



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.345 OF 2025

Mukesh s/o Nathuram Rathod
Age: 28 years, Occu.: Labour,
R/o. Gadhvewadi Tanda,
Tq. Ausa, Dist. Latur.

.. Appellant

Versus

The State of Maharashtra
Through Officer, in charge of,
Police Station, Killari, Tq. Ausa,
Dist. Latur.

.. Respondent

...

Mr. N. D. Kendre, Advocate for the appellant.
Mrs. A. S. Mantri, APP for the respondent/State.

...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 21.08.2026

PRONOUNCED ON : 24.08.2026

JUDGMENT :-

1. Appellant/original convict hereby takes exception to the judgment and order dated 11.04.2025 passed by learned Additional Sessions Judge, Latur in Sessions Case No.08 of 2024 recording conviction for offence under Section 376, 376(1)(1), 354, 323, 506 of Indian Penal Code [IPC].

PROSECUTION STORY IN BRIEF

2. Prosecution story in trial Court is that, victim, a differently abled girl, was all alone in the house. Accused, who happens to be her

cousin brother, gained entry in the house, dragged her to another room, undressed her and forcibly raped her. She reported the incident to her grandmother and, thereafter, to her mother after she returned from the field. Thereafter, the police were approached, resulting in the registration of Crime No. 301 of 2023 for the offences punishable under Sections 376, 354, 323 and 506 of the IPC.

. P.W.11, who conducted the investigation, charge-sheeted the accused, who was tried in the aforesaid Sessions Case by the learned Additional Sessions Judge, Latur. The learned Additional Sessions Judge accepted the prosecution case, held the charges to be proved, and convicted the accused for the aforesaid offences.

. Feeling aggrieved by the same, convict has approached this Court by filing instant appeal.

SUM AND SUBSTANCE OF THE ARGUMENTS OF THE PARTIES

On behalf of appellant/original accused :-

3. Learned Counsel for the appellant would plead innocence and false implication. According to him, there is no convincing, cogent or reliable evidence in support of the charges. He would submit that the learned Trial Court has convicted the accused on the sole testimony of the victim. There is no corroboration from any independent corner or from the medical expert. At the outset, he pointed out that the victim

is unable to state the day on which the incident took place. He submitted that an offence like rape cannot be committed in the presence of other family members in the house, and pointed out that, in the present case, the grandmother of the victim was very much present in the house, which clearly emerges from the testimony of the victim. Further, the said grandmother has also not been examined by the prosecution, for the reasons best known to it.

4. Learned Counsel took this Court through the examination-in-chief as well as the cross-examination of the victim P.W.7 and invited the attention of this Court to the answer given by the victim in paragraph No.6, wherein she stated that she was unable to give the day and month of the first or second incident. Inviting the attention of the Court to paragraph No.7 of the cross-examination, he submitted that there are variances between her deposition and the statement given before the learned Magistrate under Section 164 of the Code of Criminal Procedure.

5. Inviting the attention of this Court to the testimony of mother P.W.8, it is submitted that she has hearsay information. Moreover, there are material omissions in paragraph No.5 of her cross-examination on the point of accused entering the house by using staircase or accused dragging the victim and as such, it is his

submission that evidence of mother is unworthy of credence.

6. Pointing to the evidence of P.W.6, it is submitted that she is the cousin of the victim, but apparently, her testimony is a tutored one. He questioned as to how, when this witness was supposed to be at school and travelled by bus, could have been a witness to the alleged entry of the accused into the house of the victim. Moreover, he submitted that her evidence is also full of material omissions.

7. Lastly, he submitted that neither medical evidence, nor forensic evidence support prosecution. He pointed out that there is no resistance injury and even there is old hymen tear and, therefore, there is no corroboration to the testimony of victim.

8. Lastly, he criticize the judgment of the learned Trial Court for incorrect appreciation of available evidence and that learned Trial Court readily accepting the victim's testimony without corroboration. In support of his submissions, he seeks reliance on the judgment of Hon'ble Apex Court in the case of *Raju and others Vs. State of Madhya Pradesh, (2008) 15 SCC 133, Rai Sandeep Vs. State (NCT of Delhi), (2012) 8 SCC 21* and *Nirmal Premkumar and another Vs. State represented by Inspector of Police, (2024) 20 SCC 293* i.e. on the point that testimony of victim cannot be said to be gospel truth

and there to be possibility of exaggeration or embellishment or false implication; that sole testimony of victim cannot be accepted unless it is of sterling quality; unreliability of testimony which is full of conflicting version.

On behalf of respondent/State :-

9. In answer to above, learned APP justifies the judgment and order of conviction by submitting that learned Trial Court had rightly appreciated the evidence of victim, who was differently abled. That, her testimony has remained unshaken. That, therefore sole testimony was rightly relied by learned Trial Court and moreover, according to her, there is corroboration from witnesses like P.W.6 and P.W.8.

