

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.160 OF 2017

Angad S/o. Tikaram Chandane,
Age:25 years, Occu.:Agriculture,
R/o. Hiwara (Bk), Taluka -Purna,
Dist. Parbhani
(At Present in Jail)

.. Appellant
(Orig. Accused)

Versus

1. The State of Maharashtra
Through Police Station Officer,
Police Station, Purna Taluka-Purna,
Dist. Parbhani.
2. Sangeeta d/o. Narayan Nadre,
Age: 27 years, Occ.:Nil,
R/o. Hiwara (Bk), Tq. Purna,
Dist. Parbhani

.. Respondents

Mr.Swapnil S. Rathi, Advocate for Appellant;
Mr.R.B. Bagul, APP for Respondent - State;
Mr.V.P.Narwade, Advocate for Respondent No.2.

CORAM : P.R.BORA, J.

RESERVED ON : 22/12/2017
PRONOUNCED ON : 28/02/2018

JUDGMENT :

1. The appellant has filed the present appeal against the Judgement and order passed by learned Ad-hoc Additional Sessions Judge, Parbhani in Sessions Case No.145 of 2012 decided on 06.04.2017.

2. The appellant was prosecuted in the aforesaid Sessions Case for the offences punishable under Sections 376

and 417 of Indian Penal Code (hereinafter referred to as the 'I.P.C.'). The trial Court has convicted the appellant for both the aforesaid offences and has sentenced him to suffer rigorous imprisonment for 9 years for the offence punishable under Section 376 of I.P.C. and to pay fine of Rs.50,000/-, in default to suffer simple imprisonment for 2 years. The accused has been sentenced to suffer rigorous imprisonment for 7 months for the offence punishable under Section 417 of I.P.C. with fine of Rs.5,000/-, in default to suffer simple imprisonment for 1 ½ months. The appellant is hereinafter referred to as the accused.

3. The accused was on bail during the course of the trial. After the pronouncement of the Judgment by the Sessions Court, he was taken in custody on 06.04.2017 and since then, he is in jail.

4. It is the case of the prosecution that, initially twice the accused had forcible sexual intercourse with the prosecutrix without her consent and thereafter thrice with her consent, which as alleged by the prosecutrix was fraudulently obtained by the accused by giving her promise of marriage. The sexual relationship between the prosecutrix and the accused has resulted in giving birth to male child by the prosecutrix.

5. Prosecutrix lodged the report against the accused at Police Station Purna on 24.06.2012, whereupon the investigation was set in motion.

6. After lodging of the report, the prosecutrix was sent for medical examination on 25.06.2012, wherein it was noticed that, she was pregnant and pregnancy was of more than 22 weeks. During the course of investigation, the Investigating Officer visited the spot of occurrence, which was shown by the prosecutrix and prepared its panchanama. He also recorded the statements of the necessary witnesses. The required samples for chemical analysis were also collected by him. Meanwhile, the accused was arrested and his medical examination was also got conducted. After completing the investigation, the charge-sheet was filed in the J.M.F.C. Court at Purna. Since the offence under Section 376 of I.P.C. was exclusively triable by the Court of Sessions, the learned J.M.F.C. committed the case to the court of Sessions.

7. During pendency of the Sessions Case, the prosecutrix delivered the male child. After her delivery, the blood samples of the prosecutrix, the newly born male child and the accused were forwarded for the DNA test. In the DNA test, it was revealed that, the accused was the biological father of the

male child delivered by the prosecutrix.

8. In order to prove the guilt of the accused, eight witnesses were examined before the Sessions Court. The accused denied the charges levelled against him that, he had sexual intercourse with the prosecutrix without her consent or by cheating her.

9. The learned trial Court, after having assessed the oral and documentary evidence brought on record before it, held the accused guilty for the offences punishable under Sections 376 and 417 of I.P.C. and sentenced him to suffer the punishments as noted herein above. Aggrieved by, the accused has preferred the present appeal.

