

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.328 OF 2016

Santosh s/o. Deelip Shinde,
Age: 23 years, Occu.:Labour,
R/o. Mardasgaon, TQ. Gangakhed,
Dist. Parbhani.

...APPELLANT
(Ori.Accused)

VERSUS

The State of Maharashtra
through Police Station Officer,
Police Station Pimpaldari,
Tq. Gangakhed, Dist. Parbhani

...RESPONDENT
(Ori.Complainant)

...
Shri. E.P.Sawant, Advocate holding for
Shri. M.P.Kale, Advocate for appellant;
Shri. S.P.Tiwari, A.P.P. For Respondent/State.
...

CORAM: P.R. BORA, J.

Date of reserving the Judgment: 22/12/2017

Date of pronouncing the Judgment: 13/02/2018

JUDGMENT:

1. The appellant has filed the present appeal against the judgment and order passed by Additional Sessions Judge, Gangakhed, in Sessions Trial No.24/2013, decided on 20th of April, 2016, whereby the appellant has been convicted for the offense punishable under Sections 376 and 323 of IPC. For the

offense under Section 376 of IPC, the appellant has been convicted to undergo rigorous imprisonment for ten years and to pay fine of Rs.10,000/-; in default, to undergo rigorous imprisonment for six months and is sentenced to suffer simple imprisonment for three months and to pay fine of Rs.500/-; in default to suffer simple imprisonment for seven days for the offense punishable under Section 323 of the IPC.

2. It was the case of the prosecution that the appellant, who is hereinafter referred to as the accused committed rape on the prosecutrix on 27th of January, 2013, at about 2 p.m. at the house of the said prosecutrix. As is revealing from the material on record, the prosecutrix is physically handicapped and also suffers from speech impairment. It was alleged that on the day of the incident, when the mother and brother of the prosecutrix had left the house, and prosecutrix alone was at her house, the accused reached there and asked the prosecutrix to allow him to have sexual intercourse with her. The prosecutrix refused for the same whereupon the accused, by using force against the prosecutrix, had forcible intercourse with her. Because of the shouts given by the prosecutrix, two ladies, namely, Gavlanbaili and Khobrabai came on the spot. By that time the accused

had fled from the said spot. The prosecutrix disclosed the alleged incident to her mother after she returned to home in the evening. The report of the alleged incident was lodged on 2nd of February, 2013 at Police Station, Pimpaladari. On the report so lodged by the prosecutrix, offense under Sections 376 and 323 of the IPC was registered against the accused and the investigation was set in motion. The prosecutrix was sent for her medical examination at Sub District Hospital, Gangakhed. She was also referred to the Psychiatrist at Civil Hospital, Parbhani. The Investigating Officer visited the spot of occurrence, prepared spot panchnama, seized the clothes on person of the prosecutrix, and recorded the statements of the necessary witnesses. The blood and vaginal swab samples as well as the clothes on the person of the prosecutrix were sent for chemical analysis and the reports were obtained. The accused was arrested on the same day and the clothes on his person were also seized by the Police. They were also forwarded to the Chemical Analyzer. After completing investigation, chargesheet was filed in the Court of Judicial Magistrate First Class at Gangakhed. Since the offense under Section 376 of IPC was exclusively triable by the Court of Sessions, learned Judicial Magistrate, First Class, committed the case to the Sessions Court at Gangakhed. The learned

Additional Sessions Judge framed charge against the accused on 16.3.2015. The accused pleaded not guilty and claimed to be tried.

3. In order to prove the guilt of the accused, the prosecution examined as many as 11 witnesses. Prosecution evidence commenced with the testimony of the mother of the prosecutrix, namely, Chandrakala, and was concluded after the evidence of Investigating Officer, namely, Ajit Tukaram Chintala was recorded. The accused has denied the charges levelled against him and has taken the defense of his false implication. According to the accused, since he did not concede to the proposal given by the mother of the prosecutrix that he should marry with the prosecutrix, a false complaint has been filed against him. The learned Additional Sessions Judge after assessing the oral and documentary evidence brought on record held the accused guilty for an offense punishable under Section 376 of the IPC as well as under Section 323 of IPC and sentenced him to suffer the punishment as noted hereinabove. Aggrieved thereby, the appellant has filed the present appeal.

