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CRA-3578-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

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HON'BLE SHRI JUSTICE RAMKUMAR CHOUBEY

ON THE 17th OF DECEMBER, 2025

CRIMINAL APPEAL No. 3578 of 2024

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Appearance:

Shri Vijit Sahu, learned counsel for the appellant.

Shri Nitin Gupta, learned Public Prosecutor for the respondent/State.
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ORDER

Per. Justice Vivek Agarwal

Learned counsel for the appellant prays for withdrawal of I.A. No.14706/2025, which is first application for suspension of sentence and grant of bail to appellant.

Accordingly, I.A. No.14706/2025 is dismissed as withdrawn.

With the consent of learned counsel for the parties, the case is heard finally.

This appeal is filed by the appellant being aggrieved of judgment dated 30/11/2023 passed in Special Case No.107/2022 by learned Special Judge (POSCO Act) and 18th Additional Sessions Judge, Jabalpur (MP) whereby



appellant has been convicted and sentenced in the following terms:-

<u>Conviction</u>		<u>Sentence</u>		
<u>Section</u>	<u>Act</u>	<u>Imprisonment</u>	<u>Fine</u>	<u>Imprisonment in lieu of fine</u>
366	IPC	R.I. for 05 years	Rs.1,000/-	R.I for 06 months
5(l) r/w 6	POCSO	R.I. for 20 years	Rs.2,000/-	R.I. for 06 months

2. Story of the prosecution, in short, is that on 31/01/2022 mother of the victim approached Police Station, Madhotal and registered case Crime No.81/2022 under Section 363 of IPC being a missing person report of her daughter who had gone missing on 31/01/2022 when complainant returned back to her home at about 13.00 hours.

3. On 23/04/2022 victim was recovered. Her statement under Section 164 of Cr.P.C. were recorded. She was subjected to medical examination, report of which is Ex.P/16, thereafter seizure etc. were made and victim was handed over to her mother. After completion of investigation, charge sheet was filed and the appellant has been convicted as mentioned above.

4. It is submitted by learned counsel for the appellant that lady doctor i.e. Dr.Archana Grover (PW-8) deposed in her examination-in-chief that she had advised x-ray of long bone for age determination. It is pointed out that as per x-ray report, age of the victim was more than 18 years. This document is available on record. X-ray report was produced by the prosecution which was not exhibited by the Public Prosecutor and learned trial Court also failed to look into the document produced by the



prosecution. However, we are constrained to note that learned Special Judge did not deem it proper to exercise her authority under Section 311 of Cr.P.C. and call for further evidence on the said document i.e. x-ray film and report which were furnished by Dr. M.K. Mishra, Registration No.12927, Radiologist Class-I, District Hospital, Jabalpur.

5. We propose to issue a show cause notice to the concerned Special Judge as well as the Public Prosecutor for such a major lapse in doing injustice to the accused and putting him behind bar for over three years overlooking the fact that victim was a consulting adult, therefore, conviction could not have been made. This is a sign of intellectual dishonesty on the part of the Special Judge. Registry is requested to issue a show cause notice to the concerned Special Judge and the Public Prosecutor calling for their explanation.

6. As far as merits are concerned, law laid down by the Division Bench of this Court in the case of **Lallusingh S/o Jagdishsingh Samgar Vs. State of M.P., 1996 MPLJ 452** is that *despite the absence of formal proof of document of dying declaration, the same can be made use of by the accused in his defence, accused can take the advantage of the document even without proof of the same. Similarly, the medical certificate showing the injuries on the body of the accused can also be made use of by the accused despite absence of formal proof.* Para-6 of the said judgement reads as under :

"6. We deprecate the method of prosecution of withholding the evidence collected during



investigation. The prosecutor is a 'State' and, therefore, the prosecution should be fair enough to produce all the evidence collected during investigation and it should be left to the Court to come to its own conclusion on the facts proved before him or the Court concerned.

But, despite the absence of formal proof of document of dying declaration, the same can be made use of by the accused in his defence, accused can take the advantage of the document even without proof of the same. Similarly, the medical certificate showing the injuries on the body of the accused can also be made use of by the accused despite absence of formal proof.

7. In the present case, admittedly, prosecution had produced the x-ray report which is available on record as discussed above and that x-report categorically mentioned a fact that victim was above 18 years of age.

Therefore, when these facts are taken into consideration, then there appears to be no need to discuss any other evidence except the evidence of the victim (PW-1) to find out as to whether she was a consenting party or not.

8. In her examination-in-chief, victim (PW-1) deposed that appellant- is known to her. He is residing in the village of her *Mausi* i.e. Village Tilghawan, therefore, he is known to her. 6-7 months prior she had gone with to village Semariya. Thereafter he had



performed marriage with her at a temple. She had stayed with the appellant for about two months. During this period, they had established physical relationship. Victim (PW-1) also deposed that she was apprehended from Village Tilghawan by the Police authorities.

9. In cross-examination, this witness deposed that she is the only child of her parents. Her parents are illiterate. Her father is working as a labourer. She met appellant- in his village i.e. Tilghawan. Tilghawan is at a distance about two hours from her place of residence. Since her *Mausi* is residing at Tilghawan, she had met at Tilghawan. House of is situated at a distance of half km. from the house of her *Mausi*. This witness (victim) admitted that she had became a friendship with at the place of another friend 'R'. 'R' is also residing at Tilghawan in front of house of her *Mausi*. This witness admitted that her friendship with 'R' is about 3-4 years old. Thereafter victim deposed that she had met at the Hanuman Temple. Victim admitted that she had performed marriage at Hanumantal, Jabalpur temple in front of Jain temple. Victim also deposed that her parents have no knowledge about that marriage. Then in para-5, victim (PW-1) deposed that she had performed marriage on her own volition with the appellant and appellant had not forced her or coerced her for performing marriage.

10. When these facts are taken into consideration, then a consensual relationship between two consenting adults is not an offence. Thus, the impugned judgment deserves to be set aside. Trial Court has committed a grave error in conducting the trial.



11. Accordingly, this criminal appeal is allowed. Impugned judgment of conviction and order of sentence is hereby set aside and the appellant is acquitted of all the charges. Appellant is in jail, he be released immediately, if not required in any other case.

12. Record of the trial Court be sent back immediately.

13. Explanation of the concerned Special Judge and the Public Prosecutor who conducted trial be called for and be placed in Chamber for our perusal and directing further action in accordance with law.

(VIVEK AGARWAL)
JUDGE

(RAMKUMAR CHOUBEY)
JUDGE

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