10. Shri Rathi, learned Counsel appearing for the accused assailed the impugned Judgment and order on various grounds. The learned Counsel submitted that, the prosecution has failed in bringing on record any cogent and sufficient evidence to prove that, the accused had sexual intercourse with the prosecutrix without her consent. The learned Counsel further submitted that, the prosecution has also failed in bringing on record any evidence to show that, at any point of time, the accused had made any promise to the prosecutrix to marry with her and on

that pretext had sexual intercourse with the prosecutrix as alleged by her. The learned Counsel further submitted that, the court below has also erred in not appreciating that, there are several material inconsistencies in the evidence of the prosecution witnesses and more particularly the prosecutrix (PW-2) as well as the mother of the prosecutrix (PW-3). According to the learned Counsel, the accused could not have been convicted on the basis of such doubtful evidence. The learned Counsel submitted that, looking to the observations made by the learned trial Court in the impugned Judgment, it is discernible that, the learned Judge was predetermined in holding the accused guilty for the alleged offences. The learned Counsel, therefore, prayed for setting aside the impugned Judgment and order and subsequently acquit the accused for the charges levelled against him.

11. The learned APP supported the impugned Judgment and order. The learned APP submitted that, the prosecution has brought on record ample evidence in order to prove the guilt of the accused. The learned APP submitted that, the DNA report has exclusively established that, the accused had physical relationship with the prosecutrix against her wish. The learned APP submitted that, through the evidence of the prosecutrix and her mother, the prosecution has also sufficiently proved that, the

accused cheated the prosecutrix by giving her promise of marriage and on that pretext by having sexual intercourse with her. The learned APP submitted that, court below has passed a well reasoned judgment. The learned APP, therefore, prayed for dismissal of the appeal.

12. On perusal of the impugned Judgement, it is apparently revealed that, the learned trial Judge has fully relied upon the evidence of the prosecutrix. It is further discernible that, the DNA report filed on record by the prosecution evidencing that the accused is the biological father of the male child begotten by the prosecutrix, has much weighed in the mind of the learned trial Judge in holding the accused guilty for the offences punishable under Sections 376 and 417 of I.P.C.

13. Allegation against the accused is two fold. At the first place it is alleged that the accused twice had forcible sexual intercourse with the prosecutrix without her consent and then thrice by fraudulently obtaining the consent of the prosecutrix by giving her false promise of marriage. The aforesaid acts of the accused, according to prosecution amount to commission of rape by him on the prosecutrix and also cheating.

14. There is no dispute that, the prosecutrix was major

at the relevant time. As such, initial burden was on the prosecution to prove beyond reasonable doubts that, the accused had sexual intercourse with the prosecutrix without her consent. The prosecution was also cast with the burden to prove that, the accused cheated the prosecutrix by giving her a false promise to marry with her and thereby induced the prosecutrix to have sexual intercourse with him, which amounted to commission of rape by him on the prosecutrix.

15. In view of the fact that, the accused is not disputing that, he is the biological father of the male child delivered by the prosecutrix meaning thereby that, he has impliedly accepted that he had sexual intercourse with prosecutrix, the question which falls for my consideration is 'whether present is the case of rape as alleged by the prosecution or of a consensual sex as pleaded by the accused? It would also have to be examined 'whether the prosecution has succeeded in proving that the accused had sexual intercourse with the prosecutrix by giving her false promise of marriage and thereby cheated her.

16. The FIR was lodged by the prosecutrix on 24.06.2012. As per the allegations made in the FIR, since prior to six months of lodging of the said report, the accused had been committing sexual intercourse with the prosecutrix. As per the

averments in the FIR, the accused lastly had intercourse with the prosecutrix prior to 15 days of lodging the report by the prosecutrix. It is not in dispute that, the medical examination of the prosecutrix was held on 26.06.2012 and in the said examination, it was revealed that, the prosecutrix was pregnant and the pregnancy was of more than 22 weeks i.e. 5 ½ months. By the DNA report, it is established that, the accused is biological father of the male child delivered by the prosecutrix. It therefore stands established that, sometimes in January -2012 the accused had sexual intercourse with the prosecutrix, which seems to have resulted in making the prosecutrix pregnant.

