

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO. 405 OF 2014
IN
SESSIONS CASE NO. 34 OF 2010**

Mr. Raghunath Narayan Patekar	]
Age 63 years, Hindu,	]
Indian Inhabitant, Residing at	]
Rampur Tambi, Taluka Chiplun,	]
Dist. Ratnagiri (Maharashtra)	]
(At present in Kolhapur Central Prison	]
Kolhapur)	].. Appellant
	[Ori. Accused]

Vs.

The State of Maharashtra	]
Through Chiplun Police Station	].. Respondent

....

Ms. Rohini Dandekar Advocate appointed for the Appellant
Mr. Arfan Sait A.P.P. for the State

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**CORAM : SMT.V.K.TAHILRAMANI AND
M.S.KARNIK, JJ.
DATED : NOVEMBER 02, 2017**

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

1 This appeal is preferred by the appellant-original

accused against the judgment and order dated 17.7.2013 passed by the learned Additional Sessions Judge, Khed, in Sessions Case No. 34 of 2010. By the said judgment and order, the learned Sessions Judge convicted the appellant under Sections 376, 325, 392 and 394 of IPC. For the offence under Section 376 of IPC, the appellant has been sentenced to life imprisonment and fine of Rs. 10000/- i/d S.I. for six months, for the offence under Section 325 of IPC, the appellant has been sentenced to R.I. for three years and fine of Rs. 1000/- in default R.I. for three months, for the offence under Section 392 of IPC, the appellant has been sentenced to R.I. for seven years and fine of Rs. 3000/- in default R.I. for six months and for the offence under Section 394 of IPC, the appellant has been sentenced to life imprisonment and fine of Rs.5000/- in default R.I. for six months. All the sentences were directed to run concurrently.

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

(1) Marriage of the prosecutrix i.e. PW 1 took place on 2.6.2010 with one Dattaram. Dattaram was resident of village

Kapare in District Ratnagiri. The parents of the prosecutrix resided in village Anjanwel, Taluka Guhagar Dist. Ratnagiri. The prosecutrix was about 21 years of age on the date of the incident.

(2) On 17.6.2010 the prosecutrix had gone to her parental house with her father. On 21.6.2010, she came along with her father to Guhagar. From Guhagar she came along with her father to Ganesh-Khind by Chiplun S.T. Bus. At about 10.15 a.m. Maldoli Bus came to Ganesh-Khind. In order to go to her matrimonial house, she along with other passengers boarded the said Bus. Her father told the conductor that as she was new, the conductor should tell her to alight at Suparibaug Kapare. One of the passengers who boarded the Bus, told her father that he was also going to the same place, hence, he would tell the prosecutrix to alight at the same place. That person was the appellant. Then the prosecutrix sat on the last seat of the S.T. Bus. The appellant who had spoken to her father, sat next to her. He told the prosecutrix that he knew her husband. He paid for her fare. After traveling for half an hour, the appellant told the prosecutrix to alight at one spot.

Thereafter, the prosecutrix and the appellant started walking. They walked for about 1 km. The appellant then told the prosecutrix to stop below one tamarind tree. He went into one house and after some time, returned back. He then asked the prosecutrix to come with him. She went with him with her bag. Thereafter they reached near the forest. The appellant then caught her hand. The prosecutrix questioned him why he was behaving in this manner. The appellant then twisted her hand and made her fall down on the ground. There were stones lying on the spot, due to which, the prosecutrix sustained injuries below both her eyes. The appellant then removed her clothes and committed rape on her. The prosecutrix was shouting for help but there was nobody nearby. Thereafter the appellant wore his clothes. He snatched ornaments which were on the prosecutrix i.e. Mangalsutra, earring, ring and bangles. The appellant inserted some stones in the private parts of the prosecutrix. Then he took stone and assaulted the prosecutrix. Thereafter he took umbrella, saree and ornaments of the prosecutrix and ran away from the spot. On hearing the shouts of the prosecutrix, some women including PW 2 Sujata reached the spot. They took the prosecutrix to their village. They

enquired about her name and village. Then they telephoned the Sarpanch of her village. Sarpanch of her village and other persons came and took her to Kamathe hospital at Chiplun. Police then came to the hospital and recorded the statement of the prosecutrix which was treated as F.I.R. (Exh.20). The prosecutrix gave the description of the appellant. She also informed the police that the appellant was some-what bald and his age was about 45 to 50 years. The appellant came to be arrested on the same day. The appellant was sent for medical examination. Fresh injuries were found on the appellant. He was examined by PW 11 Dr. Prafulla Mishra. Dr. Mishra found seven injuries on his person which were mostly scratch marks. During the course of investigation, at the instance of the appellant, the ornaments of the prosecutrix came to be recovered. After completion of investigation, the charge-sheet came to be filed.

