



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

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 11th OF SEPTEMBER, 2024

CRIMINAL APPEAL No. 4232 of 2019

RISHABH ATLE MINOR THROUGH NEXT FRIEND (FATHER)

JAIKISHAN ATLE

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Shri Mitesh Patidar - Advocate for the appellant.

Ms. Mridula Sen – G.A./P.L. for respondent/State.

JUDGEMENT

1] On the last date of hearing, this Court had passed the following order:-

“Counsel for the appellant submits that the appellant was juvenile at the time of his conviction and was sent to the juvenile (sic) (observation) home, and as per his information, the appellant was (sic) already absconded from the said home.

In view of the same, counsel appearing for the respondent is also directed to verify the aforesaid information and apprise this Court within a week’s time.

Let the matter be listed on 11.09.2024.”

2] Today, Ms. Mridula Sen, learned Counsel for the State has confirmed that the appellant has already absconded from the



Observation home on 13.11.2019, along with 7 other such juveniles, who were also lodged in the same home and till date he is not traceable.

3] Be that as it may, the matter is heard finally.

4] This criminal appeal has been filed by the appellant under Section 374 (2) of Cr.P.C. against the judgement dated 08.05.2019 passed in Sessions Trial No.168/2018 by Vth Additional Sessions Judge, Indore (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)(i)(k)	IPC	10 years rigorous imprisonment	Rs.500/-	-
5(m)(i)/6	POCSO Act, 2012	10 years rigorous imprisonment	Rs.500/-	-

5] It is also held by the trial Court that after attaining the age of 21 years, appellant should be sent to prison.

6] In brief, the facts giving rise to the present appeal are that an FIR Ex.P/1 was lodged by the mother of the victim on 29.12.2017, at around 9 O' clock in the night under Section 376(2)(i)(k) of IPC and Section 5(m)(i)/6 of the Protection of Children from Sexual Offences Act, 2012, informing that she is residing with her husband and two daughters, aged 6 and 4 years, and when she was alone in her house and was preparing food in the night, at that time the son of her landlord, appellant Rishabh



came to her house and asked her younger daughter to come with him, and after taking her in his lap, took her out of the house. After sometime she heard her daughter who was crying, and when she went upstairs, she found that her daughter was lying unconscious on the bed and the appellant was standing beside her, and when she asked him as to what he has done, he ran away from the spot. She took her daughter in her house and found that she was profusely bleeding from her private parts and after applying cotton to her, she came to the police station to lodge the report. On such FIR, the investigation ensued, and the charge-sheet was filed, and 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.

7] Counsel for the appellant has submitted that the appellant has been falsely implicated in the case as there was a dispute going on between the complainant and the landlord relating to the rent, as the landlord wanted to increase the rent and the landlord was also demanding separate amount for light and water. It is also submitted that the age of the victim has also not been proved as no document regarding her age has been filed on record.

8] Counsel for the State, on the other hand, has opposed the prayer and it is submitted that no case for interference is made out looking to the evidence available on record.



9] Heard. Having considered the rival submissions and on perusal of the record, it is found that the date of incident is 29.12.2017, whereas the date of birth of the victim is stated to be 26.03.2014. Thus, she was around 4 years old at the time of the incident, and although no document has been filed in support of her age. However, the deposition of PW-5 Dr. Monika Verma would reveal that the victim was 4 years old and had also suffered various injuries on her private part. This Court has no reason to question the opinion of the doctor that the victim was 4 years old only as, admittedly, she was almost like a toddler, and cannot be argued that the prosecution has not been able to prove her age to be less than 18 years.

10] So far as the injuries suffered by the victim are concerned, PW-5 Dr. Monika Verma has described the same in the following manner:-

