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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1172 OF 2007

Pandurang Lalasaheb Yadav,

Age about 23 years, Occu: Agriculturist.

R/o Yelavi, Tal-Tasgaon,

Dist. Sangli.

At present in Dist. Prison (Sangli).

..Appellant
(Orig. Accused)

Versus

The State of Maharashtra

(Through P.I. Tasgaon PSO

C.R. No.133/2006)

..Respondent.
(Original Complainant)

**WITH
CRIMINAL APPEAL NO.1223 OF 2007**

The State of Maharashtra

..Appellant
(Original Complainant)

Versus

Pandurang Lalasaheb Yadav,

Age about 23 years, Occu: Agriculturist.

R/o Yelavi, Tal-Tasgaon,

Dist. Sangli.

..Respondent
(Orig. Accused)

Mr. Sachin Chandan, Advocate appointed for Appellant in Appeal 1172/2007 and for Respondent in Appeal-1223 of 2007.

Mrs. A.S. Pai, APP for State/Appellant in Appeal 1223/2007.

**CORAM: Smt. V.K. Tahilramani, Acting C.J. &
A.S. Gadkari, J.**

**Reserved On: 7th September 2015
Pronounced On: 16th September 2015.**

JUDGMENT (Per A.S. Gadkari, J.):

1 In Appeal No.1172 of 2007, the appellant has challenged the judgment and order dated 31st August 2007 passed by the Adhoc District Judge 2 and Additional Sessions Judge, Sangli in Sessions Case No.79 of 2007 thereby convicting the appellant for an offence punishable under Sections 376 (2) (f) of the Indian Penal Code and sentenced him to suffer R.I. for 10 years and to pay fine of Rs.2000/- and in default of payment of fine to further suffer simple imprisonment for six months. The State has preferred Appeal No.1223 of 2007 as contemplated under Section 377 (1) of Cr. P.C. for enhancement of the sentence imposed upon the appellant by the Trial Court by the aforesaid judgment and order. Both appeals are heard together as they are arising out of the same impugned order dated 31st August 2007 passed by the Trial Court.

 In the present judgment, we do not propose to mention the name of the victim girl in view of the provisions of Section 228-A of the Indian Penal Code and in pursuance of the observations made by the Supreme

Court in para no.4 in the case of ***State of Himachal Pradesh Vs. Shree Kant Shekari [AIR 2004 SC 4404]*** and the prosecutrix hereinafter will be referred to as the victim.

2 The facts which are necessary to decide the present appeal can briefly be stated thus:-

(i) The incident had occurred on 23.12.2006. The victim girl (PW-4) was about 9 years of age and was studying in 3rd Standard in Marathi Mulinchi Shala No.2 at Yelavi, Taluka-Tasgaon, District-Sangli. Her timing of the school was 7 a.m. to 12.00 p.m. in the noon. PW-2 Smt. Vaishali Yadav is the mother of the victim. The victim was also preparing for the Maharashtra Talent Search examination and for the said examination she was going to the house of Smt. Pawar madam for tuition. The appellant was residing near the house of the victim and PW-2.

(ii) On 23.12.2006, the victim was coming back to her house after attending tuition from Smt. Pawar madam at about 5.30 p.m. On the way back to her house, the appellant met her and told the victim that her parents are going to Soni and they have called the victim there. The appellant also informed that the parents of the victim are waiting for her near his house. The appellant under the pretext of taking the victim to her parents, forcibly took the victim girl in the sugarcane crop and when the victim girl started

shouting put his hand on her mouth and threatened her that if she raises her shout he would beat her. In the sugarcane crop the appellant forcibly committed rape on the victim. The appellant put on his clothes. As the victim could not get up because of pains and bleeding, the appellant went away by leaving the victim girl on the spot. After some time the victim girl worn her clothes. As there was acute stomach ache, she walked down slowly to her house and after reaching the house she slept there. After the enquiry from her mother, she informed her mother (PW-2) that the appellant has torn her private part and blood is oozing from it.

