



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 391 OF 2016

Bhagwan s/o Sitaram Arde,
Age 45 years, Occu. Labour,
R/o Satona (Kh.), Taluka Partur,
District Jalna.

... Appellant
[Accused]

Versus

The State of Maharashtra

... Respondent

.....
Mr. Sudarshan J. Salunke, Advocate for the Appellant.
Mrs. A. S. Mantri, APP for the Respondent-State
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 01.09.2026

Pronounced on : 03.09.2026

JUDGMENT :

1. Convict for offence under Section 354 of IPC hereby takes exception to the judgment and order of conviction dated 30.05.2016 passed by learned Sessions Judge, Jalna in Sessions Case No. 02 of 2012.

2. In short, prosecution was launched against present appellant on accusations that, on 26.01.2011 victim, a differently abled girl, had been to reach tiffin to her father, was taken by accused to the lavatory behind the school and she was raped. Victim narrated the incident by

special signs and gestures, resulting into FIR by father which formed basis for registration of crime bearing no. 84 of 2011 for offence under Section 376 of IPC. Trial was conducted, during which, evidence of as many as 8 witnesses, adduced by prosecution, was appreciated and learned trial court was pleased to hold that offence of Section 376 IPC has not been proved to be made out, rather offence of Section 354 IPC is made out and accordingly, convicted the appellant for the same. Exception is now taken to the said judgment and order of conviction.

3. Heard. Learned counsel for the appellant would plead innocence and claim false implication. He would submit that there is no convincing, cogent and reliable evidence. That, moreover, according to him, victim being deaf and dumb, was not in a position to report anything, however, by use of interpreter, her evidence is accepted and conviction is recorded. According to him, medical evidence also did not support prosecution story and there was no convincing or legally acceptable evidence about accused committing any act of rape and therefore, learned trial court rightly acquitted the accused from said charge, but according to him, learned trial court erred in returning the guilt for offence under Section 354 IPC. Learned counsel would point out that, most of the prosecution

witnesses turned hostile. For all above reasons, he attributes incorrect appreciation on the part of trial court and prays to allow the appeal by setting aside the impugned judgment.

4. Learned APP, who would justify the judgment and order of conviction, would point out that victim was admittedly deaf and dumb. That, disadvantage of the same was taken by accused. That, prosecution witnesses had seen accused taking her to the toilet behind the school and he was spotted removing clothes of victim and about to commit offence. That, apparently, major offence of rape was averted, but as offence of outraging modesty was made out, according to her, learned trial court committed no error in accepting the evidence, more particularly of PW2 and the Interpreter PW9. Resultantly, she prays to dismiss the appeal for want of merits.

5. Re-appreciated the evidence on record. Case of prosecution is rested on as many as 11 witnesses, but crucial evidence is of PW1 (father), PW2, PW3 and PW9.

6. **PW1** father deposed that, his daughter is dumb. The incident occurred on 26.06.2011 i.e. on the day when his victim daughter was proceeding to hand over tiffin to her uncle. That time, this witness

was in his shop. Around 11.30 a.m., Bhojiram, Digambar, Balasaheb and Pralhad told him that his daughter was crying behind the Urdu School and that she had no clothes on her person. Accordingly he went there and noticed that his daughter's clothes were torn and he brought her home. He deposed that when he had been to the spot, he had seen accused in the toilet who fled on seeing them. He deposed that, after reaching home, victim daughter informed his wife by making gestures and so he brought her to Police Station and informed the incident to police.

Above witness is subjected to cross, wherein details of the school premises are sought to be obtained. He is asked about the population of the village. He denied that children were playing on the play ground of the school. After giving distance of his shop from the spot, in cross he answered that when he saw accused at the spot, it was around 12.00 to 12.30 noon. Again in cross he confirmed being informed by Bhojiram, Digambar, Balasheb and Prahlad and then he reaching the said spot within 10 minutes. In para 8 of the cross, he answered that, he had informed in FIR about victim informing his wife by making gestures that she was raped. However, the word rape was shown to be missing and is thus an omission.