3 Charge came to be framed against the appellant under Sections 376, 307, 392 and 394 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 Judge convicted and sentenced the appellant as stated in para 1 above, hence, this appeal. It may be stated here that the learned Judge convicted and sentenced the appellant under Section 325 of IPC instead of offence under Section 307 of IPC as the offence under Section 307 of IPC was not proved against the appellant.

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 appellant committed rape on the prosecutrix and also assaulted her with stones and robbed her of her ornaments.

5 The conviction of the appellant is mainly based on the evidence of the prosecutrix. The prosecutrix has stated that village Anjanvel in Taluka Guhagar in District Ratnagiri is her parental home. Her marriage was performed with Dattaram on

2.6.2010. She was educated upto 9th Standard. The prosecutrix PW 1 stated that on 17.6.2010 she had gone to her parental house with her father. On 21.6.2010, she came along with her father to Guhagar. From Guhagar she came along with her father to Ganesh-Khind by Chiplun S.T. Bus. At about 10.15 a.m. Maldoli Bus came to Ganesh-Khind. In order to go to her matrimonial house, she along with other passengers boarded the said Bus. Her father told the conductor that as she was new, the conductor should tell her to alight at Suparibaug Kapare. One of the passengers who boarded the Bus, told her father that he was also going to the same place, hence, he would tell the prosecutrix to alight at the same place. That person was the appellant. Then the prosecutrix sat on the last seat of the S.T. Bus. The appellant who had spoken to her father, sat next to her. He told the prosecutrix that he knew her husband. He paid for her fare. After traveling for half an hour, the appellant told the prosecutrix to alight at one stop. Thereafter, the prosecutrix and the appellant alighted and started walking. They walked for about 1 km. The appellant then told the prosecutrix to stop below one tamarind tree. He went into one house and after some time, returned back. He

then asked the prosecutrix to come with him. She went with him with her bag. Thereafter they reached near a forest. The appellant then caught her hand. The prosecutrix questioned him why he was behaving in this manner. The appellant then twisted her hand and made her fall down on the ground. There were stones lying on the spot, due to which, the prosecutrix sustained injuries below both her eyes. The appellant then removed her clothes and committed rape on her. The prosecutrix was shouting for help but there was nobody nearby. Thereafter the appellant wore his clothes. He snatched ornaments which were on the prosecutrix i.e. Mangalsutra, earring, ring and bangles. The appellant inserted some stones in the private parts of the prosecutrix. Then he took stone and assaulted the prosecutrix. Thereafter he took umbrella, saree and ornaments of the prosecutrix and ran away from the spot. On hearing the shouts of the prosecutrix, some women including PW 2 Sujata, reached the spot. They took the prosecutrix to their village. They enquired about her name and village. Then they telephoned the Sarpanch of her village. Sarpanch of her village and other persons came and took her to Kamathe hospital at Chiplun. Police then came to the hospital

and recorded the statement of the prosecutrix which was treated as F.I.R. (Exh.20).

6 According to the prosecutrix, when the appellant committed rape on her, she shouted for help. The appellant then robbed her of her ornaments and also took away her umbrella and saree and ran away. The evidence of the prosecutrix is corroborated to certain extent by the evidence of PW 2 Sujata. Sujata has stated that when she was grazing her she-goats at about 1.00 p.m., she heard shouts of a woman shouting "save save". At that time, her brother-in-law Vasant and one woman Archana were along with her. On hearing shouts, they all went to the spot. There they saw one woman lying in naked condition. She was about 22 years of age. She had injuries on her person. Her face was stained with blood. She was moaning due to pain. They kept cloth on her body and brought her to the house of Sujata. On enquiry, the lady informed that her parent's house is at Anjanwel and her matrimonial house is at Kapare. She also told that one man brought her to the spot and committed rape on her. Sarpanch of the village of Sujata, telephoned Sarpanch of village Kapare.

After about half an hour, they came and took the lady to the Doctor.

