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CRA-4167-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

&

HON'BLE SHRI JUSTICE RAMKUMAR CHOUBEY

ON THE 24th OF NOVEMBER, 2025

CRIMINAL APPEAL No. 4167 of 2024

VIPIN YADAV

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

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Appearance:

Shri Sharad Verma - Advocate for the appellant.

Shri Shiv Kumar Shrivastava - Public Prosecutor for the respondent

No.1-State.

Shri Bhoj Ram Vijaywar - Advocate for the respondent No.2-victim.
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ORDER

Per. Justice Vivek Agarwal

Shri Sharad Verma, learned counsel for the appellant instead of pressing I.A. No.7443/2025, which is the second application for suspension of sentence and grant of bail to appellant Vipin Yadav S/o Rajjan Yadav, prays that this appeal be heard finally.

2. Accordingly, I.A. No.7443/2025 is dismissed as not pressed and with the consent of the parties, this appeal is heard finally.

3. This criminal appeal under Section 374(2) of the Code of Criminal Procedure, 1973 is filed by convicted appellant - Vipin Yadav being aggrieved of the judgment dated 20.02.2024 passed by the learned Special



Judge (Protection of Children from Sexual Offences Act, 2012) and 18th Additional Sessions Judge, Jabalpur (M.P.) in Special case No.153/2023 (*State of Madhya Pradesh Vs. Vipin Yadav*), whereby the learned trial Court convicted appellant Vipin Yadav S/o Rajjan Yadav for offence under Sections 376(3) and 376(2)(n) of the Indian Penal Code, so also under Section 5(L) and Section 5(j)(ii) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for brevity "POCSO Act") and sentenced him for offence under Section 6 of the POCSO Act to undergo R.I. for 20 years and fine of Rs.2,000/- with a further stipulation to undergo additional R.I. for 1 year in default of payment of fine amount.

4. Shri Sharad Verma, learned counsel for the appellant submits that since the victim after attaining the age of majority, has performed marriage with the appellant in October, 2025, it is a case where a lenient view may be taken and the appellant being now bestowed with the responsibility to take care of the victim, be acquitted from the charges. In support, reliance is placed on the judgments of the Hon'ble Supreme Court in cases of **K. Kirubakaran Vs. State of Tamil Nadu, 2025 SCC OnLine SC 2307**, **K. Dhandapani Vs. The State by the Inspector of Police, 2022 SCC OnLine SC 1056** and **In Re : Right to Privacy of Adolescents, 2025 SCC OnLine SC 1200**.

5. Shri Bhoj Ram Vijaywar, learned counsel for the respondent No.2-victim supports the case of the appellant and submits that he has no objection if acquittal is recorded in view of the aforesaid judgments of the Hon'ble Supreme Court.

6. Shri Shiv Kumar Shrivastava, learned Public Prosecutor, in his turn,



submits that Ex.P-4 is the birth certificate of the victim, showing her date of birth to be 19.10.2007. This birth certificate was prepared and registration was completed on 20.10.2007 i.e. on the very next day of birth of the victim at Rani Durgawati Chikitsalaya, Jabalpur. Therefore, at the time of the incident, which took place somewhere in July, 2023, the victim was less than 16 years of age. Thus, the discretion exercised by Hon'ble Supreme Court under Article 142 of the Constitution of India, as is evident from the tone and tenor of the aforesaid cited judgments, being not available to the High Court, prayer is made to show no indulgence in the matter.

7. After hearing learned counsel for the parties and going through the record, admittedly as per the prosecution story, on 16.07.2023, the victim had recorded a complaint i.e. Dehati Nalishi (Ex.P-1) at Medical College, Jabalpur, that she was in friendship with Vipin Yadav since 2023. They had developed friendship through Instagram. Thereafter, they started talking on phone. During their conversation, she came to know that Vipin Yadav is residing at some close distance from the house of her Mama. She had suffered Jaundice. For treatment, she used to visit her Mama's house, when Vipin called her and invited her to his house. She had visited Vipin, who was alone and then Vipin expressed his liking for the victim and proposed to marry her. Thereafter, her privacy was violated and then in the name of marriage, Vipin violated her privacy 2-3 times. She was pregnant and was carrying three months pregnancy.

8. It has also come on record that pregnancy was aborted and as per the DNA report (Ex.C-1), Vipin Yadav happens to be the biological father of the



aborted product of conception, whereas the victim is the biological mother of the aborted product of conception.

9. As far as age of the victim is concerned, victim's birth certificate (Ex.P-4) is proved by PW-1 victim herself. In cross-examination, several suggestions have been given and the victim admitted that in fact instead of 2007, her date of birth is 19.10.2004, but we are not inclined to accept this suggestion contrary to the birth certificate (Ex.P-4), so also the 10th Class mark-sheet available on record, showing her date of birth to be 19.10.2007.

10. PW-2 is the father of the victim and PW-3 is the mother of the victim. They too have stated that the victim was born in the year 2004, but this evidence was given when that they were declared hostile and they have not been confronted with the birth certificate (Ex.P-4), which was prepared on the very next day of the birth of the victim. Therefore, when totality of facts and circumstances are taken into consideration, then prosecution having proved the date of birth of the victim to be 19.10.2007 beyond reasonable doubt and there being no contradiction to the said date of birth, circumstances like marriage, etc. are not sufficient to show indulgence in the matter and, therefore, the victim being minor at the time of the incident, no indulgence can be shown.

11. As far as judgments cited by the learned counsel for the appellant are concerned, they all have been passed by the Hon'ble Supreme Court exercising its authority under Article 142 of the Constitution of India. That authority being not available to the High Court, these judgments cannot be accepted as a precedence for the High Court.



12. In the result, the criminal appeal fails and is dismissed. The case property be disposed off in terms of the judgment of the trial Court. Record of the trial Court be sent back. Pending application(s), if any, also stand disposed of.

(VIVEK AGARWAL)
JUDGE

(RAMKUMAR CHOUBEY)
JUDGE

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