



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 31 OF 2024

Pravin Alias Parya Sopan Sable
Age 32 years, Occupation- unemployed,
R/o. Gautam Naga, Lane No. 14,
Pisadevi Road, Aurangabad,
District Aurangabad.

... Appellant
[Accused No.1]

Versus

1. The State of Maharashtra

2. X – name withheld.

... Respondents
[Respondent No.2-Informant]

.....

Mr. Sudarshan J. Salunke, Advocate for the Appellant.
Mr. V. S. Badakh, APP for Respondent No.1-State.
Ms. Pramila V. Giri, Advocate for Respondent No.2 (Appointed)

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 04.09.2026

Pronounced on : 07.09.2026

JUDGMENT :

1. This appeal impugns the judgment and order of conviction dated 09.11.2023 passed by learned Additional Sessions Judge, Aurangabad in Sessions Case No. 217 of 2015 convicting the appellant for offence under Section 376 of IPC and sentencing him to suffer 10 years imprisonment and to pay fine.

2. Case of prosecution in trial court was that, when informant PW2 was present in her house with her 5 years old son, accused no.1 sought sexual favour but she refused, upon which he had forcible sexual relation with her. Accused nos. 2 and 3 videographed the incident whereas one of them pushed the minor son of victim. Sister of victim PW2 came and thereafter police were approached and occurrence was reported, resulting into registration of crime bearing no. 354 of 2015 for offences under Sections 376-D and 354 of IPC.

PW7, who was entrusted with the investigation, completed the same and chargesheeted accused, who was tried vide above Sessions Case. At trial case of prosecution rested its case on the evidence of seven witnesses as well as documentary evidence. On duly appreciating both, and on hearing parties, learned trial court was pleased to acquit accused nos. 2 and 3 but appellant came to be convicted for offence under Section 376 of IPC. Hence, instant appeal.

SUBMISSIONS

On behalf of the Appellant-Accused :

3. Pleading innocence and false implication, learned counsel for the appellant/accused no.1 took this Court through the testimony of PW2 victim and would submit that her story is unbelievable. That, it

is not possible to commit forceful rape in presence of child and that too, in the kitchen part of the house where there are articles and rough surface, moreover without suffering injuries on the person of the informant. According to him, medical evidence does not support prosecution story and therefore it is unsafe to rely on the same as, according to him, there is no corroboration whatsoever in any manner. He would submit that, it is impossible to commit offence like forceful rape without there being any injuries on the person of victim or accused.

4. He further pointed out that, another witness for prosecution is very sister of the victim, but she did not report about rape and rather she merely spoke about quarrel and sexual assault. Consequently, according to him, very complainant and her own sister, who accompanied her to police station, are at variance on major count.

5. He further submitted that, here, even version of victim is not consistent, i.e. her statement before learned JMFC under Section 164 CrPC, statement before police while lodging report as well as while deposing in the court. Consequently, he submits that, benefit of the same should go the accused. He further submitted that in fact, testimony of victim is not of sterling quality.

6. Criticizing the prosecution case on the point of scientific evidence, he submitted that though case of prosecution is about seizure of clothes of victim carrying semen, and though DNA report to that extent is placed on record, very expert who conducted DNA analysis has not been examined and therefore, according to him, no evidentiary value could be attributed to the same. He pointed out that, here, there is serious doubt about very chain of custody of scientific evidence. He would submit that, prosecution failed to examine who collected the sample, whether they were in sealed condition or not and in whose custody the same were retained without being tampered till it was dispatched to the analyzer. Resultantly, under such circumstances, he seeks to discredit the scientific evidence.

7. In support of above submissions, he sought reliance on the following rulings :

- (i) ***Kattavellai @ Devakar v. State of Tamilnadu*** ; AIR Online 2025 SC 667.
- (ii) ***Karandeep Sharma Alias Razia Alias Raju v. State of Uttarakhand*** ; AIR Online 2025 SC 543.