17. As has been deposed by the prosecutrix, the accused had second sexual intercourse with her five days after the first sexual intercourse. It has also come on record in her evidence that, her menstruation was stopped after her second time sexual intercourse with the accused. It can, therefore, be reasonably inferred that the accused had first and second sexual intercourse with the prosecutrix probably both in the month of January-2012 and either of them did result in making her pregnant. As mentioned earlier, as per the version of the prosecutrix herself, the accused had last sexual intercourse with her prior to 15 days of lodging the report by her meaning thereby that, accused had the last sexual intercourse with the prosecutrix sometimes in

second week of June – 2012, when prosecutrix was in her fifth month of pregnancy.

18. In the aforesaid background, the prosecution evidence will have to be examined to find out whether it was sufficient to prove the charges levelled against the accused.

19. In the sessions trial, though as many as 8 witnesses were examined, evidence of the prosecutrix (PW-2) and the mother of the prosecutrix namely Lilabai (PW-3) is only material. The accused has not raised any serious dispute about the evidence of PW-1 Dr Sonali Jagad and the evidence of PW-4 to PW-8, who all are police witnesses. The deeper scrutiny thus requires of the evidence of only two witnesses i.e. prosecutrix and her mother.

20. In para 25 of the impugned Judgment, the learned trial Judge has observed that, the version of the prosecutrix in her examination-in-chief before the Court supports the case of the prosecution on material aspects, which she narrated in her complaint. After having perused the examination in chief of the prosecutrix in light of the contents of the FIR (Exh.30) lodged by her, it is difficult to agree with the observations made by the learned trial Judge as aforesaid.

21. Further, the evidence of the prosecutrix will have to be read as a whole and it has to be examined whether the facts as are stated by the prosecutrix while lodging FIR, the facts as are stated by her in her examination-in-chief and the facts as have come on record in her cross examination are consistent with each other. It has also to be seen whether PW-3 Lilabai has corroborated the facts as deposed by the prosecutrix.

22. Reading of the FIR and the oral evidence of the prosecutrix apparently reveals that, the evidence of the prosecutrix is full of inconsistencies and different versions have come on record in her examination-in-chief and in her cross-examination in regard to the very material aspects of the matter. It is also revealed that there are material inconsistencies in the facts deposed by the prosecutrix and her mother.

23. In the FIR, it is the contention of the prosecutrix that, the accused many times had forcible sexual intercourse with her whenever she was alone at her house, whereas in her examination-in-chief the prosecutrix has not even whispered that, the accused at any point of time had forcible sexual intercourse with her at her house. In her examination-in-chief the prosecutrix has deposed about initial two instances only, wherein the accused is alleged to have committed forcible intercourse with the prosecutrix in the brook.

24. Contrary to the facts stated as aforesaid, in the cross-examination, the prosecutrix has stated that, the accused committed sexual intercourse with her for four to five times. The prosecutrix has further provided that, the accused two times had sexual intercourse with her in the brook, once at her house, once in the field of accused and at fifth time in her field. It is thus evident that, the facts as are deposed by the prosecutrix in her examination-in-chief and thereafter in cross-examination do not corroborate the facts stated by her in the FIR that, accused on several occasions had forcible sexual intercourse with her whenever she was alone at her house.

25. Nextly, in the FIR while it is the contention of the prosecutrix that, the accused lastly had sexual intercourse with her at about 03:00 a.m. in the midnight at her house; in the examination-in-chief the prosecutrix has not deposed any such fact. In her cross-examination the third version has come on record that, the accused, on fifth time committed sexual intercourse with her at her field. In this regard fourth version has also come on record wherein the prosecutrix has answered that the accused lastly had sexual intercourse with her in his field.

26. In the FIR, while it is the contention of the prosecutrix that, the accused lastly had sexual intercourse with her prior to

15 days of lodging of the report by her, in the examination-in-chief she has not stated any such fact. In the cross-examination an altogether different fact is stated by the prosecutrix that, the accused lastly committed sexual intercourse with her prior to five days of lodging complaint by her.

27. In the FIR, it is narrated by the prosecutrix that, the accused lastly had sexual intercourse with her prior to 15 days of lodging the report by her and from the next day thereafter accused was not seen in the village. In her examination-in-chief the prosecutrix has not deposed any such fact.

