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CRA-1909-2016

IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE RAJENDRA KUMAR VANI

ON THE 20<sup>th</sup> OF JANUARY, 2026CRIMINAL APPEAL No. 1909 of 2016*THE STATE OF MADHYA PRADESH**Versus**UMESH CHAUDHARY*

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Appearance:

*Ms. Vineeta Sharma - Deputy Government Advocate for appellant/State.*

*Ms. Deeksha Agrawal - Advocate for respondent.*

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JUDGMENT

This appeal under Section 378(III) of the Code of Criminal Procedure, 1973 has been filed by the appellant/State assailing the judgment and order of acquittal dated 06.11.2015 passed in Criminal Case No.4696 of 2013 (State of M.P. vs. Umesh Choudhary) by the learned Judicial Magistrate First Class, Katni (M.P.), whereby the respondent/accused, Umesh Choudhary, has been acquitted of the offence under Sections 354-ka(1)(i) of the Indian Penal Code.

2. Briefly stated, the prosecution case is that the prosecutrix (PW-1) a resident of village Bhajiya, Police Station Badwara, had gone to visit her sister (PW-2) in village Pahrua about ten days prior to 26.09.2013. On 26.09.2013 at around 02:00 PM, the prosecutrix had gone for a walk on the road along with her sister. At that time, when her sister went aside to ease herself and the prosecutrix was alone on the road, the respondent/accused approached her and finding her alone, threatened her by stating that if she did



not love him, he would inform her in-laws that she was involved in illicit activities with other persons. It is alleged that the respondent/accused threatened to defame the prosecutrix with the intention of pressurizing her to fulfil his unlawful demands. Thereafter, the prosecutrix informed her sister about the incident and subsequently went to her father (PW-3) at village Bhajiya. After narrating the incident to him, she approached the concerned Police Station and lodged the FIR (Ex.P-1). During the course of investigation, the spot map of the place of occurrence (Ex.P-2) was prepared and the statements of the witnesses were recorded. Upon completion of the investigation, the charge-sheet was filed before the competent Court. Charge was framed. The respondent/accused abjured his guilt, pleaded innocence and claimed to be tried. Statements of the witnesses were recorded.

4 . In order to bring home the charges, the prosecution has examined as many as 04 witnesses, namely prosecutrix (PW-1), her sister (PW-2), her father (PW-3) and Sub Inspector Pradeep Dwivedi (PW-4) and placed Ex.P/1 to P/3, the documents on record. In defence, the respondent/accused examined Geetabai Choudhary (DW-1) and placed document Ex.D/1 on record.

5 . Learned trial Court after recording the evidence of both the parties acquitted the present respondent/accused. Hence, this appeal.

6. Learned counsel appearing on behalf of the appellant/State has contended that the prosecutrix (PW-1) has fully supported the prosecution case. The sister of the prosecutrix, to whom the incident was immediately disclosed has also corroborated the prosecution story. The father of the



prosecutrix, has further supported the case by deposing that the prosecutrix narrated the entire incident to him. The testimonies of all three witnesses have remained intact and unimpeached during their cross-examinations. According to learned counsel, the prosecution case stood clearly established; however, the learned trial Court, solely on the ground of delay in lodging the FIR has erroneously acquitted the present respondent. Therefore, it is prayed that the appeal be allowed, the impugned judgment of acquittal be set aside and the respondent/accused be convicted and sentenced in accordance with law.

7 . *Per contra*, the learned counsel appearing on behalf of the respondent/accused has vehemently opposed the appeal and submitted that all the witnesses examined in support of the prosecutrix, namely PW-2 and PW-3 are related witnesses and that no independent witness has been examined by the prosecution. It is further contended that there is an unexplained delay of about four days in lodging the FIR, for which no plausible explanation has been given by the prosecution. Learned counsel has further submitted that there are material variations and contradictions in the testimony of the prosecutrix, who is the sole eyewitness to the incident thereby rendering her evidence unreliable. The remaining witnesses, namely PW-2 and PW-3, are merely hearsay witnesses. In view of the aforesaid submissions, learned counsel prays for dismissal of the appeal.

8. I have heard the learned counsel for the parties and perused the record meticulously.

9. The prosecutrix (PW-1) has stated that after returning from her field, she



reached the house of her elder sister, where she placed certain articles and was in the process of locking the door, suddenly the respondent/accused arrived there, caught her hand and threatened her by stating that if she did not love him he will communicate her in-laws that she was having illicit relationship with him, as a result of which her in-laws would turn her out of their house. The prosecutrix further stated that she immediately narrated the incident to her sister and thereafter she alone went to the Police Station Kuthla where she lodged FIR (Ex.P/1).

