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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 886 OF 2014**

Amit Ashok Jagtap	]
Convict No.	]
Aged 19 years (At present in	]
Judicial Custody at Kolhapur Central	]
Prison,	]
Resident of Varkutemalwadi,	]
Taluka Man Dist. Satara	].. Appellant [Ori. Accused]

Vs.

The State of Maharashtra	]
Through Senior Inspector of Police	]
Medha Police Station, Dist. Satara	]
Vide CR No. 33 of 2013	].. Respondent

....

Ms. Rohini Dandekar Advocate appointed for the Appellant
Mr. A.S. Shitole A.P.P. for the State

....

**CORAM : SMT.V.K.TAHILRAMANI AND
DR.SHALINI PHANSALKAR-JOSHI,JJ.**

DATED : JULY 27, 2015

ORAL JUDGMENT: [PER SMT. V.K. TAHILRAMANI, J.]

1 This appeal is preferred by the appellant-original
accused against the judgment and order dated 18.7.2014

passed by the learned Sessions Judge, Satara in Sessions Case No. 143 of 2013. By the said judgment and order, the learned Sessions Judge convicted the appellant under Sections 302, 392 read with Section 397, 354-A(1)(i) and 354-B of IPC. For the offence under Section 302, the appellant has been sentenced to life imprisonment and fine of Rs.1000/- i/d R.I. for three months. For the offence under Section 392 read with Section 397 of IPC, the appellant has been sentenced to R.I. for seven years and fine of Rs.1000/- i/d R.I. for three months. For the offence under Section 354-A(1)(i), the appellant has been sentenced to R.I. for three years and fine of Rs.1000/- i/d R.I. for three months. For the offence under Section 354-B, the appellant has been sentenced to R.I. for three years and fine of Rs.1000/- i/d R.I. for three months. All the substantive sentences were directed to run concurrently.

2 The prosecution case, briefly stated, is as under:

Deceased Laxmibai was the mother of P.W. 3 Sunita. Sunita was residing at Kotrushshi along with her parents. On 21.4.2013 at about 9.00 a.m. Sunita along with her mother Laxmibai went to Harchandi to meet paternal aunt of Sunita.

At about 1.00 p.m. Sunita and her mother Laxmibai left the house of Sunita's paternal aunt and they were returning home to Kotrushhi. They came on the road from Harchandi to Kotrushhi and waited for the bus for sometime. However, as the bus did not come, both of them started walking towards Kotrushhi. The distance between Harchandi and Kotrushhi is about 3 to 4 kms. After they passed a distance of 1 km., the appellant was seen sitting below a tree. Sunita and her mother Laxmibai proceeded ahead. After sometime, they saw that the appellant was following them. Then the appellant came beside them. He asked them where they had gone. Sunita told the appellant that they had gone to Harchandi. The appellant asked them where they were going? Thereupon, they told the appellant that they were going to Kotrushhi. On enquiry by Laxmibai, the appellant told his name as Jagtap. Thereafter all three started proceeding ahead. Sunita was about 10 to 12 steps ahead and her mother and the appellant were following Sunita. Sunita heard loud shouts of her mother. When she turned back, she saw the appellant assaulting her mother with a stick. Thereupon Sunita shouted. Then the appellant pushed Sunita's mother in the net of Karvandi. Thereafter, Sunita's

mother Laxmibai fell in a valley having depth of about 30 feet. The appellant then assaulted Sunita with a stick. He caught right hand of Sunita and tore her clothes. The appellant then pressed her breast. Thereafter he pulled chain which was in the neck of Sunita and ran away. Sunita's mother Laxmibai was shouting to save her. Laxmibai told Sunita to get persons from village Kotrushhi. Then Sunita left to go to Kotrushhi. After 1 or 2 kms. Sunita met one person from Amshi. She told him about the incident. Then that person came along with Sunita to the spot where her mother Laxmibai was lying. He brought her mother on the road with the help of 3 to 4 other persons. Thereafter, they were taking Laxmibai to the Doctor at Tapola, however, Laxmibai died in transit at Velapur. Then Sunita returned to Harchandi. She narrated the incident to the villagers at Harchandi. Meanwhile the accused was caught. Sunita then lodged F.I.R. (Exh. 17). Thereafter investigation commenced. Dead body of Laxmibai was sent for post-mortem. Multiple abrasions were seen on the back of Laxmibai. Contused lacerated wound was noticed on the lumber region and scapular area. Hematoma was noticed on the occipital parietal temporal area and a blood clot was found

in the left cerebral hemisphere. On 25.4.2013 Sunita was called to the jail in Satara to identify the accused. She identified the appellant in the test identification parade (TIP). After completion of investigation, the charge sheet came to be filed. In due course, the case was committed to the Court of Sessions.