4. Shri E.P.Sawant, learned Counsel holding for Shri M.P.Kale, learned Counsel appearing for the accused assailed

the impugned judgment on various grounds. Learned Counsel submitted that the learned Additional Sessions Judge has grossly erred in not appreciating that inordinate delay of about six days in lodging the report by the prosecutrix has not at all been explained by the prosecution. Learned Counsel submitted that the judgments which have been relied upon by the learned Additional Sessions Judge on the aspect of delay in lodging F.I.R. are not applicable to the facts of the present case. Learned Counsel, taking me through the evidence of the prosecutrix as well as her mother, submitted that neither in the FIR lodged by the prosecutrix nor in their testimonies before the Court any explanation has been provided for lodging the report after about six days of the alleged occurrence. Learned Counsel further submitted that though it is expected that some delay is likely to be caused in lodging the report in the case of rape, the unexplained delay of six days in the present matter is fatal to the prosecution and has raised serious doubts about the truthfulness in the allegations made by the prosecutrix against the accused.

5. Learned Counsel further submitted that the learned trial Judge has failed in appreciating that the prosecutrix suffers from speech impairment and it is quite

difficult for others to understand the communication by the prosecutrix. Learned Counsel submitted that neither the Police person i.e. PW 8 Nagnath Ippar, who was at the relevant time on duty as P.S.O. at Police Station, Pimpaldari, could appropriately understand the facts as alleged to be stated by the prosecutrix while lodging the report nor the communication by the prosecutrix while deposing before the Court was correctly understood by PW 2 Dr. Nileshkumar Ghanacharya who was specially invited to assist the learned Additional Sessions Judge who was recording the evidence of the prosecutrix to understand the facts which were to be deposed by the prosecutrix. In the circumstances, according to the learned Counsel the facts which have come on record cannot be held to have been stated by the prosecutrix and no reliance could have been placed by the trial Court on such evidence to base the conviction of the accused.

6. Learned Counsel submitted that if the evidence of the prosecutrix recorded before the Court is perused, it apparently reveals that, to many crucial questions, the answers are given by the prosecutrix through her mother i.e. PW 1 Chandrakala. Learned Counsel submitted that this is throughout the contention of the accused that the facts which

are appearing in the FIR and which were deposed before the Court by the prosecutrix are in fact not deposed by the prosecutrix but by her mother Chandrakala (PW 1).

7. Learned Counsel further submitted that it was also the contention of the accused that PW 1 Chandrakala was insisting him to marry with the prosecutrix and since he refused to accede to the said proposal, she was annoyed and the said annoyance has resulted in lodging false complaint against the accused that he committed rape on the prosecutrix. Learned Counsel submitted that the learned trial Judge has, however, failed in appropriately appreciating the contentions as aforesaid raised on behalf of the accused. Learned Counsel inviting my attention to the admission given by PW 1 Chandrakala in her cross examination to the effect that she explained the narration of the prosecutrix to the Police, submitted that the admission so given by PW 1 Chandrakala supports the allegation made on behalf of the accused that it was not the prosecutrix but her mother who stated the facts to the Police on the basis of which the FIR was lodged and the investigation was set in motion.

8. Learned Counsel further submitted that having regard to the fact that on material particulars the witnesses and

more particularly PW 1 Chandrakala and the prosecutrix are not corroborating the facts respectively stated by them, the learned trial Judge must have sought corroboration to the fact so stated by these witnesses from independent witnesses. Learned Counsel submitted that the only independent witness who was examined by the prosecution, namely, Gavalanbai, PW 4, has not supported the prosecution version. In the circumstances, according to the learned Counsel, the testimony of the prosecutrix could not have been explicitly relied upon by the learned trial Judge.