ANALYSIS

10. Re-appreciated the evidence of victim, who is examined as **P.W.7** at Exhibit-52. That, she resides with her mother, grandmother and father. She deposed that accused is her cousin brother. That, he committed rape on her twice i.e. in the house at Gadhvewadi Tanda. During the said offence she elaborated that on the day while she was sitting in the hall accused came from backside staircase, caught her both legs and dragged her in the middle room. He closed the door and committed rape on her after removing her clothes as well as his

own clothes. He also threatened her. She claims that as he pressed her mouth, she could not shout and he ran away from the staircase. According to her, due to dragging, she sustained injuries to the legs. That time her grandmother was outside the house. Her mother had been to the field. When her grandmother came inside the house, she first narrated her grandmother and thereafter to her mother when she returned from the field and thereafter, narrated the incident to police as well as gave statement under Section 164 of the Code of Criminal Procedure. In paragraph No.4 of the examination-in-chief, she has stated that she is unable to walk and stand up, as she is physically handicapped by both legs and left hand since birth.

. Victim is subjected to extensive cross-examination and only relevant portion of the cross-examination is dealt with herein. She denied that her parents do not reside at Gadhvewadi and that only grandmother reside there. In paragraph No.6 of her cross-examination, she is asked when first time accused committed the act whether she had narrated the act to anybody and she answered that she narrated it to her mother. She is unable to give date, day and month of the first and second incident. In paragraph No.7 of her cross-examination, omission is brought to the extent of she sustaining injury to the leg; and her grandmother to be outside the house.

Omissions are brought in her statement under Section 164 of the Code of Criminal Procedure to the extent that accused entered the house from the staircase; about narrating incident to the grandmother; about accused committing rape on her twice. Again omission is brought in her statement to the police on the ground that accused entered from backside and dragged her by catching hold of her legs. She further answered that there are neighbours in their neighbourhood, but she volunteered that neighbours had been to field. She denied her parents, aunt tutoring her to depose before the police and the Court. Suggestions about the occurrence are flatly denied by her. She is unable to state what was written by the police and she denied that she was sitting outside the police station and merely her parents and aunt went inside the police station. She admitted that parents and aunt also narrated the incident to police. She denied suggestion that she is able to walk and stand. She admitted Saurabh Rathod to be her cousin, but denied knowing whether wife of accused had lodged complaint against Saurabh. Rest all suggestions are denied.

11. From above evidence of victim, it is emerging that she is a differently abled person. In chief itself she has stated that she is unable to stand and walk and that her disability is since birth. The manner of

cross examination particularly para 6 clearly shows that there is no serious challenge to the occurrence. In para 7 omissions are brought but in the considered opinion of this Court they are not material omissions so as to cast doubt over her entire testimony. In fact, this Court is more than convinced that her evidence is of sterling quality and needs no corroboration. She has withstood the cross on material ground of rape by accused her own cousin.

12. Prosecution has adduced evidence of her mother and a cousin-cum-friend i.e. **P.W.6** and **P.W.8** respectively. This witness P.W.6, who is a child witness, after stating that victim is disabled by birth, deposed that she knew accused and she specifically narrated that on 02.11.2023, after she returned from school at 3.00 p.m., while she along with her friend were providing fodder to the calf, she saw accused coming while talking on phone and from Durgadevi Katta, he going towards the roof and using staircase of the house of victim. She claims that she saw accused going towards the backside of the hall and he also gave her angry look. She claims that after she returned with sugarcane from the field and returned to the house of victim, she noticed house door to be closed and in spite of attempt to open it, the door could not be opened and she claims to have peeped through the window and had seen accused pulling right leg of the victim and

taking her towards backside of the hall and closing the door. She claims to have informed grandmother and when she, her friend and grandmother went towards the victim, they found victim crying and she too narrated the incident to grandmother. She also deposed that her statement was recorded by police.

. This witness is also subjected to cross-examination. In paragraph No.4 of her cross-examination, omissions are brought to the extent of accused going towards the tin-roof by using Katta of Durgadevi Temple. In paragraph No.5 of her cross-examination, she also stated that grandmother of the victim was sitting in the courtyard, but she is unable to hear properly. In paragraph No.6 of the cross-examination, she answered that she came along with mother to the Court. The father of victim also come to Court, but she added that father did not come with them. She further answered that after giving call, they did not hear any sound from inside and she also answered that when they saw through the window, victim did not reply. She flatly denied being instructed after coming to the Court to give deposition. Rest is all denial.

13. The above is the account of child witness. This witness has deposed about seeing the accused passing by her while talking on phone and proceeding towards the house of victim by using staircase.