28. In the FIR, while it is the contention of the prosecutrix that, she disclosed about the alleged incident to her parents after the accused left village i.e prior to 15 days of her lodging the report; in her examination-in-chief, it is deposed by the prosecutrix that, she disclosed to her parents about the alleged sexual intercourse by the accused after her monthly menstrual cycle was missed. It has to be stated that, as per the version of the prosecutrix herself, after the accused had sexual intercourse with her on two occasions, she stopped menstruating. From the medical evidence on record, her menstruation was stopped sometimes in January-2012 itself. Medical evidence on record shows that, on 26th June, 2012 when her medical examination was conducted, she was pregnant of 5 ½ months. According to

the version in the FIR the prosecutrix seems to have informed to her parents about the alleged sexual intercourse by the accused with her in the first week of June, 2012. Her version in the examination-in-chief, however, goes to suggest that, the aforesaid fact was disclosed by her to her parents sometimes in January or February – 2012.

29. In the FIR, when it is stated by the prosecutrix that, initially by giving threats to her and thereafter by giving her promise of marriage the accused repeatedly had forcible sexual intercourse with her, in her examination-in-chief the only fact deposed by her is that, after she disclosed to the accused that, her menstruation period was missed, the accused gave assurance to marry with her. The prosecutrix, however, has not deposed that, on such promise of marriage the accused again committed sexual intercourse with her.

30. From the contents of the FIR, when it appears to be the allegation of the prosecutrix that, initially on two occasions accused had forcible sexual intercourse with her and thereafter on several occasions by giving her promise of marriage; in her examination-in-chief, it is the statement of the prosecutrix that, she lodged complaint as regards incident of two times sexual intercourse by the accused with her.

31. In her examination-in-chief while the prosecutrix has deposed that she disclosed her parents in regard to the forcible sexual intercourse by the accused with her after she stopped menstruating; in the cross-examination she has deposed that, prior to lodging of the complaint she did not give information of sexual intercourse between her and the accused to any other person except her mother. Different version has come on record in the cross-examination to the effect that, she intimated to her mother about the alleged incident of sexual intercourse by the accused with her prior to two days of lodging complaint. In the FIR as well as in her examination-in-chief as noted herein above, it is the case of the prosecutrix that, she disclosed the alleged incident to her mother after her menstruation cycle was missed, which period comes to more than five months prior to lodging of the complaint.

32. It has come on record in the cross-examination of the prosecutrix that, after 4 days of the second incident of sexual intercourse by the accused with her, she gave information about it to Uttam Nadare and her father. The prosecutrix has also deposed that, she lodged the complaint on the day, she gave information to Uttam Nadare and her father. It has to be stated that, neither in the FIR nor in the examination-in-chief any such fact was stated by the prosecutrix that, she informed Uttam Nadare about the sexual intercourse by the accused with her at

any point of time, nor the complaint was filed after 2nd incident as deposed by the prosecutrix. .

33. From the facts elaborately noted down by me herein above, it is explicitly revealed that, the evidence of the prosecutrix is full of inconsistencies. It is also noticed that, the prosecutrix has frequently changed her version in stating facts. The conduct of the prosecutrix is also revealed to be quite unnatural. In the circumstances, I am afraid to what extent her evidence could have been relied upon by the learned trial Court to base the conviction of the accused.

34. Further, it appears quite improbable, unnatural and unconscionable that, the prosecutrix in her 5th month of pregnancy again consented for sexual intercourse with the accused since he reiterated his promise of marriage. No woman in her fifth month of pregnancy would allow the person, who earlier had virtually committed rape on her and because of whom, she had remained pregnant, to again have sexual intercourse with her on promise of marriage, which he has been making since first month of her pregnancy, but has avoided to fulfill the same.