7 The prosecutrix has stated that after the appellant made her alight from the Bus, they walked for about 1 km. Then the appellant told her to stop below one tamarind tree. The appellant then went into one house and after some time came back. The appellant then asked her to come with him and she followed him. This part of the evidence of the prosecutrix is corroborated by PW 12 Dattaram. Dattaram was the police patil of village Bhom. He knew the appellant. He knew that the appellant was resident of Rampur Tambi. The appellant had exchanged the bullocks with the bullocks of Dattaram and the appellant had to pay additional amount of Rs.7000/- to Dattaram. The appellant had paid Rs.5000/- and assured that he will pay remaining amount of Rs.2000/- after two days. Dattaram stated that on 21.06.2010, the appellant had come to his house between 11.00 a.m. to 11.15 a.m. One woman was along with the appellant and the woman was standing below the tamarind tree. She was wearing saree of yellow colour. The appellant came and gave Rs. 2000/- to Dattaram. Dattaram

enquired with the appellant about who was the lady, whereupon, the appellant told Dattaram that she was his relative. Thereafter, the appellant and that woman went away. At about 3.00 p.m. in the afternoon, PSI Kakade had come to the house of Dattaram. He asked him whether the person who was tall, wheatish and bald, was seen by him. Thereupon Dattaram told him that the appellant had come to his house and he gave address of the appellant to PSI Kakade. Thereafter, Dattaram went to Lalbag stop for bringing fertilizer. Thereafter he came to know that one woman was raped by someone. He also came to know that the said woman was admitted to Kamathe hospital, therefore, Dattaram went to Kamathe hospital to verify. On seeing the lady in the hospital, he realized that it was the very same woman who had come along with the appellant to his house. Thus, the evidence of Dattaram, establishes that the appellant and the prosecutrix were together at about 11.15 a.m. on 21.6.2010.

8 The prosecutrix has stated that on 21.6.2010 she boarded Maldoli Bus at 10.15 a.m. in order to go to her matrimonial house at village Kapare. She has stated that the

appellant also boarded the Bus at Ganesh-Khind. When the appellant was boarding the Bus, the father of the prosecutrix told the conductor that as she was new hence, he should get her to alight at Supari-bag, Kapare. Thereupon, one of the passengers i.e. the appellant who boarded the Bus, told her father that as he was also going to the same place, he would see that the prosecutrix also alights at the said place. Thereafter, the appellant sat next to her. After traveling half an hour, the appellant told her to alight at one stop, hence, she alighted at that stop and the appellant and the prosecutrix started walking. This part of the evidence of the prosecutrix is corroborated by the evidence of PW 5 Pawar. Pawar was the Conductor of the said S.T. Bus in which, the appellant and the prosecutrix were traveling. Pawar has stated that at about 10.20 a.m. Bus came to Ganesh-Khind when 7 to 8 passengers boarded his Bus. One person told him that one lady was going to Bhom and the Conductor should make her alight at Bhom. The said lady, according to Pawar, was 21 years of age. Pawar has further stated that the appellant also stepped into the Bus at the very same Stop. The appellant and the prosecutrix sat on the last seat of the Bus. The appellant purchased tickets for

himself as well as for the lady to Lalbag – Bhom. On the next day, Pawar read the news published in the newspaper regarding rape. On 23.6.2010 he was called to the police station. As the appellant had traveled in his Bus, Pawar was called for enquiry. He was called for identification parade in the Tehsil office. In identification parade, Pawar has identified the appellant as the same person, who was traveling in his Bus.

9 It is the categorical case of the prosecutrix that after committing rape on her, the appellant robbed her of her ornaments and also took away her saree and umbrella with him. These ornaments, saree and umbrella were recovered at the instance of the appellant. PW 3 Deepak is the panch witness. Deepak has deposed about this aspect. Deepak has stated that on 23.6.2010, he was called to Chiplun police station. The appellant was in the custody of the police. The police told him to listen to what the accused was stating. The accused i.e. the appellant stated that he was ready to show the place where he kept the ornaments and will produce the same. The appellant then led the police and the panchas to Rampur Tambewadi. The appellant took them to his house. The

appellant then produced one bag which was kept under the bed. The appellant also produced the umbrella, mangalsutra, earring, ring, bangles and one saree. This recovery of these ornaments at the instance of the appellant, further corroborates the case of the prosecutrix.

10 That the prosecutrix was raped is borne out by the medical evidence. PW 9 Dr. Kanchan Madar examined the prosecutrix on 21.6.2010 at about 3.55 p.m. On external examination of the prosecutrix, he found following injuries:

- “1) CLW over left eye-lid admeasuring 1.5 x 0.5 cm.
- 2) CLW over right eye-brow and forehead 1.00 cm. x 0.5 cm. x 1.00 cm.
- 3) Periorbital oedema present;
- 4) CLW over lower lip 0.5 x 0.5 cm. oedema present;
- 5) Abrasion 1.00 x 1.00 cm. over left shoulder”.