She has stated about the presence of accused in the house of victim and has also stated that she saw through the window, the accused dragging victim by pulling her leg into another room and closing the door. Thereafter, she heard the victim narrating the incident to her grandmother. Nothing damaging has been brought in her cross-examination. Couple of omissions are there but they are not material omissions.

14. **P.W.8** mother has deposed at Exhibit-54 that her daughter aged 21 years was differently abled. That, on 02.11.2023 she went to field while her daughter and mother-in-law in the house and husband went to attend duty. She deposed that around 5.00 p.m., she came and thereafter learnt from her daughter about forcible rape on her coupled with threats.

. In cross-examination, omissions are brought to the extent of hearing from daughter that accused entered the house by use of staircase and accused dragging her daughter. She has denied that her mother-in-law is able to hear. Rest of the cross-examination is not material, because questions are asked whether she had personally witnessed the incident. All suggestions on the point of rape are denied by her to be false.

. Thus, even P.W.8 mother has deposed in the similar manner

like victim on the point of forcible rape by accused.

15. The prosecution, before the learned Trial Court, examined medical expert P.W.12, who, after stating that the victim was differently abled, narrated, in paragraph No.3 of her examination-in-chief, the history given by the victim on both occasions, i.e. on 28.10.2023 and the last episode, which took place on yesterday afternoon i.e. on 02.11.2023 at 3.00 p.m. In paragraph No.4 of his examination-in-chief, detailed findings are narrated including abrasion on knee, tenderness on right temporal area of skull and on examination of genitals coming across inflammation with redness over vaginal wall. He deposed that there was evidence of old hymenal heal tag, which he clarified to be possible due to 2-3 episodes of sexual intercourse. In paragraph No.8 of his examination-in-chief, he deposed that abrasions are possible due to dragging. Tenderness to the breast is possible due to forceful pressing and abrasion to the scapula is possible due to lying down on the back.

. This witness has admitted that abrasions on the knee and toe are possible due to fall on hard surface, but in cross-examination he denied that other injuries to be possible due to fall on hard surface. He admitted that tenderness to the breast could be possible by self beating and tenderness to the scapula could be possible on account of

fall, but this witness has flatly denied that hymenal heal tag is possible due to illness. After deposing that other than sexual intercourse old hymenal heal tag to be possible due to stretching exercise like cycling gymnastic etc., this witness volunteered that victim is physically handicapped and, therefore, such activities are not possible. Witness admitted that her opinion is provisional. Though he admitted that abrasions are possible in scuffle, but he answered that injuries to the genitals are not possible in scuffle and rather they are possible by penetration and that it was his provisional opinion. Rest is all denial.

16. From above discussed medical evidence, medical expert here, who has examined the victim, has recorded clear findings about coming across injuries on left lateral knee and there to be penetration in the genital area by penis. Doctor has noticed inflammation over urethral meatus, redness and inflammation over vaginal wall, which are attributed to old hymenal heal tag, which according to expert is possible due to 2-3 episodes of sexual intercourse. Though attempt is made to discredit the witness on above count, testimony of expert has remained intact. Though suggestions are given that injuries noticed by him are possible due to activities like gymnastics and cycling, doctor has very categorically stated that victim was differently abled

and unable to perform such activities. Thus, here, there is corroboration to the testimony of victim from medical expert.

17. Here, father, mother including victim and her cousin are all unanimous about victim to be differently abled. Disability certificate is placed on record, which is at Exhibit-57.

18. To sum up, there is clinching overwhelming evidence on the point of victim to be differently abled. Precisely, disadvantage of her disability is taken by accused/appellant, who is none other than her cousin. Fortunately, there is evidence of the child witness, P.W.6, who claims to have seen the accused entering the house of the victim and was also present when the victim narrated the act of the accused to her grandmother. Nothing damaging has been brought in the testimony of said child witness or her parents. Mere failure of prosecution to examine grandmother is of no significance. More particularly, when the testimony of victim is noticed to be of sterling quality and inspiring confidence and as such, her sole testimony deserves acceptance without corroboration.

19. Learned Counsel for the appellant has relied upon the aforesaid rulings. The same lay down the settled legal position, with which there is no dispute. However, the facts of those cases are clearly

distinguishable from the facts of the present case, as the testimony of the victim herein inspires confidence. Therefore, those rulings cannot come to the aid of the appellant.

CONCLUSION

20. Perused the judgment under challenge. Learned Trial Court has correctly appreciated the prosecution evidence. Settled law has been taken into account. No perversity or illegality is brought to the notice of this Court so as to interfere. Accordingly, the following order is passed :-

ORDER

. The Criminal Appeal is dismissed.

[ABHAY S. WAGHWASE, J.]