(iii) PW-2 Smt. Vaishali, the mother of the victim thereafter took her to the hospital of Dr. Salunkhe. Dr. Salunkhe immediately gave her treatment. After the victim girl started feeling better, PW-2 Smt. Vaishali lodged the first information report bearing no.133 of 2006 under Section 376 of Indian Penal Code. The victim girl was thereafter referred to Dr. Prakash Hankare (PW-8) who was then attached as Medical Officer in Rural Hospital, Tasgaon. Dr. Hankare examined victim girl and referred her to the Civil Hospital. On 25.12.2006 Dr. Basappa Koli (PW-7), the Medical Officer of Vasantdada Civil Hospital, Sangli examined the victim girl at about 6.15 p.m. The said victim girl was accompanied by a lady Police Constable Sankpal, Buckle No.1148. Dr. Koli did preliminary examination

of the victim girl. He took blood sample, nail clippings, hair and vaginal swab for sending it to the Chemical Analyzer. Dr. Koli thereafter referred the victim girl to the Gynecology Department for opinion of the expert. Dr. Jyoti Rokade (PW-6), was lecturer in Gynecology Department, Civil Hospital, Sangli. On 25.12.2006 itself when she was on duty, the victim was referred to her. She examined the victim girl. The victim girl gave the history of sexual assault on her by the appellant. Dr. Rokade (PW-6) opined that the victim girl was subjected to sexual assault.

(iv) Shri Shinde (PW-9), police sub-inspector was then attached to Tasgaon police station. On 25.12.2006 PW-2 Smt. Vaishali lodged FIR to the said police station which was registered as C.R. No.133 of 2006. Under the orders of the superior, the investigation was handed over to him (PW-9). He thereafter effected the spot panchanama (Exhibit-13), recorded statements of witnesses. He arrested the appellant on 26.12.2006. He seized the clothes of the victim girl which were on her person by effecting seizure panchanama (Exhibit-18). He also seized the clothes of the appellant by effecting panchanama (Exhibit-19). He sent necessary and relevant articles to the Chemical Analyzer at Pune through police constable Shri Patil by forwarding letter which is at Exhibit-36. As the physical condition of the victim girl was not proper and she used to get frightened after seeing police

personnel, the statement of the victim girl was recorded little late. After completion of the investigation, Shri Shinde (PW-9) submitted chargesheet against the appellant for the offence punishable under Section 376 (2) (f) of the Indian Penal Code in the Court of Judicial Magistrate First Class, Tasgaon, District- Sangli.

(v) The learned Judicial Magistrate First Class, Tasgaon, District- Sangli committed the case to the Court of Sessions as per the provision of Section 209 of Cr. P.C. The Trial Court framed charge for an offence punishable under Section 376 (2) (f) of the Indian Penal Code below Exhibit-2. The said charge was read over and explained to the appellant in vernacular language to which the appellant pleaded not guilty and claimed to be tried. In the statement recorded under Section 313 of the Cr. P.C., the appellant has taken defence that, on 21.12.2006 he went at the house of his maternal uncle and he came back on 24.12.2006 by vehicle at 8 to 8.30 p.m. and he was not in village at the relevant time. It is the further defence of the appellant that there was previous dispute pertaining to the landed property with Sanjay Patil (PW-3) and therefore false case has been lodged against him. He has stated that he was having dispute with Sanjay Patil (PW-3) and as he is neighbour of the complainant, false accusation has been levelled against him. He has also taken defence that his clothes which

were seized by the Investigating Officer were not his clothes. The learned Trial Court after recording evidence and after hearing the parties to the case has convicted the appellant by its judgment and order dated 31.8.2007 as stated hereinabove.

3 Heard Shri Sachin Chandan, the learned Advocate appointed for the appellant/accused and Smt. A.S. Pai, the learned APP for the State. With their assistance we have also perused the entire record of the present case.

4 The learned Counsel for the appellant submitted that the clothes of the appellant and C.A. Report pertaining thereto has not been proved during the course of the trial. He further submitted that in the statement recorded under Section 313 of Cr. P.C., in Question Nos.16 and 20 the appellant has taken a specific defence that he was having dispute with Sanjay Patil (PW-3) who is neighbour of the complainant Smt. Vaishali (PW-2) and therefore a false case has been registered against him and his clothes which were seized by the Investigating Officer were not his clothes. He further submitted that in the evidence of victim girl she has stated that she was returning to her house along with her 'friend' and prosecution has failed to examine the said friend of the victim girl as a corroboration to the version of the victim. He lastly contended that Dr. Salunkhe who

examined the victim girl at the first instance has not been examined by the prosecution. That the PW Nos.6, 7, and 8 have examined the victim girl on 25.12.2006 i.e. belatedly and therefore it creates doubt about the genuineness of the opinion given by Dr. Rokade (PW-6). He urged before us that taking into consideration various lacunas in the case of prosecution, the benefit of doubt may be given to the appellant and he may be acquitted from charges levelled against him.

