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CRA-149-2015

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

&

HON'BLE SHRI JUSTICE DEVNARAYAN MISHRA

ON THE 10th OF JANUARY, 2025

CRIMINAL APPEAL No. 149 of 2015

SANJU SONKAR ALIAS SANJU KHATIK

Versus

THE STATE OF MADHYA PRADESH

.....
Appearance:

Mr. Santosh Sahu - Advocate for appellant.

Mr. Manas Mani Verma - Government Advocate for State.

.....
WITH

CRIMINAL APPEAL No. 312 of 2015

NATI @ AMAR YADAV

Versus

THE STATE OF MADHYA PRADESH

.....
Appearance:

Mr. J.K. Dwivedi - Advocate for appellant.

Mr. Manas Mani Verma - Government Advocate for State.

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JUDGMENT

Per. Justice Vivek Agarwal

These appeals are filed by the convicted appellants being aggrieved of the judgment dated 01.08.2014 passed by learned Fifteenth Additional Sessions Judge, Jabalpur in Sessions Case No.628 of 2012 whereby out of the three accused persons, one has been acquitted by the trial Court and two



appellants who have filed these appeals have been convicted under Section 376(2)(g) of the Indian Penal Code with life imprisonment and fine of Rs.10,000/- each with default stipulation of six months R.I. They have also been convicted under Section 506 (Part-II) of the Indian Penal Code with three years R.I. and fine of Rs.2,000/- each with default stipulation of one month R.I. All the sentences to run concurrently.

2. Learned counsel for the appellants submits that the prosecution case in short is that on 08.02.2012, prosecutrix along with her brother visited Sharda Mandir Madan Mahal. When she was coming down the stairs after *darshan*, the accused persons and Rahul called them and asked their address, then they took them inside the jungle on a hillocks and then extended threat. Thereafter, the accused had taken the prosecutrix in the shadow of a stohe and committed rape one after another. It is submitted that the case of the prosecutrix is that since her brother was under the custody of the remaining accused persons, she was helpless. During the performance of illegal act, prosecutrix protested as a result of which, she lost her anklet.

3. It is submitted that FIR was registered under Section 376 (2)(g) and 506 of the Indian Penal Code against unknown persons on a written complaint and thereafter, appellants were arrested along with other co-accused persons. It is submitted that there are contradictions in the statements of the prosecutrix and another witness Dayaram (PW-7).

4. It is pointed out that a hand written complaint (Ex.P-4) was given to the police authorities and that hand written complaint is contrary to the statements given by the prosecutrix and PW-7 before the Court of law. It is



further submitted that no TIP was carried out after arrest of the appellants on 10.02.2012 and 13.02.2012 respectively. For the first time, she identified the accused persons before the Court when her statements were recorded on 03.10.2013. It is also submitted that there are several contradictions in the evidence of the prosecutrix and further the MLC report of the prosecutrix as contained in Ex.P-9 reveals that there were no injury marks seen on the body of the prosecutrix anywhere. Thus it is submitted that it is a case of false implication and therefore the judgment of conviction recorded against the present appellants needs to be set aside.

5. Mr. Manas Mani Verma, learned counsel for the State submits that merely a fact that accused persons were identified in the Court is not sufficient to record the finding of acquittal.

6. After hearing learned counsel for the parties and going through the record.

7. Prosecutrix (P.W-6) in her statements in paragraph no.8 admitted that at Police Station, no identification was carried out. She has also admitted that she cannot give any reason for not mentioning this fact in her written complaint that accused persons snatched her gold nose pin. In paragraph no.11 of her cross-examination, it has come on record that prosecutrix admitted that when she was asked that the person standing in white shirt was accused Nati @ Amar, then she said that after the incident she was very upset and therefore, she cannot say as to whether he is the same person or not. She further on her own stated that the persons available in the Court are the same which were present at the time of the incident. She further admitted that after



incident, she was seeing the accused persons for the first time.

8. P.W-7 Dayaram, cousin brother of the prosecutrix has admitted in his cross-examination that he had not made any mention in regard to nose-pin being snatched by the accused persons in his written report (Exhibit-P/4). He further admitted that he had demanded Rs.100/- from the accused persons to go back upto Adhartal. In paragraph no.12 of his cross-examination, this witness has admitted that in report Ex.P-4 he has mentioned certain things on his own volition and certain things were written as per the instructions of the police personnel. He further admitted that he had not seen the incident taking place. This admission of the independent prosecution witness who was admittedly present at the time of incident that he had not seen the incident makes the whole prosecution story doubtful.