9. Learned Counsel further submitted that the medical evidence which has been attempted to be brought on record by the prosecution also does not support the case of the prosecution. Taking me through the evidence of PW 9 Dr.Manisha Rathod, learned Counsel submitted that no concrete opinion was expressed by the said witness as about allegation made by the prosecutrix that she was raped by the accused. Learned Counsel invited my attention to the answer recorded in the examination in chief of PW 9 in its paragraph no.2 to the effect that, " In my opinion, the patient might have been subjected to sexual intercourse". Learned Counsel submitted that, PW 9 Dr. Manisha had, thus, expressed only the possibility

of the prosecutrix being subjected to sexual intercourse but has not recorded any definite opinion that on physical examination by her of the prosecutrix, she was in a position to firmly opine that prosecutrix was subjected to sexual intercourse. Learned Counsel submitted that the vague opinion is given by PW 9 Dr. Manisha Rathod as about the scratch wounds noticed on the person of the prosecutrix that the age of the said injury was more than 24 hours. The learned Counsel submitted that in absence of any dependable opinion given by PW 9 Dr. Manisha, the learned Sessions Judge could not have reached to the conclusion that the injuries which were noticed on the person of the prosecutrix were possibly caused in the incident of alleged forcible sexual intercourse by the accused with the prosecutrix.

10. Learned Counsel submitted that as has been deposed by the prosecutrix in her evidence before the Court, about ten persons had assembled out of her house after she gave shouts for help on the day of the incident. The learned Counsel submitted that the prosecutrix could state only three names out of which Gavlanbai was examined as a witness by the prosecutrix who did not support the case of the prosecution. Learned Counsel submitted that nothing has been brought on record by the prosecution as to who were the said ten persons

and as to whether their statements were recorded by the investigating officer or not. Learned Counsel submitted that, according to the averments in the FIR, after prosecutrix shouted for help, several persons reached to her house, including Khobrabai and Gavalanbai whose names were stated by the prosecutrix and after noticing that so many persons are assembled at the spot, the accused fled from there. Learned Counsel submitted that it appears improbable that the persons assembled out of the house allowed the accused to flee from the spot without ascertaining the fact from the prosecutrix as to what had happened between her and the accused. when they had reached there after hearing the shouts given by the prosecutrix. The learned Counsel submitted that the aforesaid circumstance alone is enough to discard the prosecution case. Learned Counsel on the aforesaid grounds prayed for setting aside the impugned judgment and order and, consequently, to acquit the accused of the charges levelled against him.

11. Shri S.P.Tiwari, learned A.P.P., supported the impugned judgment and order. Learned A.P.P. submitted that learned Additional Sessions Judge has correctly appreciated the evidence on record and has passed a well reasoned order. Learned A.P.P., therefore, prayed for dismissal of the appeal.

12. Delay caused in lodging the FIR is the main ground of objection raised by the appellant accused for discarding the case of the prosecution. It was argued by Shri Sawant that the period of six days taken by the prosecutrix for lodging the report of the alleged incident provides a legitimate basis for suspecting that no such incident had, in fact, occurred and a concocted report was filed by the prosecutrix to falsely implicate the accused. It is true that the alleged incident though is stated to have occurred on 27th of January, 2002, the FIR in that regard was lodged on 2nd of February, 2002 i.e. after about six days of the alleged occurrence. However, the objection of the appellant accused that the prosecution has not provided any explanation for the said delay cannot be accepted. In the FIR itself it is mentioned that,

"सदर दिवशी झालेल्या घटना बाबत सविस्तर
विचार करुन त्याचे विरुध्द आज फिर्याद देत आहे."

(English translation:

After having thoroughly thought about the alleged
incident, today I am lodging the complaint against
the accused.)

According to me, the aforesaid was the sufficient explanation

given by the prosecutrix for the delay which had occurred in lodging the report by her. In sexual offenses, delay in lodging the FIR can be due to variety of reasons, particularly, the reluctance of the prosecutrix or her family members to go to the Police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. Reluctance to go to Police is because of the society's attitude towards such woman victims. From the material on record it transpires that the prosecutrix and her family members took some more time in taking a decision whether or not to lodge the report of the alleged occurrence. As has been observed by the Honourable Apex Court in the case of State of Punjab Vs. Gurmitsing (AIR 1996 SC 1393), it is only after giving it a cool thought that the complaint of sexual offense is generally lodged. In the instant matter, the averment in the FIR, which I have reproduced hereinabove, has to be understood to mean and convey that after having thoroughly thought, ultimately, the complaint was lodged. The explanation so given by the prosecutrix appears to be quite natural and believable. It also cannot be lost sight of that the prosecutrix and her mother belong to a poor strata of the society. Besides, the prosecutrix is, admittedly, a disabled girl. Further, as held by the Honourable Apex Court in the case of Tulsidas Kanolkar V. State

