holding that at the time of incident, she was 13 years 3 months and 19 days old only, on the basis of the scholar register. It is also submitted that the prosecutrix has resided with the appellant for a period of around two months in *Sillod*, where he was working in a Ginning factory. It is submitted that the prosecutrix never made any hue and cry while she resided with the appellant, even at the time when she was taken from bus, which was a public transport, and the other passengers were also travelling with her. She has also admitted in para 12 of her deposition that



she never informed the people residing nearby at *Sillod* that the appellant is forcibly keeping her.

5] Counsel has also submitted that the prosecutrix was a consenting party and she had travelled with the appellant on her own accord and only after she was recovered and went in her parents' custody, she has deposed against the appellant. Thus, it is submitted that the appeal be allowed, and the appellant be acquitted.

6] Counsel for the respondent/State, on the other hand, has opposed the prayer.

7] Having considered the rival submissions and on perusal of the documents filed on record, it is found that the prosecutrix has supported the case of the prosecution that the appellant had raped her while she was in her custody, although the FSL report is also on record, filed as Ex.P/25, which is negative.

8] So far as the age of the prosecutrix is concerned, the prosecution has proved Ex.P/1, which is the birth certificate issued by PW-1 Chetram, teacher in school at *Raibidpura*, District- Ratlam, who has also proved her scholar register Ex.P/2, however, he has admitted that the prosecutrix has taken admission in Class- VI of their school. The father of the prosecutrix PW-3 Gangaram has also stated that the age of her daughter is 14 years, but he has not been cross examined on the point of her age.

9] This Court also finds that regarding the age of the prosecutrix, the testimony of PW-5 Dr. Mahendra Badole is important, who has also stated that the age of the prosecutrix was around 14 years and has also examined her and had found that according to her, her periods had not started and



her secondary sexual characters were also in the developing stage, although, he did not find any internal or external injuries on her person. In his cross-examination, he has been suggested that periods start at the age of 14 years, to which he has admitted.

10] On a close scrutiny of the testimony of PW-5 Dr. Mahendra Badole, this Court is of the considered opinion that it is a classic case of casual cross-examination. It also demonstrates the consequences of asking a wrong question to a particular witness. It would be relevant to refer to the relevant paras of PW-5 of his examination-in-chief and cross-examination.

The same read as under:-

“Examination-in-chief

03- मैंने पीडिता का चिकित्सीय परीक्षण किया था। परीक्षण में मैंने पाया कि पीडिता साधारण कद काठी की थी। पीडिता के बताये अनुसार उसका मासिक धर्म प्रारंभ नहीं हुआ था। एवं उसके द्वितीयक यौन लक्षण विकसीत हो रहे थे। पीडिता के बाहेय शरीर पर किसी प्रकार की चोट के निशान नहीं थे। पीडिता की अंदरूनी जांच करने पर उसके गुप्तांग पर किसी प्रकार की कोई चोट नहीं पायी गयी थी।

Cross-examination

06 सामान्यतः किसी लडकी का मासिक धर्म १४ वर्ष की उम्र से प्रारंभ हो जाता है। मुझे पीडिता द्वारा जो उम्र बतायी गयी थी, वह मैंने परीक्षण रिपोर्ट में लिखी थी। यह कहना सही है कि पीडिता के गुप्तांग पर बाहेय या अंदरूनी किसी प्रकार की चोट व खरोंच के निशान नहीं थे।

पुनः परीक्षण –कुछ नहीं।”

(Emphasis Supplied)

11] In such facts and circumstances of the case, this Court is of the considered opinion that although, the prosecution has not produced any cogent documents regarding the age of the prosecutrix, but the same has been found to be proved to be less than 14 years, as per the deposition of the doctor PW-5 Dr. Mahendra Badole who has observed that her secondary sexual characteristics were in the developing stage and that her



menstruation periods had not started. Thus, when the prosecutrix, who was less than 14 years old and was forced to have sex with the appellant, who was 26 years old, for a period of around two months, this Court finds that the prosecution has proved its case beyond reasonable doubt.

12] Accordingly, the appeal being devoid of merits, is hereby *dismissed*.

(SUBODH ABHYANKAR)
JUDGE

Bahar