35. It is admittedly not the case of the prosecution that

there was any love affair between the accused and prosecutrix and during the course of such affair, they succumbed to temptation of having sexual relationship with each other and it has resulted in the prosecutrix remaining pregnant. Had it been so, the story put forth by the prosecutrix, that the accused promised her to marry and on such promise, she consented for sexual intercourse with her on the third occasion would have appeared probable. However, when it is the case of the prosecutrix that on earlier two occasions, the accused did have forcible sexual intercourse with her without her consent meaning thereby that the accused committed rape on her, it appears quite improbable that the prosecutrix will accord her consent to the accused to have sexual intercourse with her on the third occasion simply on a promise that he would marry with her. As noted above, it appears more improbable and unnatural that, in her 5th month of pregnancy the prosecutrix again consented for sexual intercourse with the accused, as because he reiterated his promise of marriage. It cannot be accepted that the prosecutrix could not have understood the fallacy and underlying hostile interest in the promise allegedly made by the accused to marry with her. Further, the prosecutrix was fully aware that she belongs to '*Maratha*' community; whereas the accused belongs to '*Dhangar*' community and because of their different castes, their marriage was not possible and in any event, the proposal

for their marriage was bound to be seriously opposed by their family members. In the circumstances, her natural conduct would be firstly to refrain herself from again having sexual relationship with the accused and secondly to disclose all such facts to her parents.

36. Serious doubts are, therefore, raised about the case put forth by the prosecution that, the accused had sexual intercourse with the prosecutrix on three more occasions after she had remained pregnant and lastly had such intercourse prior to 15 days of the report lodged by the prosecutrix. The very basic fact is in serious doubts whether really any such promise as alleged by the prosecutrix was made by the accused that, he would marry with the prosecutrix. Had it been so the prosecutrix would have definitely given an ultimatum to the accused that, either he shall marry with her or else she will lodge the complaint against him that, he has committed sexual intercourse with her by fraudulently obtaining her consent by giving her promise that, he would marry with her.

37. According to the version of the prosecutrix promise of marriage was given by the accused when she disclosed to him that, her menstrual cycle is discontinued, in other words that she has remained pregnant. From the material on record this happened in January-2012 or in the first week of February-2012.

In no case it can be accepted that, there would be no moment from the side of the prosecution for more than five months to get the promise of marriage fulfilled by the accused more particularly in premise of the fact that she had already conceived and there was no medical termination of pregnancy. Neither the prosecutrix nor her mother PW-3 Lilabai have deposed any such fact that, any effort was made from their side either to convince or compel the accused to marry with the prosecutrix.

38. In her cross-examination, PW-3 Lilabai has stated that one Uttamrao Nadre, who was the police patil of the village at the relevant time and who also happens to be in their relation had been to the house of the accused with a request that, the accused shall marry with the prosecutrix. However, as further stated by PW-3 Lilabai, Uttamrao Nadre had been to the house of accused after lodging of the complaint. There was no propriety in visiting the house of the accused and to request him to marry with the prosecutrix after lodging criminal complaint against him. When it was the case of the prosecution that the accused refused to marry and thereby cheated the prosecutrix, it was incumbent for the prosecution to bring on record sufficient evidence to show as to when the accused refused to marry with the prosecutrix. It has to be further noted that, PW-3 Lilabai did not provide any further information as to what happened at the house of the accused when Uttamrao had been to his house. The contention

of PW-3 Lilabai that, she was not then remembering as to what was told by Uttamrao after he returned from the house of accused is unbelievable. Prosecution, for the reasons best known to it, has not examined said Uttamrao as its witness.

39. Thus, though it was the case of the prosecution that as because the accused refused to marry with the prosecutrix, she was left with no option, but to file report against him in the police station, prosecution has utterly failed in brining on record any evidence firstly to prove that any such promise was in fact given by the accused and secondly if such promise was given, when the accused refused to fulfill the same. Failure on part of the prosecution in proving the very cause of action for filing the complaint has raised serious doubts about the existence of any such cause of action leading to an inference that, there may not be any truth in the allegation made against the accused that he fraudulently obtained the consent of the prosecutrix and had sexual intercourse with her by giving her false promise of marriage.

40. The story that after the prosecutrix disclosed to the accused that she had remained pregnant from him, the accused gave her promise that he would marry with her and on such promise again had sexual intercourse with her repeatedly for next five months thereafter, seems to have been introduced with

the only object that there shall appear at least some reason for justifying the delay of the period of about six months, which has occurred in lodging the report by the prosecutrix against the accused.