7. **PW2** Jafarkhan deposed at Exhibit 35 that, on 26.06.2011 around 9.30 p.m. he had been to the Deshmukh Tea House and work of lift irrigation was going on near Zilla Parishad School and he was watching the work by standing on a cement pipe, and he claims to have seen victim in the school premises and had further seen accused coming in the school premises from the backside, holding hand of victim and taking her towards toilet and therefore, getting doubtful, he claims to have entered the school premises from over the compound and saw that accused had taken victim behind the toilet, removed his pant and was applying condom and therefore he sensed something wrong. He saw Digambar Bhojiram, Balasaheb and Pralhad and he informed them about what he saw and they all went towards the toilet and saw both legs of victim on the shoulder of accused and victim to be in naked condition and then, accused by holding his pant fled from the spot.

In cross, he answered that whatever he witnessed had occurred at the backside of the toilet. He was in the school premises for 15 minutes or so. He admitted that he did not meet family members of victim. In para 5, suggestions are given about Gram Panchayat Elections and his father contesting the same, but he denied that an

inquiry was conducted regarding encroachment of land by his father for conducting business.

8. **PW3** Digambar, a Chairman of School Management Committee, Zilla Parishad, though turned hostile, he deposed that on 26.06.2011, he himself, Balasaheb, Bhojiram and Pralhad had been to the school premises for some meeting on Sunday and while they were parking their vehicles and about to enter the school, they heard cry of a girl. That, some boys were playing there. On hearing the cry, they went to room no.5 and found a girl crying there and when she was questioned the reason for crying, she was unable to speak as she was dumb and therefore her father was informed. After stating so much, he did not support prosecution, but his above discussed testimony can definitely be taken into account.

9. **PW4** deposed at Exhibit 38 that, he was working as Special Educator in the school meant for deaf and dumb students and on 03.07.2011, police had requested him for recording statement of a girl who was deaf and dumb. In para 4, he deposed that accordingly he recorded statement of the girl. That, she was illiterate. According to him, on inquiry, she made gestures that her hand was caught hold, she was dragged, she kicked and slapped him, rescued herself and

ran towards the flour meal. Report to the above extent was submitted which he identified to be at Exhibit 41. He identified the victim.

While under cross, he answered that he was Diploma Holder in Special Education in Hearing Impaired (DSEHI) and that he was trained to provide training to deaf and dumb people.

10. **PW5** and **PW6** did not support prosecution. **PW7** is the PSO who recorded FIR. **PW8** is the Naib Tahsildar who conducted Test Identification and **PW9** is the Teacher in a residential school meant for deaf and dumb students at Partur.

11. **PW10** is the victim. Record shows that trial court has noted that witness was deaf and dumb and therefore, with consent of defence, female interpreter, namely, Mithila, who was working in Shruti Wani Vikas Vidyalaya, was administered oath wherein she deposed that she can understand language of deaf and dumb students by use of gestures and she agreed to act as an interpreter for explaining the signs and gestures of the witness. By extracting services of said special teacher, evidence of victim was recorded in question-answer form. While answering question no.5, she identified accused sitting in the dock and while answering question no.7, she stated that he called her

towards him, removed her pant and pulled her shirt, caught her hand, removed his pant. Thereafter she ran away from the place. She assaulted him and raised her voice and thereafter somebody came. Thereafter, she came home.

While under cross, she is unable to give day, date and year of the incident, but incident occurred at 09.00 a.m. and on that day, school was closed. That, she did not receive any injury. Rest is all denial.

12. **PW11** is the Investigating officer.

13. Above is the evidence on record. Here, PW2 had seen victim being taken behind the school and he deposed about he further informing to that extent to PW3 and PW5. He deposed that they saw accused had removed his own clothes and had also removed clothes of victim. Though PW3 and PW5 did not support, it has come in their evidence that, victim was spotted crying in the school premises.