10 . Other witnesses namely sister (PW-2) and father (PW-3) of the prosecutrix though supported the story of the prosecution but admittedly they are not the eye witnesses to the incident. The entire incident was intimated to them by the prosecutrix. There are material contradictions and variations in the statements of these witnesses. Though being related witnesses, the evidence of these witnesses cannot be thrown at the threshold, but of course their statements are to be scrutinized with circumspection as their statements have not been supported by any independent witness.

11. As per the story of prosecution, the prosecutrix on the date of incident had gone towards the road for a walk and when she was alone, the respondent/accused approached her and told that if she did not love him, he would inform her in-laws that she was involved in illicit activities with other persons and respondent/accused has exerted pressure on her to make illicit relations with him and given threat to defame her. She narrated the story to her father and thereafter along with her father she has lodged the FIR (Ex.P/1), which was actually lodged after four days of the incident i.e.



30.09.2013 whereas the incident alleged to have happened on 26.09.2013.

As against the story of prosecution, the statement of prosecutrix (PW-1) and other witnesses is compared then it is found that there are material contradictions and variations revealed from their statements. The prosecutrix (PW-1) initially stated that the incident occurred at about 03:00 PM; however, during cross-examination, she stated that it would be incorrect to say that the incident took place at 02:00 PM. She exaggerated her statement in the Court that the respondent/accused has caught hold her hand. She did not depose that the respondent/accused has also told that she was involved in sexual relations with others and the respondent/accused has exerted pressure on her for doing wrongful act and given threat to defame her. In this regard, material omissions have also been brought on record.

1 2 . The prosecutrix (PW-1) has admitted that the incident was ensued when she was in the process of locking the door while as per the story of the prosecution the incident occurred near the road where the prosecutrix had gone for a walk. She also stated that she went for treatment of snake biting, but in this regard the facts are missing in the prosecution story. She also stated in the cross-examination that she screamed, but no person was there, as such no one has reached on the spot, but this fact is also missing in the police statement and FIR. In this aspect the statements of PW-2 and PW-3 also have some variations and omissions. They stated that they deposed the facts whatever narrated to them by prosecutrix. All these three prosecution witnesses have stated that on the very date of incident the FIR has been lodged by them and there is no explanation of delay in lodging the FIR. It is



denied by these witnesses that the FIR has been lodged after four days and police took their statement thereafter.

13. The defence witness Geetabai Choudhary (DW-1) has stated in her statement that the prosecutrix in her house was found with Ramu Kalar, thereafter, they have been locked by her and other residents of the vicinity, but at that time the respondent/accused was not there. The prosecutrix after four days has falsely lodged the report against the respondent/accused.

14. The evidence of defence assumes importance when the statement of these three witnesses of prosecution rendered doubtful. Keeping in view the contradictions, variations and omissions revealed from their statements as well as no explanation of delay in lodging the FIR has been given by them or prosecution their statement are not found to be reliable, therefore, the prosecution has utterly failed in proving its case beyond reasonable doubt and on the cogent and reliable evidence.

15. In the case of **State of Gujarat v. Jayrajbhai Punjabhai Varu, (2016) 14 SCC 151** the Hon'ble Apex Court has held that prosecution has to prove the guilt of the accused beyond all reasonable doubt. It is also the rule of justice in criminal law that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other towards his innocence, the view which is favourable to the accused should be adopted. In case of **Nikhil Chandra Mondal v. State of W.B., (2023) 6 SCC 605** Hon'ble Apex Court has observed that it is a settled principle of law that however strong a suspicion may be, it cannot take place of a proof beyond reasonable doubt. Unless finding of the trial Court is found to be perverse or



illegal/impossible, it is not permissible for the appellate Court to interfere with the same.

16. Recently in case of **Mallappa & others v. State of Karnataka, (2024) 3 SCC 544**, the Hon'ble Apex Court has again summarized the principles while deciding the appeal against acquittal which are as follows :-

*"42. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarised as :*

*(i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive — inclusive of all evidence, oral or documentary;*

*(ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;*

*(iii) If the court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;*

*(iv) If the view of the trial court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;*

*(v) If the appellate court is inclined to reverse the acquittal in appeal on a reappraisal of evidence, it must specifically address all the reasons given by the trial court for acquittal and must cover all the facts;*

*(vi) In a case of reversal from acquittal to conviction, the appellate court must demonstrate an illegality, perversity or error of law or fact in the decision of the trial court."...*

17. *Ex consequenti*, in the light of the aforesaid discussion and the ratio of law laid down by Hon'ble Apex Court in aforesaid cases, on careful analysis of the evidence, the observations made by the learned trial Court in the impugned judgment are not found to be faulty. The learned trial Court on proper appreciation of evidence available on record has rightly acquitted the respondent/accused. There is no ground for interference with the findings of the trial Court. Therefore, while affirming the findings of acquittal of present



respondent by trial Court, the appeal being bereft of merit is hereby **dismissed.**

**(RAJENDRA KUMAR VANI)**  
**JUDGE**

THK