of Goa (AIR 2004 SC 978), the delay, per se, is not a mitigating circumstance for the accused when the accusations of rape are involved. Mere delay in lodging the FIR does not render the prosecution version brittle. There is no material to show that the delay has been used by the prosecution to falsely implicate the accused and hence, the same cannot be a ground for rejection of prosecution case. More importantly, the serious allegation made by the prosecutrix against the accused that he had forcible sexual intercourse with her against her wish cannot be discarded merely on the ground of delay when the same is otherwise found to be believable. The learned trial Court, relying on the judgments cited before it, has rightly held that the delay cannot be a reason to discard the evidence of the prosecutrix and her mother. The objection raised by the appellant accused that the Sessions Court has failed in considering the aspect of delay, therefore, has to be rejected.

13. It was further argued by the learned Counsel that because of speech impairment, it was not possible for the prosecutrix to narrate the incident and was equally impossible for the Police Officer i.e. PW 8 Nagnath Ippar to understand the said narration. It was, therefore, the further argument of the learned Counsel that the facts in the FIR were in fact stated by

the mother of the prosecutrix who was accompanying prosecutrix when she had been to Police Station, Pimpaldari for lodging the report.

14. In view of the allegations so made on behalf of the accused, I carefully scrutinized the evidence of PW 8 Nagnath Ippar. It is true that PW 8 Nagnath has deposed before the Court that the mother of the prosecutrix disclosed to him that rape was committed on her daughter by the accused. However, PW 8 Nagnath had immediately thereafter testified that on such disclosure made by the mother of the prosecutrix, he made an enquiry with the prosecutrix. He has further deposed that the prosecutrix narrated the facts orally as well as by signals. He did also state that the prosecutrix was stammering. PW 8 Nagnath has also deposed that he reduced into writing the oral report as per the say of the victim and her mother. I do not see any reason to disbelieve the facts as aforesaid deposed by PW 8 Nagnath.

15. The material on record shows that the prosecutrix was not deaf and dumb but was having some problem in her speech. The prosecutrix stammers while speaking. It cannot be accepted that the narration by a person who stammers while

speaking may not be understood at all by a person to whom such narration is being made. A person who stammers may take some more time in communicating the facts but it cannot be accepted that the narration by such person would not be understood by any other person unless he is specially trained in that regard. It further cannot be ignored that PW 8 has also deposed that the prosecutrix narrated the contents by signals. It is a matter of common knowledge that even a totally dumb person also can convey the facts with the aid of signals.

16. Similarly, if the evidence of the prosecutrix before the Court is perused, the objection raised by the learned Counsel for the accused that the same was recorded without proper understanding also cannot be believed. It is a matter of record that while recording evidence of the prosecutrix before the Court, the assistance was taken of PW 2 Dr. Nileshkumar. As deposed by PW 2 Dr. Nileshmukar, he is serving as Speech Therapist at Civil Hospital, Parbhani. He had studied Diploma in Hearing Language and Speech. He developed speech of children who have some difficulty in speaking. As further deposed by PW 2 Dr. Nilesh, he understands the language of such persons and he was possessing seven years professional experience at the relevant

time. PW 2 Dr. Nilesh also deposed that he can have conversation with the persons who have difficulty in speaking. Dr. Nilesh has further specifically deposed that he had conversation with the prosecutrix out of the Court and he understood whatever was spoken by the prosecutrix. Dr. Nilesh has also deposed before the Court that he was able to interpret whatever would be told by the prosecutrix before the Court and also to put her the questions which may be put to her by the prosecutor or by the defense Counsel. Dr. Nilesh had also assured the Court that he will interpret whatever would be deposed by the prosecutrix before the Court in the same manner. It is a matter of record that before recording evidence of the prosecutrix, the evidence of PW 2 Dr. Nilesh was recorded by the Court.