5 Per contra, the learned APP submitted that the victim girl immediately after the incident disclosed the said fact to her mother and in turn her mother had immediately taken the victim girl to Dr. Salunkhe as there was bleeding from her person. She further submitted that the evidence of PW-4 the victim girl, PW-2 Smt. Vaishali, the mother of the victim girl and PW-6 Dr. Rokade the Medical Officer is reliable and trustworthy and needs no further corroboration. She therefore submitted that there is no need to interfere with the judgment and order passed by the Trial Court and prayed that the appeal filed by the appellant may be dismissed.

As far as the Criminal Appeal No.1223 of 2007 filed by the State for enhancement of sentence of the appellant is concerned, the learned APP submitted that taking into consideration the heinous and

gruesome crime committed by the appellant on the victim who was nine years of age and suffered various injuries, the sentence awarded by the Trial Court is inadequate and she prayed that the said sentence may be enhanced and the appellant may be awarded with maximum sentence for the said crime. She lastly urged before us that the appeal bearing no.1223 of 2007 may be allowed by enhancing the sentence of the appellant.

6 The prosecution in support of its case examined in all nine witnesses.

7 PW-1 is Uttam Mane who is panch-witness to the spot of the incident. His testimony is formal in nature. PW-3 is Sanjay Patil who is a panch-witness to the seizure of the clothes of the victim and the appellant. The said panchanamas are at Exhibits 18 and 19 respectively. In the cross-examination of this witness, it has been brought on record that he knows the complainant Smt. Vaishali and her husband very well as they are from his village. In the further cross-examination of this witness, no other material which would be useful to the appellant has been elicited from this witness. PW-5 is Shivaji Landge who was the Head Master of the School wherein the victim girl was taking education. This witness has been examined to prove the date of birth of the victim girl which is 6.9.1998. His evidience discloses that the victim girl was below the age of 12 years on

the date of commission of offence.

8 PW-2 is Smt. Vaishali Yadav, the mother of the victim. PW-2 in her testimony has stated that she herself alongwith her husband, mother-in-law, father-in-law and her sister-in-law were residing jointly at village Yelavi. That she was having two daughters and one son. On the date of incident her daughter was about 9 years of age and was studying in 3rd standard. Her daughter i.e. victim girl was also preparing for Maharashtra Talent Search examination and was taking tuition from Smt. Pawar madam for the said examination. The the appellant was residing near her house. The incident had occurred on 23.12.2006 and it was Saturday. On that day the victim girl had been to the school between 8.00 a.m. to 12 p.m. Thereafter for extra period of the MTS examination she had been to the house of Smt.Pawar madam. On that day PW-2 was attending her work. From her work in the evening at about 6.00 p.m. she came to her house. At about 6.30 p.m. the victim came to the house and went for sleeping. PW-2 thereafter made enquiry with the victim girl as to why she was sleeping. The victim girl informed her that she was suffering from stomach pain. On making further enquiry as to why the victim changed her dress, she informed her mother that her clothes were wet and therefore she changed the dress. PW-2 saw the clothes which were changed by the victim and

kept outside the house near the place of bath. PW-2 noticed blood stains on the said clothes. PW-2 therefore took the victim girl in the hospital of Dr. Salunkhe. The victim girl informed her mother about the sexual assault committed by the appellant. The victim girl inter alia narrated the entire incident of rape committed by the appellant on her. In the hospital of Dr. Salunkhe, the medical treatment was given to the victim on 23.12.2006 and 24.12.2006. PW-2 has further stated that as the blood was oozing from the private part, the victim was crying. That after the medical treatment on 24.12.2006, the victim girl started feeling better. Thereafter PW-2 lodged first information report on 25.12.2006 with the police which is at Exhibit 36. That during the course of investigation the police seized the clothes of the victim i.e. one kincker, one salwar and one kameez which are at Article Nos. A, B and C respectively.

In the cross-examination of this witness, an omission to the effect that, 'on 24.12.2006 the blood was oozing from the private part of the victim' has been brought on record. In the detailed cross-examination, no material which is of any help to the appellant has been elicited at the instance of this witness.