41. After having closely scrutinized the entire evidence on record, the only fact which seems to have been established by the prosecution is that, the accused had sexual intercourse with the prosecutrix some times in the month of January 2012, may be once or twice, as a result of which, the prosecutrix remained pregnant and ultimately delivered a male child, however at that time, there was no promise by the accused to the prosecutrix that he will marry with her.

42. Certain more circumstances, which have come on record also indicate the falsity in the case attempted to be made out by the prosecution that, the accused committed sexual intercourse with the prosecutrix till prior to 15 days of her lodging the F.I.R.. The case attempted to be made out by the prosecution that, the accused had been committing sexual intercourse with the prosecutrix for the period of about 6 months and lastly he had sexual intercourse with the prosecutrix prior to 15 days of her lodging the report at police station is falsified by the crucial admission given by the prosecutrix that, the gap

between the first and last sexual intercourse which the accused had with her was not more than 10 to 12 days.

43. As noted herein above, as per the version of the prosecutrix the accused firstly had forcible sexual intercourse with her at brook in the evening when she was returning to her home from her agriculture land. As was further deposed by the prosecutrix the accused second time had sexual intercourse with her at the same place after about 5 days of the alleged incident. It has to be stated that, at one point of time it was stated by the prosecutrix that, the accused second time had sexual intercourse with her after 10 days of the first incident, but subsequently the prosecutrix reasserted that, it was not 10 days, but after 5 days after the first incident that, the accused second time committed sexual intercourse with her.

44. According to the testimony of PW-3 Lilabai also, the accused had sexual intercourse with the prosecutrix only on two occasions. In the examination-in-chief the prosecutrix also has deposed about only two such instances of alleged forcible intercourse by the accused with her and though she has further deposed that, thereafter the accused promised her to marry with her, she has not further provided any information or has asserted that, after making of such promise also, the accused had sexual

intercourse with her. Similarly the version of the prosecutrix in her examination-in-chief is also to the effect that, she disclosed the incident of two times sexual intercourse by the accused with her and thereafter she, her mother and police patil Uttamrao M. Nadre went to Purna, Police Station for lodging the report. Prosecutrix has further specifically deposed that, at Purna police Station, she lodged the complaint as regards incident of two times sexual intercourse by the accused with her.

45. The facts as aforesaid demonstrate that, the story attempted to be made out by the prosecution that, there was a promise by the accused that, he would marry with the prosecutrix and further that, on pretext of such promise the accused again had sexual intercourse with her for next five months has not been substantiated by the prosecution.

46. I reiterate that, after having closely scrutinized the entire evidence on record, it is transpired that, the story of the promise of marriage by the accused is introduced by the prosecution for the only purpose that, there shall appear some reason to justify the inordinate delay of about six months, which had occurred in lodging the report by the prosecutrix against the accused. However, the prosecution has utterly failed in bringing on record any cogent and sufficient evidence to prove firstly that,

any such promise was given by the accused and secondly that, the accused refused to honour offer the said promise if at all it was given by him.

47. It is true that, in the rape cases, the delay in filing the FIR by prosecutrix or by the parents of the prosecutrix, in all circumstances may not be significant and must not be viewed with the same sensitiveness as in other cases. However, if no plausible explanation is offered by the prosecution for delay in lodging the FIR, then the accused cannot be convicted for the offence of rape and more so, if the explanation so attempted to be given is found to be wholly unreliable. In the instant case, it is noticed that, the testimony of the prosecutrix is highly unbelievable. As I have elaborately discussed herein above, the prosecutrix has frequently changed her version and on every aspect of the matter different facts have been stated by her during the course of her evidence. No reliance can be placed on such testimony to base the conviction of the accused. Moreover, there is no corroboration to the facts stated by the prosecutrix. Her evidence has even not been corroborated by her mother PW-3 Lilabai.