- (iii) ***Parvej Khan v. State of Maharashtra*** ; AIR Online 2023 Bom. 2268.
- (iv) ***Lalliram and others v. State of M.P.*** ; AIR 2009 SC (Supp) 902.
- (v) ***Ram Nivas v. State of Karnataka*** ; AIR Online 1993 SC 49.
- (vi) ***Kalyan Sudam Ramgude v. The State of Maharashtra and another*** ; (Criminal Appeal NO. 312 of 2024 decided by this Court on 30.04.2026.

On behalf of the State as well as Victim :

8. In answer to above, both, learned APP as well as learned counsel for the compliant, would justify the order of conviction by pointing out that here, there is credible, trustworthy evidence of victim. That, there is prompt reporting. Victim's story has remained unshaken and therefore her evidence being of sterling quality, it is their submission that, there is no need for corroboration even from medical evidence or scientific evidence. However, it is submitted that, here, there is positive DNA report and the same is rightly relief by learned trial court for accepting the case of prosecution. Consequently, they pray to dismiss the appeal for want of merits.

EVIDENCE BEFORE THE TRIAL COURT

9. As stated above, prosecution has rested its case on the evidence of seven witnesses. **PW1** and **PW4** acted as pancha to spot, who identified panchanama Exhibit 37. **PW2** is the victim. **PW3** is the minor son of PW2. **PW5** is sister of PW2. **PW6** is the medical expert who conducted medical examination of victim on 16.07.2015 with history of sexual assault on 15.07.2015. **PW7** is the Investigating Officer who narrated all the steps taken by him during investigation.

ANALYSIS AND CONCLUSION

10. Studied, re-appreciated and re-analyzed the evidence. The fundament grounds on which appeal is based are:

Firstly, victim's testimony failing to inspire confidence as, in spite of allegation of forceful rape, no injuries are noticed either on external examination or internal examination of victim and she to be addicted to liquor.

Secondly, there to be no corroboration to the testimony of victim as her own sister merely speaks about sexual assault and not rape.

Thirdly, false implication for refusal to return the house property, and

Fourthly, regarding chain of custody of DNA to be doubtful.

11. It is to be noted that though three accused were chargesheeted for offence under Sections 376-D and 354-C of IPC, sole appellant is convicted for offence under Section 376 of IPC.

12. Visited the evidence of informant **PW2** at Exhibit 42, wherein it emerges that, she deposed that on the date of incident which took five to six years ago at 7.30 p.m., appellant entered her house, pressed her breast. At that time, her five years old son was only present in the house. Accused requested for sexual pleasure, to which she denied and therefore she claims to have pushed him raising shouts, but he made her lie down, lifted her sari and committed rape on her. Friend of appellant/accused no.1 pushed her son and videographed the incident, and appellant threatened to slit her throat if she goes to police, after which her son, her own mother and sister as well as her daughter came and they all went to CIDCO police station where she lodged report Exhibit 43. Apparently, report is lodged on the next day

at 02:03 hours i.e. on the same intervening night of 15th and 16th July 2015.

Initial cross is on the point of her husband conducting business of liquor, parents of accused purchasing house property of her parents but she denied that she insisted for return of the same by taking money. She admitted that, she herself and her husband are in the habit of consuming liquor. She admitted that she was not wearing undergarment but was wearing petticoat. Rest is all denial.

13. Therefore, the above discussed evidence shows that there is no serious challenge to the very occurrence of accused entering the house, initially seeking sexual favour and on refusal, making her fall down and committing rape on her after pulling over her sari. She has deposed that her son was also present there and her son was pushed and he ran to call her sister, who came along with mother and other daughter.

14. The next witness is **PW3** who is a child of PW2 and he also in his evidence at Exhibit 48 deposed about occurrence taking place around 7.30 p.m., three persons entering in their house, one of them laying his mother down, one of them recording the incident and one

of them assaulting him and so he going to his maternal aunt's place to call her. He also identified appellant/accused before the court deposing that he laid his mother down.

In cross, he admitted that at that time he was in the backside of the room, but he denied that he was tutored to depose by his mother and grandmother.

15. Thus, presence of child is not rendered doubtful by the defence. Rather, victim, i.e. mother of child, marks his presence and he being pushed by accused. Even child witness deposed that three accused persons came to his house and one of them made his mother fall down, and he was also pushed, and so he went to the sister of his mother and they accordingly came.

