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THE HIGH COURT OF MADHYA PRADESH, INDORE BENCH

MCRC.No.31232/2021

(State of Madhya Pradesh Vs. Raghunath)

Indore, Dated: 09/09/2021

Shri Sanjay Karanjiwala, learned counsel for the applicant/State of Madhya Pradesh.

Heard.

This application for leave to appeal under Section 378(3) of Cr.P.C. has been filed against the order dated 3.2.2021 passed in S.T.No.2018/2018 by Special Judge, Indore, District Indore, whereby, the respondent has been acquitted of the charges under Sections 354 of IPC and Sections 7/8 of the Protection of Children from Sexual Offence Act 2021.

It is alleged that on 11.7.2021 at about 9.30 PM the respondent caressed on the back of the victim, a girl aged around 10 years and thus, tried to outrage her modesty.

Learned Judge of the trial Court after recording the evidence and appreciating the same has acquitted the respondent on the ground that the respondent did not try to run away from the spot soon after the incident and also did not object to the thrashing given to him by the bystanders.

The defence of the respondent was that he was suffering from mental disorder, the documents regarding which were also placed on record including the OPD ticket dated 2.11.2015 of Gwalior Mental Hospital as also other documents demonstrating that the respondent was undergoing mental treatment for a long period of time. Another document dated 16.9.2013 is also placed on record as also the discharge ticket of the respondent from the Gwalior Mental Hospital demonstrating that he was admitted in the hospital from 3.6.2015 to 12.6.2015 i.e. much prior to the incident in the year 2018.

The learned Judge of the trial Court has come to a conclusion that on the date of the incident the respondent was

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normal and was not suffering from any mental disorder. Although, the proceeding of the trial Court also reveals that on 02.02.2021, the learned Judge has also made an observation regarding the respondent's mental health that as per the certificate issued by the medical Board on 21.01.2021 the respondent's mental status is better from earlier. Hence, under these circumstances, the Court has found that the respondent was in a better mental condition.

From the deposition of all the prosecution witnesses it is apparent that the respondent was acting in a strange manner as he had shown no emotions at the time when the incident took place, even when he was being thrashed by the onlookers but, in the considered opinion of this court, such behaviour in itself cannot be a reason to acquit the respondent.

This court finds that in the certificate issued by the medical Board of M.Y.H.Hospital dated 27.7.2019, signed by three doctors, it is clearly mentioned that in MSE (Mental Status Exam), observation and ward behaviour the Board was of the opinion that the respondent was suffering from Schizophrenia and that he would require long term treatment and followup, but this opinion of the Board has been deferred by the learned Judge of the trial court vide its order dated 30.09.2019 observing that from this report it does not appear if the respondent is suffering from mental disability and thus a clarification has again been sought which has been given vider report dated 21.01.2021. In the said report dated 29.01.2021 the Board has opined that, "*the subject Raghunath is suffering from mental disorder "Schizophrenia" and with the treatment his symptoms have improved from previous state and currently he is in a relatively stable condition*". This court is of the considered opinion that the learned judge of the trial court has clearly missed the import of the Board's report dated 27.07.2019 clearly mentioning that in MSE (Mental Status Exam), observation and ward behaviour the Board was of the opinion that the respondent was suffering from Schizophrenia and that he would require long term treatment and followup. It is found that in the

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Board's report dated 27.07.2019, the respondent was actually suffering from Schizophrenia which admittedly causes delusions and hallucinations whereas in the report dated 29.01.2021 as reproduced above, it is apparent that the respondent had already taken the treatment and was in a much better condition than that of 27.07.2019. Thus, it appears that the respondent was in a state of delusion at the time of incident and for the aforesaid reasons only, did not act normally when the incident took place.

In view of the aforesaid discussion, this Court finds that the learned judge of the trial Court has erred in holding that the respondent's mental state was normal; it is also found that the conclusion, that the respondent did not try to run away from the spot shows his lack of *mense rea* is also not correct as it is found by this court that the respondent was suffering from mental disorder Schizophrenia since a long time.

In view of the same, although in the impugned judgement dated 3.2.2021, the finding of acquittal recorded by the learned judge of the trial court is correct but for all the wrong reasons assigned to record such finding. Thus, the impugned judgement is hereby modified to the extent that the respondent was mentally challenged at the time of the incident and his behaviour of showing no emotions at all, at the time and place of the incident was owing to his mental condition only and not because of his lack of *mense rea*.

Resultantly, the application for leave to appeal by the applicant/State being devoid of merits, is **hereby dismissed**.

Digitally signed by
REENA PARTHO
SARKAR
Date: 2021.09.17
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(Subodh Abhyankar)
Judge