11 Dr. Kanchan Madar has stated that injuries 1 to 5 are possible while resisting rape and injuries on the private part of the victim are possible due to rape. Dr. Kanchan Madar opined

that the rape might have been committed 3 to 4 hours before examination and injuries sustained by the victim were grievous and fresh injuries.

12 The prosecutrix has specifically stated that after committing rape on her, the appellant inserted some stones in her private parts. This is corroborated by the evidence of PW 9 Dr. Kanchan Madar who has stated that three stones were found in the vagina of the prosecutrix and she removed the said stones. The said stones were measured.

13 Dr. Kanchan Madar has stated that on examination of breast, Dr. Kanchan Madar found bite mark present over left side. During the examination of vulval region, Dr. Madar found bleeding was present with mud and dirt. On perineum region, she found broken glass bangle pieces present. During examination of labia minora, she found CLW 0.5 x 1.00 x 0.2 cm. and on right labia minora lacerations were present. Mud over clitoris, fourchette, majora, minora, urethra, bleeding from vulva was present. There was mud present over all external genitalia. Hymen tear as well as perineum tear second degree

4.00 x 2.00 x 2.00 cm. and bleeding was found. Dr. Madar found hard stones in her vagina and felt patient / victim should be taken for emergency operation. In operation theater, Dr. Madar found CLW i.e. tear to sub-urethral region admeasuring 0.2 x 0.2 cm. Dr. Madar removed three stones from vagina. The stones removed were admeasuring 1) 4.5 x 2.5 x 1.00 cm. 2) 5.00 x 3.00 x 4.00 cm. and 3) 2.00 x 2.00 x 3.00 cm.

14 The appellant was arrested on the same day. The appellant was sent for medical examination. PW 11 Dr. Mishra examined the patient. On examination, he found following injuries on the appellant:

- “(1) Scratch mark on the left shoulder, admeasuring 0.5 cm. red brown in colour;
- (2) Scratch mark on the upper limb i.e. near the shoulder right side admeasuring 4 cm.
- (3) Scratch mark over both the buttocks inferior side (lower buttock) admeasuring 5 cm.
- (4) CLW over the right great toe of the lower limb i.e. right leg with swelling, also bleeding positive of about 1 x 1 cm.
- (5) Scratch mark over the right dorsal aspect of

the feet (above the feet) at about 1 cm.

(6) Scratch mark over the back in the lumbar region on the right side near the spine about 5 cm.

(7) Scratch mark on the right hand near palms about 0.5 cm.”

15 According to Dr. Mishra, the said injuries have been caused within 24 hours. The said injuries are possible if resistance is put up by victim while committing rape. Dr. Mishra has stated that the appellant was capable of sexual intercourse.

16 When the appellant was arrested, his clothes came to be seized. Panch witness PW 4 Prabhakar has deposed about this aspect. The panchnama regarding the seizure of the clothes of the appellant is at Exh. 31. These clothes along with the clothes of the prosecutrix, blood samples of the appellant and the prosecutrix were sent for chemical analysis.

17 The prosecutrix had sustained bleeding injuries which is clear from the evidence of PW 9 Dr. Kanchan Madar. As per the C.A. Report (Exh. 68), the shirt of the appellant which was

sent to C.A., had blood stains of "B" group on it. The C.A. Report (Exh. 56) shows that the blood group of the prosecutrix was "B". The blood group of the appellant is "A" group which is seen from the C.A. Report Exh. 68. Thus, finding of blood of "B" group on the shirt of the appellant, is another highly incriminating circumstance against the appellant.

18 We would also like to refer to the evidence of PW 8 Nisha Jadhav, Chief Intelligence Officer. S.I.D. Karad. She has stated that she has recorded the statement of the prosecutrix. She has further stated that during the investigation, it was revealed that the appellant was working in Military Force and he was convicted for committing rape on a seven year old girl when he was in Military service and after his conviction, he was removed from Military service. The Investigating Agency had entered into correspondence with the Headquarters of the Military Department regarding the previous conviction of the appellant and in reply, the Military Department had sent all the necessary information regarding the conviction of the appellant and discharging him from the Military service. The said correspondence has been exhibited.

19 On going through the evidence on record, we are of the opinion that the prosecution has proved its case against the appellant beyond all reasonable doubt. Thus, we find no reason to interfere with the conviction or sentence. Appeal is dismissed.

[M.S.KARNIK, J.]

[SMT.V.K.TAHILRAMANI,J.]