3 Charge came to be framed against the appellant under Sections 302, 392 read with Section 397, 354(D), 354(A) (I) (v) and 354(B) of IPC. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is that of total denial and false implication. After going through the evidence adduced in the present case, the learned Sessions Judge convicted and sentenced the appellant as stated in para 1 above, hence, this appeal.

4 We have heard the learned counsel for the appellant and the learned A.P.P. for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned counsel for the parties, the judgment delivered by the learned Judge and the evidence

on record, for the below mentioned reasons, we are of the opinion that the prosecution has not proved its case against the appellant beyond reasonable doubt.

5 The star witness in the present case is P.W. 3 Sunita. Sunita has stated that she was residing at village Kotrushu along with her parents. On 21.4.2013 at about 9.00 a.m. Sunita along with her mother Laxmibai went to Harchandi to meet paternal aunt of Sunita. At about 1.00 p.m. Sunita and her mother Laxmibai left the house of Sunita's paternal aunt and they were returning home to Kotrushu. They came on the road from Harchandi to Kotrushu and waited for the bus for sometime. However, as the bus did not come, both of them started walking towards Kotrushu. The distance between Harchandi and Kotrushu is about 3 to 4 kms. After they passed a distance of 1 km., the appellant was seen sitting below a tree. Sunita and her mother Laxmibai proceeded ahead. After sometime, they saw that the appellant was following them. Then the appellant came beside them. He asked them where they had gone. Sunita told the appellant that they had gone to Harchandi. The appellant asked them where they were going?

Thereupon, they told the appellant that they were going to Kotrushi. On enquiry by Laxmibai, the appellant told his name as Jagtap. Thereafter all three started proceeding ahead. Sunita was about 10 to 12 steps ahead and her mother and the appellant were following Sunita. Sunita heard loud shouts of her mother. When she turned back, she saw the appellant assaulting her mother with a stick. Thereupon Sunita shouted. Then the appellant pushed Sunita's mother in the net of Karvandi. Thereafter, Sunita's mother Laxmibai fell in a valley having depth of about 30 feet. The appellant then assaulted Sunita with a stick. He caught right hand of Sunita and tore her clothes. He then pressed her breast. Thereafter he pulled chain which was in the neck of Sunita and then ran away. Sunita's mother Laxmibai was shouting to save her. Laxmibai told Sunita to get persons from village Kotrushi. Then Sunita left to go to Kotrushi. After 1 or 2 kms. Sunita met one person from Amshi. She told him about the incident. Then that person came along with Sunita to the spot where her mother was lying. He brought her mother on the road with the help of 3 to 4 persons. Thereafter, they were taking Laxmibai to the Doctor at Tapola, however, Laxmibai died in transit at Velapur. Then

Sunita returned to Harchandi. She narrated the incident to the villagers at Harchandi. Sunita then lodged F.I.R. (Exh. 17).

6 It is pertinent to note that Sunita has admitted in her examination-in-chief itself that she had not seen the accused any time prior to the incident. In her cross-examination also, she has admitted that **"it is true to say that I was not knowing the accused earlier"**. As the appellant was not known to Sunita prior to the incident, Test Identification Parade (TIP) was held on 25.4.2013 wherein, according to the prosecution, Sunita identified the appellant. TIP was held by P.W. 15 Shri. Sapate who was the Tahsildar of Mahabaleshwar. Shri. Sapate has stated that on 25.4.2013 he held the parade in the open space adjacent to Satara Jail. Sunita has identified the appellant in the said parade. On going through TIP memo, we find that it is stated therein that Shri. Sapate asked Sunita whether she had seen the accused anytime prior thereto or whether she had seen the accused while he was in jail ? To this question, Sunita answered in the affirmative. This is clearly stated in the TIP memo Exh. 50/3. This shows that prior to holding of TIP, the appellant was shown to Sunita while he

was in jail. In such case, the identification of the appellant by Sunita cannot be relied upon.

7 According to the prosecution, the appellant was caught by P.W. 10 Vasant. P.W. 9 Sandip has stated that on 21.4.2013 he heard a girl saying "bring water bring water", hence, he carried a vessel to Chirekhan stream. He handed over the vessel containing water to the villagers there. He then went to Harchandi on his bike. There he told Vasant about the assault on the lady. Sandip then sent Vasant in search of the boy who had assaulted the lady. P.W. 10 Vasant has stated that P.W. 9 Sandip resident of Amshi came to him and told him that one lady was assaulted at Amshi. Sandip told him that the assailant ran away towards the river. Thereafter, Vasant along with two others went towards the bank of the river. They saw one person washing hands and legs in the river. The boy was wearing a black pant and chocolate colour T-shirt. They enquired with the boy where he was going, whereupon the boy said he was going to Tapola. Thereupon P.W. 10 Vasant suspected that the boy was the assailant, Vasant accosted him & brought him to Harchandi. As far as the

