

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1170 of 2022

Appau Punnaswami Devendra ... Appellant/s
Age : 50 years, Occ.: - Driver,
R-at Room No.345, Makkawadi,
Near Vijay Kirana Store, Sion Koliwada,
Antop Hill, Mumbai
(At present Nashik Road Jail Prison)

versus

1. The State of Maharashtra, ... Respondent/s
(At the instance of Antop Hill Police Station)
2. Victim "X" Antop Hill Police Station,
Aged – 24 years, Occupation -Nil.
Residing at

Mr. Aniket Vagal along with Ms. Savvy Kolhekar, Advocate for the Appellant.

Mr. M. S. Sonavane, APP for Respondent No.1-State.

Ms. Aishwarya Sharma, Advocate for Respondent No.2.

CORAM : R. M. JOSHI, J.

DATE : 19th NOVEMBER, 2025.

Oral Judgment :

1. The appellant is in jail. By consent of both sides, heard finally.
2. This appeal is against the judgment and order dated 6th April 2022 passed in Sessions Case No.239 of 2020 whereby the appellant is convicted for the offences punishable under Sections 376, 324, 354, 452 and 509 of the the Indian Penal Code 1860 (for short "IPC") and was sentenced to suffer imprisonment and to suffer maximum sentence for 10 years with fine.

3. The facts which led to filing of this appeal can be narrated in brief as under :

3.1. On 22nd November 2019, a lady aged about 37 years lodged report to the police about the incident occurred on 21st November 2019 at about 11.00 p.m.. According to her, brother of the owner of the house where she resides, came in drunken state and abused, misbehaved and assaulted her. She claims that bleeding injury was caused to her. She raised cries for help and, therefore, the accused ran away from the spot. She did not go to the police in the night, however, on the next day, she went to Sion Hospital first and, thereafter, went to the police station and lodged the report.

3.2. On the basis of this report, Crime No.357 of 2019 came to be registered with Antop Hill Police Station. On 26th November 2019, a supplementary statement was recorded by the informant claiming that about 12.30 a.m., in the intervening night of 21st November 2019 and 22nd November 2019, accused came to her house and forcibly entered the house and sought sexual favours. She opposed the same and, hence, the accused committed forcible rape upon her. She claims that while resisting, injuries were caused on her person. Similarly, one more statement came to be recorded of the informant/victim on 3rd December 2019. The accused was arrested. During the investigation, spot panchanama was done, so also the panchanama of seizure of clothes of victim as well as accused was conducted. Investigating Officers recorded

the statements of witnesses and obtained medical certificates. The seized muddemal was sent to C.A. for examination. On conclusion of investigation, charge-sheet came to be filed against the accused before the competent court. Charge was framed against him vide Exhibit-10. As the accused denied the charges levelled against him, prosecution led evidence of 8 (eight) witnesses in order to bring to home guilt of the accused.

3.3. The prosecution examined following witnesses :

1. Mahesh Kharvi (PW1) Exhibit-36 -Panch Witness
2. Victim (PW2) Exhibit-24
3. Dhanji Kharvi (PW3) Exhibit-28A -Panch Witness
4. Dr. Madhavi Chavan (PW4) Medical Officer
5. Sarita Mhaske (PW5) Investigating Officer
6. Tukaram Korde (PW6) Investigating Officer
7. Deepak Shelar (PW7) Investigating Officer
8. Dr. Vidya Vijayan (PW8) Medical Officer

4. The learned Trial Court found the evidence led by the prosecution is sufficient to prove the guilt of the accused beyond reasonable doubt and hence, convicted the accused by passing the impugned judgment and order. Being aggrieved by the same, the present appeal.