“परीक्षण में मैंने पाया कि पीड़िता के गुप्तांग नीला पड़े हुए थे और उसके अंदर बांयी साईड के पुठे पर 4 इनच 4 से.मी का नीला पड़ा हुआ था। उसका हायमन फटा हुआ था। गुप्तांग पर एक से.मी. राईड साईड और 1.25 से.मी. लेफ्ट साईड पर चोट थी और कट लगा हुआ था। योनि मार्ग पर और उसके अंदर की मैकोजा भी सूजी हुई थी। पुठों को चौड़ा करने पर बहुत सारी चोटों और कट के निशान थे पेरीएनल एरिया में बहुत ज्यादा कट और सूजन भी थी। जो कट पेरीएनल और वेजाईनल एरिया के बीच में थे उनमें ब्लीडिंग हो रही थी। एनल स्पीटर पर चोट थी और जिससे मेरा तात्पर्य उस हिस्से की मासपेशिया शिथिल हो गयी थी। मेरे द्वारा दी गई रिपोर्ट प्रदर्श पी 5 है। जिसके सी से सी भाग पर मेरे हस्ताक्षर हैं। प्रदर्श पी 5 की रिपोर्ट पर मेरे हस्ताक्षर के साथ-साथ शिशु रोग सर्जन डॉ अशोक लड्डा के हस्ताक्षर हैं। जिन्होंने मेरे साथ ओ. टी में पीड़िता का परीक्षण किया था। डॉ लड्डा के डी से डी भाग पर हस्ताक्षर हैं।

English translation of the same:-



There were bruises on the vagina of the victim which had turned bluish; On the left side of her buttock there was 4x4 cm bruise; Her hymen was ruptured; There were injuries and cut on her private part 1cm right side and 1.25cm on the left side. There was swelling on her vaginal wall and inside vaginal mucosa. On widening the buttocks there were many injuries and cut marks. There were many cuts and swelling in the perianal area. The cuts between the perianal and vaginal area were bleeding. There was an injury on the anal sphincter and due to which, the muscles of that area had become numb/loose.”

11] PW-5 Dr. Monika Verma has also stated that the victim was kept in the labour room of the Hospital for around two days as she was in extreme pain, and she had also taken the history from her mother, who had informed that she was subjected to rape by the present appellant, who happens to be the son of her landlord. Thus, there is no denying the fact that the victim was brutally raped. She has also been cross-examined that the victim has suffered such injuries, if she falls on a wooden log, to which she has admitted, but has also stated that a fall injury would not have such pattern of injuries, which the victim has suffered.

12] Whereas, PW-4 Dr. Amarnath Yadav, who has examined the appellant, has also stated that the appellant's secondary sexual characteristics were fully developed as also his pubic hair and there was no smegma on his glans.

13] FSL report is also available on record, which is Ex.P/21 in which it has been found that, although the slides of the victim had no human



spermatozoa, however, on the slide of the appellant human spermatozoa has been found.

14] On perusal of the deposition of the complainant PW-1, it would reveal that she has supported the case of the prosecution and has clearly made specific allegation against the appellant only, and in defence she has been suggested that the victim has suffered injuries only because of falling on the ground to which she has denied. Other witness PW-6 Pushpa Oswal, who is the other tenant of the landlord, has also supported the case of the prosecution, as she happens to be the first one to reach on the spot. She has also deposed that she saw that the victim was bleeding when her mother brought her from the room of the appellant.

15] Be that as it may, this Court is of the considered opinion that in such facts and circumstances of the case, there was no reason for the mother of the victim, who herself had reached on the spot soon after the incident where she found the appellant standing beside her daughter, who was already bleeding, to lodge a false case against the appellant and to save the real culprit. The appellant has been rightly convicted as aforesaid.

16] Accordingly, this Court does not find any illegality in the impugned judgement, and the appeal sans merits, is hereby **dismissed**.

17] The appellant is at large, let perpetual warrants be issued against him and he be arrested to suffer the remaining part of his sentence.



P.S.: ABOUT ONE MORE NIRBHAYA.

18] As a parting note, this Court is once again at pains to observe that juveniles in this country are being treated rather tooleniently, and that the Legislature, to the utter misfortune of the victims of such crimes, has still not learnt any lessons from the horrors of *Nirbhaya*, reported as (2017) 6 SCC 1 (Mukesh v. State NCT of Delhi). Looking to the overwhelming medical evidence available in the present case, it does not taken an expert to see as to how demonic the appellant's conduct was while he was juvenile, and his mindset can also be gathered from the fact that he has also absconded from the observation home, and presently is at large, probably lurking in some dark corner of the street, for yet another prey, and there is nobody to stop him. And, although such voices are being raised time and again by the Constitutional Courts of this country, but to the utter dismay of the victims, they have not been able to make any impact on the legislature even after a decade of *Nirbhaya (supra)* which took place in the year 2012.

19] Let a copy of this order be sent to the Law Secretary, Department of Legal Affairs, Government of India, New Delhi (India).

20] The appeal is, accordingly, *disposed of*.

(SUBODH ABHYANKAR)
JUDGE