evidence of P.W. 10 Vasant is concerned, it is pertinent to note that nobody including P.W.9 Sandip or P.W.3 Sunita had given him the description of the appellant. The description of the clothes worn by the appellant was also not given by any one to P.W. 10 Vasant. As the description of the appellant or of his clothes was not given to P.W. 10 Vasant, it is difficult to understand on what basis he suspected that the appellant was the assailant and caught him. Just because the appellant stated that he was going to Tapola would be no reason to suspect the appellant, because the evidence on record shows that the road was also leading to Tapola, which is seen from the fact that Laxmibai from the spot was being taken to the hospital at Tapola. It also cannot be believed that the assailant would linger near the river for such a long time, because in the meantime, P.W. 9 Sandip went from village Amshi to village Harchandi, then P.W. 10 Vasant came from village Harchandi to Amshi then he searched for the assailant and he found the appellant near the river and he suspected that the appellant was the assailant. In this connection, we would like to advert to the evidence of P.W. 17 Police Head Constable Sapkal. He has stated that he had not personally verified whether the

appellant was the same person who was involved in the offence in respect of which a report was registered by Sunita. All these facts raise doubt about whether the appellant was indeed the assailant.

8 P.W. 14 Dr. Jadhao examined Sunita on 22.4.2013 at 9.15 p.m. On examination, he noticed a contused lacerated wound on the left tempo parietal aspect which was "**S**" in shape and the dimensions were 6 x 2 x 2 cms. It is the case of the prosecution as seen from the evidence of P.W. 3 Sunita that the appellant assaulted Sunita with a stick. In no circumstance, can a stick cause "**S**" shape wound. A stick would cause only a weal mark or contused lacerated wound which would be more or less linear in shape. Thus, the medical evidence also raises doubt about the veracity of the evidence of Sunita.

9 The prosecution is relying heavily on the fact that Sunita has stated that her chain was snatched by the appellant and when the appellant was arrested, a chain was found with him which was seized under panchnama (Exh.15). However, in this connection it may be noted that P.W. 10 Vasant stated

that on 21.4.2013 itself they accosted the appellant and brought him to Harchandi, however, the panchnama in relation to the chain is drawn on the next day i.e. on 22.4.2013. P.W. 16 API Kale has stated that the appellant was arrested at 10 a.m. the next morning. Panch witness P.W. 2 Bhausahab has stated that on 22.4.2013 he was called to the police station and asked whether he was ready to act as pancha. He replied in the affirmative. He noticed that the appellant was present in the police station. After searching the person of the appellant, in the inner side pocket, they found a chain. Police seized the chain. If the appellant was apprehended on 21.4.2013, then the chain should have been seized on 21.4.2013 itself. In such case, though the appellant is apprehended on 21.4.2013, the seizure of the chain from his pocket on 22.4.2013 becomes suspect. It may further be stated that Sunita has not identified the chain before the Court.

10 Thereafter the prosecution has relied on the fact that the pant of the appellant was seized and it was sent to the C.A. and as per C.A. report Exh. 65, the pant was found stained with blood. Though the pant was found stained with blood, blood

group could not be ascertained. The evidence of P.W. 16 API Kale shows that in fact, the villagers had also assaulted the appellant. In such case, we find much merit in the contention raised by Ms. Dandekar that the blood found on the pant of the appellant could be that of the appellant. It is also recorded in the panchanama Exh. 28 that the villagers assaulted the appellant due to which, T-shirt on his body was torn and one of the villagers threw away the shirt. It is interesting to note that the panchnama Exh. 28 shows that T-shirt worn by the appellant, was torn by the villagers and thrown away and though there is no panchnama in relation to seizure of T-shirt, yet Sunita has identified the T-shirt before the Court. It is not known from where this T-shirt was produced before the Court when it had been thrown away by the villagers and there was no seizure panchnama in relation to this T-shirt. This also renders the prosecution case suspect.

11 In view of the above facts, we are of the opinion that the appellant deserves to be given the benefit of doubt, hence, the following order is passed:

ORDER

- (1) The judgment and order dated 18.7.2014 passed by the learned Sessions Judge, Satara in Sessions Case No. 143 of 2013 convicting and sentencing the appellant - Amit Ashok Jagtap under Sections 302, 392 read with Section 397, 354-A(1) (i) and 354-B of IPC, is set aside;
- (2) The appellant is acquitted of all offences for which he was convicted and sentenced by the learned Sessions Judge.
- (3) Fine amount if any, paid by the appellant, be refunded to him.
- (4) The appellant be set at liberty forthwith, if not required in any other case.
- (5) Office to communicate this order to the concerned Jail Superintendent and the appellant.
- (6) We quantify legal fees to be paid to Advocate Ms. Rohini Dandekar by the High Court Legal Services Committee at Rs. 5000/-.

[DR.SHALINI PHANSALKAR-JOSHI, J.] [SMT. V.K.TAHILRAMANI, J.]