17. It was sought to be canvassed by Shri E.P.Sawant, learned Counsel for the accused that PW 2 Dr. Nilesh has candidly admitted that errors are possible in understanding language of persons like the prosecutrix and communication with such persons. Referring to the said admission, it was the contention of the learned Counsel that there would always remain a doubt whether the facts narrated by the prosecutrix are recorded without any error and hence the said evidence

cannot be relied upon unless it is corroborated by some other independent evidence. I, however, do not find any substance in the objection so raised by the learned Counsel. The evidence of Dr.Nilesh has to be considered as a whole and the admission given by him that the errors are possible cannot be interpreted to mean that the narration recorded with the help of PW 2 Dr.Nilesh may not be liable to be depended upon. I have already noted that PW 2 Dr.Nilesh has very confidently deposed that he had the conversation with the prosecutrix and he did understand whatever she spoke with him. In view of the positive and assertive statement made by PW 2 Dr. Nilesh, there remains no doubt that the oral evidence recorded before the Court with the assistance of PW 2 Dr.Nilesh was the correct narration of the facts stated by the prosecutrix.

18. The another objection raised by learned Counsel was that to all crucial questions the answers were given by the mother of the prosecutrix and not by the prosecutrix. I am not much impressed with the objection so raised by the learned Counsel. Most of the oral evidence of the prosecutrix recorded by the learned Judge is in question and answer form. Around 74 questions were put to the prosecutrix and answers to the said questions were recorded by the learned Judge. Out of

said 74 questions, to only seven questions the answers were given by the prosecutrix through mother. I have gone through the said questions and answers. None of the said question can be said to be crucial so as to disbelieve the entire version of the prosecutrix as was narrated by her before the Court.

19. It was also alleged by the appellant accused that despite there being any conclusive medical evidence proving that the prosecutrix was subjected to rape, the learned trial Judge has held that the prosecutrix was raped and it was the accused who committed rape on her. I have carefully scrutinized the evidence of PW 9 Dr. Manisha Rathod who had conducted the medical examination of the prosecutrix after she was referred by the Police to the Sub District Hospital at Gangakhed. At the relevant time PW 9 Dr. Manisha was working in the said hospital. As has been deposed by her, she found scratches over left cheek of the prosecutrix, scratch over left side of her chest, scratch over lateral side of right knee and, according to her, all the said injuries were caused prior to more than 24 hours of her examination of the prosecutrix. Dr. Manisha also noticed tenderness over vulva of the prosecutrix, there was old tear of hymen, there was hemorrhage at vagina and labia minora of the prosecutrix was stained with blood. It

is true that PW 9 Dr.Manisha instead of giving concrete opinion that the prosecutrix was subjected to sexual intercourse, has deposed that the patient "might have been" subjected to sexual intercourse. However, in no case, the answer so given by Dr.Manisha can be used to argue that the prosecutrix was not at all subjected to sexual intercourse. The tenderness noticed over vulva of the prosecutrix, her torn hymen, hemorrhage at vagina and blood at labia minora were the symptoms clearly suggesting that the prosecutrix was subjected to sexual intercourse. Moreover, the evidence of Dr.Manisha has to be conjointly read with the evidence of the prosecutrix and, if it is so read, there remains no doubt that the prosecutrix was subjected to sexual intercourse. It has also to be stated that the injuries which were noticed over the left cheek of the prosecutrix, over left side of her chest and lateral side of her right knee were, in the opinion of Dr.Manisha, were possible while resisting sexual intercourse. The prosecution has, thus, brought on record sufficient evidence to prove that the prosecutrix was subjected to sexual intercourse.

20. Another objection which was raised by the learned Counsel, was that looking to the evidence of the prosecutrix which, according to him, was shrouded with doubts, the learned

trial Judge should not have based the conviction of the accused without any corroboration to the evidence of the prosecutrix. It was also vehemently argued by the learned Counsel that the circumstances brought on record by the accused were sufficient to draw an inference that the accused was falsely implicated in the alleged crime for the reason that he refused the proposal given to him by the mother of the prosecutrix to marry with the prosecutrix. According to the learned Counsel, the trial Judge has not properly appreciated the plea so raised by the accused.