9 PW-4 is the victim girl. PW-4 in her testimony has stated that on the date of incident she was of nine years and was studying in 3rd standard.

She was taking education in Marathi Mulinchi Shala No.2 at Yelavi. That she was going to school alone. She has also given the name of her friend. That the incident occurred on 23.12.2006 and it was a Saturday. That her school timing on that day was 7.00 a.m. to 12.00 p.m. in the noon. On that day she had been to the school. After her school time was over, she went to her teacher's house i.e. Smt. Pawar madam's house for attending tuition. On the way back to her house from the said MTS class at about 5.30 p.m., 'Pandu Bhau' met her. Pandu Bhau told her that her parents are going to Soni and they have called her. He also informed her that her parents are waiting for her near his house. That thereafter she started following appellant. As the said road was not proceeding to the house of the appellant, the victim asked him as to where the appellant is taking her. The appellant thereafter caught hold her hand and took her to the field of sugarcane and when the victim girl started shouting, the appellant put his hand on her mouth and threatened her that if she raises shouts he would beat her. In the sugarcane crop the appellant forcibly made the victim girl to lie down and committed rape on her. It is not necessary to reproduce in verbatim the detailed incident narrated by the victim girl. However, it is noted here that the victim girl has in unequivocal terms stated about the fact of commission of forcible rape on her by the appellant. PW-4 has

further stated that thereafter 'Pandu Bhau' wore his clothes and asked the her to wear her clothes. At that time she could not get up as she was having pain and thus the appellant went away. That after some time, she worn the clothes and as there was stomach ache, she walked down slowly to her house. After reaching to the house as she could not notice her mother she went inside and slept there. After her mother came to house, she made enquiry with the victim girl, whereupon victim girl informed her that 'Pandu Bhau' has torn her private part and blood is oozing from the private part. That her mother took her to the hospital of Dr. Salunkhe. Said doctor gave her medicines. After one or two days her mother lodged report to the police. That the police referred her to the Civil Hospital at Sangli. That lady police constable Smt. Sapkal madam accompanied her. The treatment was going on for a period of about two to four months. During the said period she was not psychologically feeling well. There used to apprehension in her mind. PW-4 identified her clothes which are Articles A, B and C on record. PW-4 victim has identified the appellant in the Court as the same 'Pandu Bhau'.

In the lengthy cross-examination of this witness, it has been brought on record that a friend was accompanying her when appellant took her aside. Apart from the said admission, no other omission or admission

has been elicited at the instance of this witness which would create doubt in the mind of this Court about the veracity and/or truthfulness of the testimony of this witness. In short the material part of the testimony of this witness has gone unchallenged in the cross-examination.

10 PW-8 is Dr. Prakash Hankare and was then working as a Medical Officer in the Rural Hospital, Tasgaon. PW-8 on 23.12.2006 has examined the victim girl and referred her to the Civil Hospital at Sangli for her further examination. PW-7 is Dr. Basappa Koli, Medical Officer, who was then attached to Vasantdada Civil Hospital, Sangli and was on duty on 25.12.2006. He examined the victim girl at about 6.15 p.m. He collected the necessary samples from the victim girl for sending it to the Chemical Analyzer, Pune. He thereafter referred the said victim girl to the Gynecology Department for expert's examination.

11 PW-6 is Dr. Smt. Jyoti V. Rokade who was a lecturer in Gynaecology Department in Civil Hospital, Sangli. On 25.12.2006 she was on duty in the said hospital. The victim girl was referred to her. The victim was about 9 years of age. The victim stated the history of the sexual assault on her. PW-6 examined the victim girl. PW-6 noticed the evidence of recent hymenal tear at 6' O' clock position triangular about 3 x 1 cm square, about more than 24 hours but less than 7days duration. On examination,

PW-6 formed opinion of the said hymenal tear at 6' O' clock position.

In the cross-examination of PW Nos.8, 7 and 6 respectively no material beneficial to the appellant has been brought on record. As a matter of fact while denying various suggestions, the PW-6 Dr. Rokade has reiterated about the sexual assault on the victim girl.

12 Before we proceed to analyse the evidence available on record, a useful reference can be made to the celebrated judgment of the Supreme court in the case of ***State of Himachal Pradesh Vs. Shree Kant Shekari [AIR 2004 SC 4404]***. In para-21 of the said judgment the Supreme Court has observed as under:

“21- It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is physical as well as psychological and emotional. However, if the Court on facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice would suffice.”