16. **PW5** is the sister of PW2, and she in her evidence at Exhibit 79 testified that, son of victim came to her house and told her that his mother has fallen down and someone causing assault to her. Therefore, she and her mother went to the house of victim. At such point of time, victim was lying there and victim disclosed that accused caused sexual assault on her. Then they went to police station. But in chief itself she stated that as there were many police personnel, they

did not report the incident of sexual assault and rather told that there was quarrel. But she further stated that during medical examination, victim disclosed about sexual assault.

In her cross, omission is brought that on the day of incident, she was in the house till afternoon and that, victim told her that, accused Ganya was out of the house. But these are minor omissions. Rest of the suggestions are denied by this witness, except admitting that she is unable to read and write.

17. Resultantly, here, the chronology of events narrated by victim about while she was with her child, accused entering her house, seeking sexual pleasure and on her refusal, making her lie down and committing rape, has remained intact. Child witness was party to the act of accused making his mother lie down and while he was pushed, he seems to have rushed to PW5, who came to victim's place and also learnt from her that accused raped her.

18. Medical witness **PW6** deposed about noting history of sexual assault by one person and incident being videographed by two others at 7.30 p.m. on 15.07.2015 and she being brought to Government Medical College and Hospital with LPC at 3.45 a.m. on 16.07.2015.

Therefore, on the same night PW2 was referred to medical examination. Doctor stated that he did not notice external injuries or on the genitals. However, on the basis of his examination, he opined that possibility of sexual assault cannot be ruled out.

19. Above testimony of the victim is criticized on the ground that it fails to inspire confidence. But, as stated above, her version seems to be trustworthy on the point of sexual favour initially being asked and on refusal she being forced upon. Nothing adverse or damaging has been brought in her cross to the extent of rape. Her evidence appears to be natural and one does not come across any material omissions or contradictions so as to disbelieve her testimony. Mere suggestion is given that parents of accused purchased house from her parents and she wanted it back. No documentary evidence is placed to that extent on record to probabalize this defence.

20. Absence of injuries on the person or private parts of the victim is of no significance and law to this extent has been dealt and discussed in numerous judgments including *Gurucharan Singh v. State of Haryana*, AIR 1972 SC 2661 ; *Krishan Lal v. State of Haryana*, AIR 1980 SC 1252 ; *State of Rajasthan v. N.K.*, (2000) 5 SCC 30 ; *Narayanamma (Kum) v. State of Karnataka and Others*, 1994 (5) SCC

728 ; *State of Rajasthan v. Shri Narayan*, (1992) 3 SCC 615 and *Devinder Singh and others v. State of Himachal Pradesh*, (2003) 11 SCC 488.

21. Here, apart from oral account which inspires confidence, prosecution seems to be relying on scientific evidence i.e. DNA.

22. Such evidence is questioned by learned counsel for the appellant for want of proof of chain of custody. Learned counsel would submit that, when samples were collected, by whom, and in whose custody they were retained till dispatch to FSL, is not substantiated by prosecution. In the light of such ground, record is put to minute scrutiny.

23. Thereupon it is noticed that clothes of victim were seized in presence of PW4 on 16.07.2015, i.e. on the very next day at 13:30 to 14:00 hours, i.e. sari, blouse and petticoat. Record shows that, on 16.07.2015 itself, accused person were referred for medical checkup and there is communication by the Investigating Officer to the medical officer to procure semen samples of all three accused. Doctor seems to have collected the semen samples and on receipt of the same, record shows that vide outward no. 3398/2015, within two

days i.e. on 18.07.2015, the cloths and samples are dispatched to the analyzer. CA report also confirms receipt of samples on 20.07.2015. There is no serious challenge in the cross of Investigating Officer on the point of custody of *muddemal*, more particularly clothes and semen samples of accused.

24. In the DNA analysis Exhibit 121, interpretation is “male hyplotypes of semen stain cutting from ex.3 petticoat of victim matched with male hyplotypes of ex.2 blood sample of appellant/accused. Communication to the Medical Officer by the Investigating Officer dated 16.07.2015 shows that request was made to the medical authorities to procure sample of semen, nails, pubic hair, hair and blood samples of accused for DNA. Therefore, there is prompt collection of samples of accused for DNA and its dispatch for analysis.