5. Learned counsel for the appellant submits that the testimony of the victim is unreliable in order to hold that the offence punishable under Section 376 is proved against the appellant. It is his submission that firstly, the report in respect of the incident is not lodged immediately after the occurrence of the incident and that for the first time i.e. on the next day of incident, the victim went to the police station, and she disclosed the incident of the assault being caused to her and that there was no allegation of she being subjected to any sexual assault. It is his submission that after four days of occurrence of the incident, supplementary statement of the victim came to be recorded, wherein the allegations of sexual assault was introduced. It is his submission that the evidence of the victim led before the Trial Court is full of omissions and contradictions and having regard to the fact that there is no immediate information about the sexual assault to the police, her testimony becomes unreliable in order to convict the accused for offence of rape in the absence of any corroborative evidence. It is his submission that since it is the case of the prosecution that the victim could gather courage after the neighbours told her to report about the incident of sexual assault, it was necessary for the prosecution to examine the neighbouring witnesses. It is his submission that the topography of the area wherein the spot of the incident is situated indicates that it is a slum area and houses are close to each other and that the victim claims in the FIR that she raised shouts and, therefore, the accused ran away from the spot, recording of

statement of neighbours becomes imperative. It is his submission that the allegation made by the victim at belated stage is not supported by medical evidence. He drew attention of the Court to the cross-examination of the victim, wherein suggestion is made about the FIR being lodged against the accused in order to grab the house and to avoid payment of rent. On these amongst other submissions, acquittal of the accused is sought.

6. Learned counsel for respondent No.2/victim vehemently opposed the appeal by contending that it is settled position of law that the sole testimony of the victim, if found reliable, is sufficient to prove the guilt of the accused. Thus, it is her submission that in the facts of the case, no corroboration was required to establish the guilt of the accused. It is argued that it is difficult for any woman to disclose about any sexual assault on her immediately and only after she gathered courage, she reported the said incident of sexual assault. It is submitted that the medical evidence does not exclude the possibility of sexual assault and hence, this is not the case wherein there is no corroboration to her version. She drew attention of the Court to the medical evidence on record, which according to her indicates that during resistance to the sexual assault, injuries were caused to the victim and the same were confirmed by the Medical Officer.

7. Learned APP also supported the impugned order. He drew attention of the Court to the evidence on record in order to argue that minor discrepancies in the testimony of the victim would not become a

ground for acquittal of the accused. He further argued that the defense of the accused about he being falsely implicated in the crime for grabbing the house for non-payment of rent has not been substantiated before the Trial Court.

8. There is no dispute about the correctness of proposition canvassed by learned counsel for respondent No.2 that in case, the testimony of the victim is found reliable and free from doubt, the Court need not insist for the corroboration to her testimony. The testimony of the victim, however, needs to pass the said test of trustworthiness and unimpeachability. If it does not clear the same, the Court may seek corroboration of her oral version, before convicting the accused. Moreover, entire facts and circumstances of the case and conduct of parties is required to be given due consideration. Needless to say that the burden to prove guilt would always be upon prosecution and the accused is required to explain incriminating circumstances against him.

9. The prosecution seeks to prove the charges against the accused essentially on the testimony of the victim and the medical evidence. The victim states about the incident occurred on 21st November 2019 at about 12.30 a.m. It is her case that in the intervening night of 20th November 2019 and 21st November 2019, the accused came to her house and forced his entry inside. She further claims that he pulled her hair and abused her in filthy language. She narrated the words uttered by the accused to her. She also claims to have been beaten by the accused and

she sustaining the injuries on her person. As far as the said evidence is concerned, her testimony with regard to the actual assault being caused upon her gets support from the medical evidence on record. The medical examination done of the victim on 22nd November 2019 clearly indicates that she had suffered injuries in the incident in question. In the morning on the next date, she went to the Hospital first and then to the police station and lodged report. She claims that she did not lodge the report in respect of the incident of rape as she was scared. According to her when she narrated the incident to the neighbours, on their advise, she complained about the same. In the cross-examination, it has come on record that the area where the incident had occurred is slum area and there are houses near to her. She further accepts she had cordial relations with the neighbours. The defense has brought on record discrepancies in her statement before the police and substantive evidence before the Trial Court. Thus, omissions and contradictions are proved through the Investigating Officer. Though there is evidence with regard to the assault being caused upon her, the medical evidence does not support the incident of rape committed on her by the accused in the incident in question.