13 After taking into consideration the entire evidence available on record, it is absolutely clear that the victim (PW-4) has in unequivocal terms stated that she was subjected to sexual assault by the appellant on 23.12.2006 when she was returning from the tuition in the evening. It has also come on record that when the victim girl tried to raise shouts, the appellant caught hold her mouth and put his hand on her mouth and committed rape on her. The evidence of PW-4 has further been corroborated by the testimony of PW-2 Smt. Vaishali, mother of victim. PW-2 after noticing that PW-4 has fallen asleep in house, made enquiry with her, whereupon the victim girl disclosed the incident to her mother. PW-2 also noticed blood stains on the clothes of PW-4. The testimony of PW-4 victim has further been corroborated by the medical expert i.e. PW-6 Dr. Smt. Jyoti Rokade who in her evidence has stated that hyemenal tear caused to the victim girl was bout more that 24 hours but less than 7 days of duration. She has further stated that if able human body person tries to forcibly commit the act of rape the said injury which has occurred to the victim was possible. She has accordingly submitted her opinion. Thus, it is clear that the evidence of PW-4 victim girl is corroborated by the evidence of PW-2 Smt. Vaishali, mother of the victim and PW-6 Dr. Rokade, the Gynaecologist.

14 It is to be noted here that in view of the evidence of PW-2 Smt. Vaishali that as the victim girl was suffering from bleeding and pains, she was immediately treated by Dr. Salunkhe and after victim was feeling better, PW-2 Smt. Vaishali, mother of the victim lodged first information report on 25.12.2006. The contention of the appellant that the said Dr. Salunkhe has not been examined by the prosecution which creates doubt about the truthfulness of the testimony of PW-4, in our opinion has no substance in it as the mother of the victim girl i.e. PW-2 Smt. Vaishali has taken all the necessary and immediate steps which were to be adopted by her. The facts narrated by PW-4 herein has not only been corroborated by PW-2 Smt. Vaishali, mother of the victim, but has further been substantiated and corroborated by Dr. Smt.Rokade (PW-6), the Gynaecologist in that behalf.

15 As has been held by the Supreme Court in the case of ***State of Himachal Pradesh Vs. Shree Kant Shekari (supra)*** that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime in the present case, we find that the testimony of the victim PW-4 is wholly trustworthy and reliable and it need not require any corroboration in support thereof. Apart from the said fact PW-2 and PW-6 have corroborated the version of the victim girl which lends further

credence to her testimony. It is to be noted here that the victim girl immediately after the incident and at the first instance informed about the said fact of sexual assault on her by the appellant to her mother and her mother thereafter took her to doctor for treatment. In our considered opinion, the offence under Section 376 (2) (f) of Indian Penal Code has been proved beyond reasonable doubt against the appellant.

16 In the circumstances, we are of the considered opinion that the learned Trial Court has rightly and correctly convicted and sentenced the appellant under Section 376(2) (f) of the Indian Penal Code and the impugned judgment and order passed by the Adhoc District Judge 2 and Additional Sessions Judge, Sangli dated 31st August 2007 needs no interference at the instance of this Court. We are of the further opinion that the impugned judgment and order dated 31st August 2007 does not suffer from any infirmity either in law or on facts to interfere with it. The appeal filed by the appellant being sans of any merits is accordingly dismissed.

17 As far as the criminal appeal no.1223 of 2007 filed by the State under Section 377 (1) of Cr. P.C. for enhancement of sentence imposed upon the appellant by the Trial Court is concerned, after taking into consideration the entire evidence on record we find that the sentence awarded by the learned Trial Court is just, right and proper and in view of

the facts and circumstances mentioned hereinabove, we are of the opinion that it is not necessary to modify and/or interfere with the sentence imposed upon by the learned Trial Court on the appellant. In view of order passed in criminal appeal no.1172 of 2007 preferred by the appellant, we are of the opinion that the said appeal is also without merit and is accordingly dismissed.

18 We quantify legal fees to be paid by the High Court Legal Services Committee to Mr. Sachin Chandan at Rs.5000/-.

(A.S. GADKARI,J.)

(ACTING CHIEF JUSTICE)

CERTIFICATE

**Certified to be true and correct copy of the original
signed Judgment.**