

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO. 346 OF 2001

Keshav Pandurang Dhadwad,
age : 35 years, r/o: Vihir,
Tq. Akole, Dist. : Ahmednagar.

... **APPELLANT**

VERSUS

The State of Maharashtra.
(Copy to be served on the
Public Prosecutor, High Court
of Judicature of Bombay,
Bench at Aurangabad.)

... **RESPONDENT**

...
Mr. Shivaji T. Shelke, Advocate for Appellant.
Mr. S. N. Morampalle, APP for Respondent / State.

...

CORAM : **INDIRA K. JAIN, J.**
DATE : 06th April, 2016.

ORAL JUDGMENT:

. This appeal takes an exception to the judgment and order dated 20th August, 2001 passed by the learned Additional Sessions Judge, Sangamner in Sessions Case No.10 of 2001 convicting the Appellant of the offences punishable under Sections 376 and 506 of

the Indian Penal Code as under:

<u>Conviction under Section</u>	<u>Sentence</u>
376	Rigorous Imprisonment for seven years and fine of Rs.2,000/- in default Rigorous Imprisonment for six months.
506	Rigorous Imprisonment for one year and fine of Rs.500/- in default Rigorous Imprisonment for three months.

2 Briefly stated the facts of prosecution case are as under:

- i. Prosecutrix Lahanbai Dighe was resident of village Vihir, Taluka Akole, District Ahmednagar. She was residing with her husband and children. Parents of prosecutrix were also residing in the same village.
- ii. Complainant was a labourer. She used to go from place to place in search of labour work. On 15th December, 2000 Complainant with other labourers had been to Dhamangaon Pat-Ghulewadi to work in the field of Machindra Ghule. She was required to stay there till completion of work. In the night she

and other lady labourers were sleeping in a room. According to prosecution at around 10:30 p.m. Accused and PW-5 Gorakh Sable went to the room in which prosecutrix was sleeping. They came on motorcycle. Accused told prosecutrix that her daughter Shaila was ill and her brother had asked him to bring her. Prosecutrix then accompanied Accused and Gorakh on motorcycle. Gorakh was riding the motorcycle. Accused and prosecutrix were the pillion riders.

- iii. When they reached to Deviche Ghat Accused under the pretext to go for urination asked Gorakh to stop motorcycle. Gorakh stopped the bike. Accused then asked Gorakh to proceed with bike and told him that they would come on foot. Gorakh left the place. It is alleged that Accused then took Complainant to the side of the road and under threats twice committed sexual assault on her.

iv. Report of the incident was lodged. Crime was registered against the Accused. PW-9 P.I. Janardhan Tivate conducted investigation and filed charge-sheet.

3 Charge was framed against the Accused. He pleaded not guilty and claimed to be tried. He raised the defence that it was a case of love affair. The husband of Complainant learnt about love affair and so he was falsely implicated.

4 Prosecution examined in all 9 witnesses to substantiate the alleged guilt of Accused. On hearing both the sides learned Additional Sessions Judge came to the conclusion that there was sufficient evidence to prove the guilt of Accused and convicted and sentenced the Accused as stated herein before in para 1. Appellant had challenged the correctness of said judgment and order in this appeal.

5 Heard the learned counsel for parties. Upon carefully going through the evidence of prosecution witnesses this Court finds that there is merit in the submissions advanced on behalf of

Appellant / Accused as the prosecution could not prove guilt of Appellant / Accused beyond all reasonable doubt for the reasons stated below.

6 PW-1 Lahanbai Dighe is the star witness for prosecution. She stated that at the time of incident she had been to village Dhamangaon Pat-Ghulewadi for labour work. She was required to stay in the village till completion of work. She stated that other labourers were with her. During night lady labourers were sleeping in one room and male labourers were sleeping in another room. Evidence of prosecutrix shows that at around 10:00 to 10:30 p.m. Accused with Gorakh had been to the room and informed her that her daughter was ill so she was required to accompany them. Since she was knowing the Accused she accompanied him on the motorcycle on which Gorakh and Accused had come to her. Evidence of prosecutrix further indicates that Gorakh was driving the motorcycle. She and Accused were pillion riders. On the way to her village at around 11:00 p.m. when they reached Deviche Ghat Accused told Gorakh to stop vehicle and asked him to proceed. Gorakh left the place. She states that Accused then threatened to kill her and her husband. He took her to the distance of 40-50 feet from road, undressed her and

committed sexual intercourse with her forcibly.

7 It is also stated by prosecutrix that after incident she wore her clothes. Accused also put on his clothes. When they were proceeding on foot again second time Accused committed sexual intercourse with her. She then came to her house. Informed the incident to her mother and brother. After arrival of her husband, he was also informed about the incident. She proved FIR Exhibit 13.

8 In the cross-examination prosecutrix admitted that she was knowing Accused since before incident. She also admits that she did not ask Gorakh not to leave when Accused asked him to proceed. She admitted that she did not resist Accused when he undressed her. She did not try to run away when Accused was removing his clothes. She did not raise any alarm. She further admits in an unequivocal terms that both the time she did not resist the act of Accused.

9 The evidence of prosecutrix clearly shows that after the first incident she on her own followed the Accused and accompanied him. There is no evidence to show that she attempted to resist the alleged act of Accused. Facts elicited in her piercing cross-examination would make it clear that she was a consenting party

throughout. Medical evidence does not indicate any injury on the person of prosecutrix. She was a married lady having children.

10 Accused has come with a defence that it was a case of love affair but at the instance of husband, Complainant has falsely involved him. In view of the conduct of prosecutrix, defence raised by Accused appears to be more probable and acceptable. This Court thus finds that prosecution could not prove the guilt of Accused beyond reasonable doubt. Appeal therefore deserves to be allowed. Hence the following order –

ORDER

- I. Criminal Appeal No.346 of 2001 is allowed.
- II. The judgment and order dated 20th August, 2001 passed by the learned Additional Sessions Judge, Sangamner in Sessions Case No.10 of 2001, is set aside and Appellant Keshav Pandurang Dhadwad is acquitted of the offences punishable under Sections 376 and 506 of the Indian Penal Code.

III. Bail bonds of Appellant stand cancelled.

IV. Fine amount if any paid shall be refunded to the Appellant.

[INDIRA K. JAIN, J.]

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