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**(2016) 07 MP CK 0043**  
**MADHYA PRADESH HIGH COURT**  
**Case No:** M.C.R.C. 22386 of 2015

Smt. Sarita Jain

APPELLANT

Vs

Nishant Jain

RESPONDENT

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**Date of Decision:** July 25, 2016

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 323, Section 354, Section 376(2)(n), Section 506

**Citation:** (2016) 168 AIC 504

**Hon'ble Judges:** S.K. Gangele and Ashok Kumar Joshi, JJ.

**Bench:** Division Bench

**Advocate:** None Appears, for the Respondent; Shri Umakant Sharma, learned Senior Advocate Assisted by Shri P.N. Tiwari, Learned Counsel, for the Applicant

**Final Decision:** Allowed

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**Judgement**

@JUDGMENTTAG-ORDER

**Ashok Kumar Joshi, J.** - This order is disposing an application filed by the applicant/complainant under Section 378(4) of the Cr.P.C for grant of leave to appeal against the judgment dated 16.11.2015 passed by the Fourth ASJ, Jabalpur, whereby respondent No.1 Nishant Jain has been acquitted from the charge of Sections 376(2)(n), 323, 506 part-I and 354 of the IPC and respondent No.2 Hani alias Gaurav Jain has been acquitted from the of charge of Sections 323, 506 part-II and Section 354 of the IPC.

2. Prosecution's story in short is that the husband of the prosecutrix (PW-1) was mentally ill and at that time respondent No.1 Nishant Jain used to come to her house and he was assuring the prosecutrix that he would always help them and take care of prosecutrix and her both children. On this assurance, respondent No.1 Nishant Jain was sexually exploiting the prosecutrix. Respondent No.1 Nishant Jain assured the prosecutrix that he loved her. Her husband died in the year 2012. Thereafter, when prosecutrix asked respondent No.1 Nishant for marriage, then

Nishant denied her stating that who would get married with a mother of two children. Respondent No.2 Hani alias Gaurav Jain is the servant of respondent No.1, who on 24.02.2014 in Bhaldarpura area of Jabalpur, gave beating to the prosecutrix and sexually assaulted her and also assaulted the son of the prosecutrix by belt and stick. Respondent No.2 also threatened the prosecutrix that if she would made report to the police, then he would throw acid on her and she would be killed with her children. Just after this incident, prosecutrix reached to the police station Kotwali, Jabalpur, where respondent No.1 was previously present. On report of the prosecutrix, crime was registered and after completing formalities of the investigation, charge sheet was filed in the Court of concerned JMFC, Jabalpur, who committed the case to the Sessions Court.

3. Prosecutrix (PW-1) and her son Sagar Jain (PW-2) had supported the case of prosecution, but another son of prosecutrix Sumank (PW-3) deposed that he is not having any knowledge about the incident and he did not wish to give any statement. There are material contradictions between deposition of prosecutrix (PW-1) and her son Sagar (PW-2) in reference to the alleged incident of 24.02.2014. According to evidence of prosecutrix, the incident of 24.02.2014 happened on public street, when she was going to report the matter to the police, but according to evidence of her son the incident of 24.02.2014 had happened in his shop. Prosecutrix (PW-1) deposed in her cross-examination that on 24.02.2014 respondent No.1 Nishant had asked her to make sexual relation with respondent No.2 Hani alias Gaurav, but this very important fact is totally missing in her written application (Ex.P-1) and signed FIR (Ex. P-2). On this point, her Sagar (PW-2) had not supported her. Thus, it is clear that prosecutrix and her son had exaggerated their version in the Court, which indicates their clear falsehood. There is material contradictions about the year, when the husband of the prosecutrix expired. Prosecutrix has deposed in her statement before the trial Court that her physical relation with respondent No.1 Nishant had started much before the death of her husband.

4. Prosecutrix (PW-1) admitted in her cross-examination that in her lifetime, her husband had been going to his office till his death and was receiving his salary and prosecutrix also admitted that she used to write letters to Nishant and has also admitted that letters (Ex. D-2 to D-14) have been written by her. She had given explanation for writing of letters that she was being raped by respondent, so she was writing letters. Such explanation is highly fanciful and unbelievable. Sagar Jain (PW-2) had admitted in his cross-examination that when the dispute occurred on 24.02.2014 in his shop, the other shopkeepers of the market were seeing and hearing the incident and had admitted that two days later the incident was reported to the police, but no any independent witness was examined in the Court.

5. Prosecutrix has stated in her written application that respondent Nishant was having physical relations with her since 2010 and her husband had died in the year 2012. Thus, it is clear that this relation was not started on promise of Nishant to

marry her. Contrary to her signed application and FIR, she deposed before the Court that after about one month of death of her husband, Nishant made physical relation with her for the first time after giving her some intoxicating drug. The contents of her letters have been excerpted in trial Court's judgment, which indicates that prosecutrix was having love affair with respondent Nishant and in such state of her evidence and admissions, her deposition about rape appears to be totally unbelievable. Looking to the facts, stated by her in written application, this possibility could not be denied that due to alleged ill health and mental condition of her husband, she was having love affair and physical relation with respondent Nishant in the alternative.

6. We are of the opinion that the aforesaid findings of the trial Court are based on just and proper appreciation of prosecution evidence. Upon the aforesaid findings, acquittal of respondents is entirely justifiable. It is not a case of leave to appeal. There is no reason to grant leave. If leave is granted, the appeal filed by the applicant shall not succeed.

7. In these circumstances, leave application filed by the applicant is hereby dismissed. Copy of this order be sent to the trial Court along with its record for information.