14. Admittedly, victim is differently abled girl. She is deaf as well as dumb and therefore unable to speak. However, she had made use of gestures. Section 119 of Indian Evidence Act specifically deals with

recording of evidence of witnesses who are unable to communicate verbally, to record their evidence in any other manner in which he can make it intelligible, as by writing, by signs. This section specifically provides that if witness is unable to communicate verbally, the court shall take assistance of interpreter or special educator in recording the statement and such statement shall be videographed.

15. It would be useful to refer to the judgment of the Hon'ble Apex Court in the case of ***M. P. Sharma & others v. Satish Chandra, District Magistrate, Delhi and others*** AIR 1954 SC 330 wherein it has been held that, *"a person can 'be a witness' not merely by giving oral evidence, but also by producing documents or making intelligible gestures as in the case of dumb witnesses"*.

Likewise, in the case of ***State of Rajasthan v. Darshan Singh @ Darshan Lal*** (Criminal Appeal No. 870 of 2007 decided on 21.05.2012), the Hon'ble Apex Court has observed in para 18 as under :

"1. The object of enacting the provisions of Section 119 of the Evidence Act reveals that deaf and dumb persons were earlier contemplated in law as idiots. However, such

a view has subsequently been changed for the reason that modern science revealed that persons affected with such calamities are generally found more intelligent, and to be susceptible to far higher culture than one was once supposed. When a deaf and dumb person is examined in the court, the court has to exercise due caution and take care to ascertain before he is examined that he possesses the requisite amount of intelligence and that he understands the nature of an oath. On being satisfied on this, the witness may be administered oath by appropriate means and that also be with the assistance of an interpreter. However, in case a person can read and write, it is most desirable to adopt that method being more satisfactory than any sign language. The law required that there must be a record of signs and not the interpretation of signs.”

Similarly in para 20 and 21 the following observations are made :

“20. Language is much more than words. Like all other languages, communication by way of signs has some inherent limitations, since it may be difficult to comprehend what the user is attempting to convey. But a dumb person need not be prevented from being a credible and reliable witness merely due to his/her Physical disability. Such a person though unable to speak may

convey himself through writing if literate or through signs and gestures if he is unable to read and write.

A case in point is the silent movies which were understood widely because they were able to communicate ideas to people through novel signs and gestures. Emphasised body language and facial expression enabled the audience to comprehend the intended message.

21. To sum up, a deaf and dumb person is a competent witness. If in the opinion of the Court, oath can be administered to him/her, it should be so done. Such a witness, if able to read and write, it is desirable to record his statement giving him questions in writing and seeking answers in writing. In case the witness is not able to read and write, his statement can be recorded in sign language with the aid of interpreter, if found necessary. In case the interpreter is provided, he should be a person of the same surrounding but should not have any interest in the case and he should be administered oath.” (emphasis laid)

16. In the light of above settled position, here, it emerges that learned trial court, in the best interest of the victim, permitted evidence of victim to be recorded with the aid of the very teacher who was teaching in a Special School and she was qualified, having taught scores of deaf and dumb children, and by taking her help, evidence of victim, who made gestures, seems to have been recorded.

17. Resultantly, here, in the light of Section 119 of the Evidence Act, victim's evidence is itself brought on record. There is no serious challenge to the same in cross. From the evidence of PW2 as well as the evidence of victim at Exhibit 57, it is clear that accused outraged her modesty by taking her to the toilet and tearing her clothes. PW1 father and PW2 have both deposed about seeing victim in naked condition and clothes in torn condition respectively. Therefore, their evidence to this extent having remained intact, their testimony is worthy of credence.

18. Perused the judgment under challenge. The learned trial court has correctly appreciated the evidence and applied settled procedure while recording testimony of victim, a differently abled girl. Finding prosecution story inspiring confidence to the extent of outraging modesty, guilt for the same has been recorded. There being no infirmity or perversity so as to interfere, this Court refrains from any interference. Hence, the following order :

ORDER

The Criminal Appeal is hereby dismissed.

[ABHAY S. WAGHWASE, J.]