10. Here in this case, admittedly, the victim on the next day of the incident went to government hospital and thereafter to the police station in order to lodge the report in respect of the incident occurred with her on the previous night. The said act of the victim approaching to the police

indicates that she was not having any fear for lodging the report against the accused. Even the history given to the Medical Officer at the time of her examination does not show the Medical Officer being informed about any sexual assault on her. It is not the case of the victim that out of shame or to avoid blot on her character, she did not lodge report against the accused in respect of the sexual assault immediately. She, however, claims that as the neighbours gave her courage, she reported about the said incident to the police later on. Since there was no impediment for the victim to lodge the report against the accused, there would be burden upon the prosecution to show that at the instance of the neighbours and their encouragement, report came to be lodged in that regard. Admittedly, though statements of the neighbours were recorded, during the investigation, none of the neighbour is examined before the Trial Court. Ordinarily, non-examination of the neighbours would not have become fatal to the case of prosecution. However, when the victim herself claims that at the time of lodging of FIR when she raised cries, the accused ran away, so also at the instance of the neighbours, the report was lodged, this Court is of the view that examination of the neighbours was necessary to support the victim's contention.

11. Apart from this, the evidence of the victim is full of contradictions as observed above and more particularly on the aspect of she being sexually assaulted by accused in the incident in question. Moreover, the said claim of the victim is not supported by the medical

evidence. The medical certificate issued on examination of the victim clearly indicates that there was no evidence of sexual assault.

12. Not only there are material inconsistencies in the testimony of the victim and that her claim is not supported by clinical examination done by the Medical Officer, the C.A.Reports also do not support the case of she being sexually assaulted. The C.A.Reports are negative in respect of finding of any semen on the bed-sheet and the blood of group "O" found thereon, can be said to be of victim herself as her blood group is "O". This cannot become an incriminating circumstance against the appellant/accused. Overall, the evidence on record thus is doubtful and not at all convincing in order to record conviction of the appellant/accused for the offence punishable under Section 376 of the IPC.

13. Now the question arises as to whether the entire testimony of the victim needs to be discarded for the reason that her evidence in respect of the sexual assault has not been believed by the Court. The maxim *falsus in uno, falsus in omnibus* has no application in India. Therefore, even though part of the testimony of the victim is discarded for not being believable, there would be no reason or justification to entirely discard her evidence with regard to the incident of assault caused upon her by the appellant/accused. In this regard, it is pertinent to note that stress of the appellant was on his false implication with regard to the offence punishable under Section 376 of the IPC. The defense in respect of the said offence has been accepted for belated disclosure of the sexual

assault to the police, the medical evidence not supporting the said claim and non-examination of material witnesses. However, that would not be so in respect of the incident disclosed by the victim to the police by lodging FIR. She has categorically stated about the accused entering the house in the night in drunken state and abused, misbehaved and assaulted her. The said evidence of victim gets support from corroborative material placed on record in the form of medical evidence as well as recovery of ring from the accused. The history given to the Medical Officer with regard to the assault is consistent with her statement in the substantial evidence before the Trial Court. Her contention about she having sustained injuries on her person is proved through the medical evidence. Thus, it can be said that the accused entered the house of the victim in the dead night in order to commit the offence. Thus, the offences punishable under Sections 324, 354, 452 and 509 of the IPC are proved. It is necessary to take note of the fact that at wee hours, the appellant/accused entered the house of victim, who was alone and not only assaulted her but also molested her. The entire evidence on record in this regard demonstrates that appellant with premeditation barged into the house of victim to commit offence. He, therefore, does not deserve any leniency with regard to the punishment. This Court, therefore, finds no reason to cause interference in the judgment and order passed by the Trial Court convicting the accused for these offences.

14. As result of above discussion, following order :

ORDER

- (I) The appeal is partly allowed.
- (ii) The appellant is acquitted of charge for the offence punishable under Section 376 of the IPC.
- (iii) The appellant is convicted for the offences punishable under Sections 324, 354, 452 and 509 of the IPC and sentenced to suffer Rigorous Imprisonment for 2 years, 2 years, 5 years and 1 year respectively with fine of Rs.500/- for each offence, in default, simple imprisonment of 4 weeks. Since the appellant has already undergone more period than sentenced, the default sentence not to apply. All the sentences to run concurrently.
- (iv) The appellant be released forthwith from the jail.
- (v) Registry to convey this order to the jail authorities for its implementation.

(R. M. JOSHI, J.)