25. Learned counsel for the appellant has placed reliance on the recent judgment of the Hon’ble Apex Court in the case of ***Kattavellai*** (supra), more particularly the observations of the Hon’bel Apex Court in paragraphs 28 to 31. Indeed, in serious offences like murder and rape, prosecution is duty bound to prove chain of custody to maintain its integrity and rule out its tampering, and said point is dealt in the

above ruling. However, in that case, Hon'ble Apex Court noticed that, samples were sent to FSL after unexplained delay of 41 days and therefore, doubt was entertained about collecting, sealing, storage for employing such evidence. Here, as stated above, it is not so. Occurrence is around 7.30 p.m. on 15.07.2015. FIR is at around 02:00 to 03:00 hours i.e. on the same intervening night and through PW4 spot pacha, clothes of victim are shown to be seized on 16.07.2015 itself at around 13:30 to 14:00 hours, and vide communication by the Investigating Officer, seizure is shown to be dispatched to FSL on 18.07.2015 which was received to the FSL on 20.07.2015. Therefore, here, apparently there is promptness in collection of clothes of victim and more particularly her petticoat which, at the time of seizure, also reflected semen spots, and when analyzed, turned out to be positive and there is DNA report to that extent confirming semen to be of accused appellant. Consequently, here, there is no reason to raise doubt over the collection of sample, clothes and its analysis. Precisely for such reasons, the judgment of Hon'ble Apex Court referred above, does not come to the aid of accused.

26. On the point of probative value of DNA and non-examination of the expert who conducted DNA, reliance is also placed on *Karandeep*

(supra), ***Kattavellai*** (supra). However, in both above rulings, cases of prosecution were based on circumstantial evidence and theory of last seen together respectively.

27. In **Lalliram** (supra) version of prosecutrix about place of occurrence and name of accused who committed rape was found to be inconsistent coupled with inconsistent evidence of prosecution witnesses.

For the said reasons, facts in these cases differ from the case in hand.

28. Rather here, DNA is not the sole piece of evidence. In fact, there is credible evidence of victim finding support from evidence of her very son and sister. Such evidence would not get eclipsed merely on failure of prosecution to examine the DNA analyst.

29. Yet another ground raised by learned counsel for the appellant is that, there is variance in the evidence of complainant, i.e. in her narrative in FIR, in her testimony before learned Magistrate and before the trial court. According to him, victim deposed before learned Magistrate about accused indulging in bad act and it is

ambiguous term and it is rather at variance from her statement before the police as well as before the Court. It is to be noted that, victim is a married lady having a child. While deposing before the Court, she might have felt shy to narrate the actual occurrence in verbatim to the act and therefore she might have used the words “bad act”. However, while giving substantive evidence before the Court, she has specifically deposed about she being raped and the evidence before the trial court would prevail.

30. As regards to the sister of victim is concerned, she indeed has deposed that they reported sexual assault, but immediate to such statement, there is explanation, which is plausible, that as there were police persons in the police station, the incident was reported as mere quarrel. But she added in further chief that, to the doctor as well as police at the time of FIR, rape was reported.

31. Learned counsel tried to submit that victim having admitted that she was habituated to liquor consumption, her such conduct makes her testimony unworthy of credence. However, there is no force in such submission. It is also not the defence case, that at relevant time, victim was under influence of liquor.

32. To sum up, this Court, on re-appreciation and re-analysis of the evidence, is of the firm opinion that the view taken by the learned trial court is the possible view with such quality of evidence on record. No patent perversity or illegality is brought to the notice of this Court so as to interfere. Hence, following order :

ORDER

- I. The Criminal Appeal is hereby dismissed.
- II. Fees of the learned counsel appointed to represent respondent no.2-victim, which is to be paid by the High Court Legal Services Sub-Committee, Aurangabad, is quantified at Rs.10,000/- (Rupees Ten Thousand Only).

[ABHAY S. WAGHWASE, J.]

vre