9. Thus, in view of the fact that no TIP was carried out immediately on the arrest of the accused persons and thereafter, after lapse of about 10 months time, prosecutrix identified the accused persons in the Court and that too she was not firm on her identification, and looking to the evidence of PW-7 that he had not seen the incident taking place though he happens to be the author of hand written report Ex.P-4, by Dayaram signed by prosecutrix, it is evident that it is a case of false implication and prosecution failed to prove the case.

10. Supreme Court in *Ramkishan Mithanlal Sharma Vs. State of Bombay AIR 1955 SC 104* noted that

"Identification parades are held by the Police, during their investigation, for the purpose of enabling the witnesses to identify



the properties which are subject matter of the offence, or to identify the persons who are concerned in the offences."

11. In **Matru Vs. State AIR 1971 SC 1050** it is held that:

"Test identification is meant for the purpose of helping the investigation with an assurance that their progress with the investigation into the offence is proceeding on right lines, though it does not constitute substantive evidence."

12. In **Sampat Tatyadae Shinde Vs. State of Maharashtra AIR 1974 SC 2791**, it is held that

"The identification made by the witnesses at the parade itself has no independent value. The identity of the accused can be proved by circumstantial evidence also."

13. In **Raju Gurang Vs. State, 2002 Cr.LJ 3426, Punjab and Haryana High Court** has noted that

"If the accused had been appearing in the Court after its committal to the Court of Sessions, the application of the accused for holding identification parade at the stage of trial was held to be not tenable."

14. Similarly, in case of **Kapporchand Chaudhary Vs. State of Bihar, 2002 Cr.LJ 1424** it is held that:

"Conviction cannot be recorded on the basis of the sole uncorroborated testimony of such witnesses."

15. In the present case, delay in identifying the accused in the Court of law when prosecutrix was being examined is fatal to the case of the prosecution. There is delay of about 10 months. The fact of the matter is that



it is not the case of the prosecution that accused were not appearing before the Sessions Court after its committal. It is also not the case of the prosecution that accused were not arrested in time and therefore, despite the fact that report was lodged against unknown persons there was need for identification immediately soon after their arrest. Coupled with the fact that not only identification in the Court is delayed and faulty but also the fact that P.W-7 has categorically stated that he had not witnessed the incident which means that there is no corroboration of the testimony of the prosecutrix though she claims that P.W-7 was present and since he was in custody of the accused persons, accused persons holding out a threat could violate her privacy.

16. Thus, in the aforesaid backdrop and also taking into consideration, the judgment passed by the Hon'ble Apex Court in *Musheer Khan @ Badshah Khan and Anr. Vs. State of Madhya Pradesh (2010)2 SCC 748* wherein it is observed as under:-

"In so far as the identification of A-5 is concerned that has taken place at a very delayed stage, namely, his identification took place on 24.01.2001 and the incident is of 29.11.2000, even though A-5 was arrested on 22.12.2000. There is no explanation why his identification parade was held on 24.01.2001 which is after a gap of over a month from the date of arrest and after about 3 months from the date of the incident. No reliance ought to have been placed by the courts below or High Court on such delayed T.I. parade for which there is no explanation by the prosecution."

17. In the present case, considering entire evidence carefully, it is quite



manifest that long delay in holding Test Identification Parade coupled with other infirmities and inconsistencies as pointed out above, renders the prosecution case doubtful.

18. It is settled principles of law that merely on surmises and conjunctures conviction cannot be upheld. Thus, when tested impugned judgment of conviction qua the appellants Sanju Sonkar @ Sanju Khatik and Nati @ Amar Yadav cannot be sustained in the eyes of law and is consequently set aside. Appeal is allowed.

19. Parties to bear its own cost. If not required in any other case, they be released forthwith. Case property be disposed of in terms of the orders of the trial Court. Record of the trial Court be sent back.

(VIVEK AGARWAL)
JUDGE

(DEVNARAYAN MISHRA)
JUDGE

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