48. Further, there cannot be a dispute that, mere delay in lodging the FIR is not necessarily fatal to the case of the

prosecution. However, the fact in the present matter that, the report was lodged belatedly i.e. after the period of about six months and the justification attempted to be given for occurrence of the said delay is found unreliable, is a relevant fact, of which the Court has to take notice and the same has to be considered in the light of other facts and circumstances of the case. As has been deposed by the prosecutrix, the first incident had occurred at 06:30 p.m., when she was returning from her field and proceeding towards her house, and the second incident happened after five days on the same spot at 07:30 p.m. It is also the case of the prosecutrix that, after having committed first forcible sexual intercourse with her, the accused had threatened her with her life if she discloses the said incident to anybody. In the aforesaid background, the conduct of the prosecutrix after five days to proceed from the same route that too in the late evening i.e. at 07:30 p.m. and that too alone cannot be just said to be a co-incidence. On the contrary, it leads to an inference suggesting the possibility of consent of the prosecutrix.

49. Secondly the allegation made by the prosecutrix that, the accused despite her strong resistance forcibly committed sexual intercourse with her and at the second time, the accused had dragged her for the distance about 40 feet, appear to be highly unbelievable in view of the fact that, the prosecutrix, in

any of the alleged two instances did not receive any external injury not even a scratch on any part of her body. The complete absence of any injury or scratch on person of the prosecutrix would suggest that, the alleged intercourse was not forcible.

50. In the above circumstances, though it is established that, the accused and the prosecutrix had sexual intercourse may be once or twice which had resulted in incurring pregnancy by the prosecutrix and the prosecutrix eventually delivered a male child, since the possibility of the prosecutrix willingly submitting herself to sexual intercourse with the accused is difficult to be ruled out, it would be unsafe to maintain order of conviction passed by the learned trial Court holding the accused guilty for the offence of rape and cheating.

51. Having carefully scrutinized the evidence on record, I am not satisfied that the prosecution has proved its case beyond reasonable doubt. I am left with a strong suspicion that the case put forth by the prosecution may not be true. In any event the appellant is entitled to the benefit of doubt. I am therefore inclined to allow the present appeal.

52. While convicting the accused for the offence punishable under Section 376 of I.P.C., the trial Court, along with

the sentence of imprisonment has also imposed the fine of Rs.50,000/- upon the accused. The fine amount has been deposited by the father of the accused in this Court. Subsequently, the father of the accused has willingly at his own deposited the additional amount of Rs.50,000/- in this Court as a voluntary compensation for the welfare of the male child born out of the physical relationship between the accused and the prosecutrix.

53. In the peculiar facts and circumstances of the present case, though order of conviction passed by the trial Court is liable to be set aside, I have decided not to pass the consequential order, which is ordinarily passed, for refund of the fine amount deposited by the accused and in stead decided to pass an order directing the release of the said amount of fine along with the additional amount of Rs.50,000/- deposited by the father of the accused as a voluntary compensation, in favour of the male child born out of the physical relationship of the accused with the prosecutrix. In the foregoing circumstances and for the reasons stated above, the following order is passed.

ORDER

i) The order passed by the Ad-hoc Additional Sessions Judge, Parbhani in S.T. No.145/2012 on 06.04.2017 convicting the appellant namely Angad s/o Tikaram Chandane for the offences

punishable under Sections 376 and 417 of I.P.C. is quashed and set aside.

ii) The appellant namely Angad s/o Tikaram Chandane is acquitted of the offences charged against him. He be released forthwith, if not required in any other case or crime.

iii) The amount of fine and voluntary compensation deposited in this Court amounting to total Rs.1,00,000/- be transmitted to the Sessions Court at Parbhani and shall be released in favour of the minor male child by name Shubham born out of the physical relationship of the accused with the prosecutrix.

iv) The Sessions Court shall ensure expeditious payment of the aforesaid amount in favour of the said minor child by following the due procedure therefor.

v) The appellant shall furnish P.R. Bond of Rs.15,000/- with one surety in the like amount before the Sessions Court in compliance with the provision envisaged under Section 437A of the Code of Criminal Procedure.

. Appeal thus stands allowed in the aforesaid terms.

(P.R. Bora, J.)