21. On careful reading of the entire evidence on record, I do not find any substance in the plea so raised by the accused that he has been falsely implicated in the alleged crime as he refused to marry with the prosecutrix. It has come in the evidence of PW 1 Chandrakala i.e. mother of the prosecutrix that she has two sisters, namely, Radhabai and Laxmibai. PW 1 Chandrakala also provided further information that Radhabai has three sons, namely, Ramesh, Dilip and Babu. It is further stated by her that accused is the son of Dilip. The accused, thus, happens to be the grand son of PW 1 Chandrakala. Having regard to the aforesaid relationship, it is evident that the prosecutrix is the aunt of the accused. As has been rightly observed by the learned Additional Sessions Judge, considering

the relationship between the prosecutrix and the accused, the defense raised by the accused was improbable. Judicial note can be taken that in some communities, marriages can take place between cousins but not between an aunt and a nephew. The accused has also not brought on record any such custom prevailing in his community permitting the marriage between aunt and the nephew. There was, thus, no possibility of PW 1 Chandrakala, giving such proposal to the accused to marry with the prosecutrix.

22. Though no such case is made out by the appellant accused either in the memo of appeal or while arguing the appeal that in her cross examination the prosecutrix has admitted that there is no relationship between her and the accused and further that the names of the maternal aunts stated by the prosecutrix in her cross examination are different than stated by PW 1 Chandrakala in her cross examination, some doubt did crop up in my mind about the alleged relationship between the accused and the prosecutrix. However, when I carefully perused the evidence of PW 1 Chandrakala, it is revealed that the facts about the relationship have come on record in a cross examination i.e. as a result of questions put to her from the accused. PW 1 Chandrakala has

stated in her cross examination that Radhabai is her real sister and the accused is the grand son of said Radhabai. The accused is, thus, also the grand son of PW 1 Chandrakala and, thus, the prosecutrix happens to be the aunt of the accused. It is significant to note that in the further cross examination of PW 1, it is nowhere suggested to her that Radhabai is not her sister, that Dilip is not the son of Radhabai and that accused is not the son of Dilip. It appears that PW 1 Chandrakala had correctly stated the relationship between her and the accused. There is, therefore, reason to believe that the accused did not refer to the evidence of the prosecutrix wherein she has stated that the accused is not in her relation. The fact apart, the appellant accused has not challenged the impugned judgment on the said ground and as I stated hereinabove, neither in the memo of appeal nor in the argument any such objection was raised on behalf of the appellant accused.

23. After duly considered the evidence on record, there apparently appears no reason for the prosecutrix or the mother of the prosecutrix to falsly implicate the accused. Moreover, no girl or her mother would normally concoct a story of rape just to falsely implicate a person or would come forward to make a humiliating statement against her honour, of having been raped

unless it was true.

24. Relying on the judgment of the learned Single Judge of this Court in the case of Sk. Rustum Sk. Dada Vs. State of Maharashtra (2016 ALL MR (Cri) 3496). it was sought to be canvassed by learned Counsel Shri E.P.Sawant that when the Medical Officer who examined the prosecutrix did not state anything in concrete terms as about the forcible intercourse, and when it was also the fact that there was no injury noticed on the person of the accused even though it is the case of the prosecution that the accused was aggressive in committing rape on the prosecutrix, no conviction could have been based of the accused for an offense under Section 376 of the Indian Penal Code on such evidence. As such, according to the learned Counsel, the conviction of the accused was liable to be set aside. I am, however, not impressed with the argument so made. I have carefully gone through the facts of the judgment relied upon by the learned Counsel. The facts in the cited case and the facts involved in the present case cannot be equated with each other. Moreover, in the instant case, in many words, Dr.Manisha Rathod, PW 9, has suggested the possibility of prosecutrix being subjected to forcible sexual intercourse. I reiterate that the injuries as were noticed on the person of the

prosecutrix, more particularly to her genitals, supports the case of the prosecution that the prosecutrix was subjected to forcible sexual intercourse. In so far as other objection that no injury was noticed on the person of the accused, it needs to be stated that the prosecutrix is admittedly a physically disabled girl of the age of about 18 years. From the evidence on record, it could be gathered that that the accused was much aggressive in committing the sexual intercourse with the prosecutrix. The physically disabled prosecutrix possibly could not resist sexual assault on her. Moreover, merely because no injury was noticed on the person of the accused, cannot be interpreted to mean that the prosecutrix had consented for such sexual intercourse.

25. An objection was also raised by learned Counsel Shri E.P.Sawant that the evidence of the prosecutrix has not been corroborated by any other independent evidence and, as such, the conviction of the accused cannot be based by implicitly relying on the evidence of the prosecutrix alone. Pointing out some omissions and contradictions, it was also sought to be canvassed that the evidence of the prosecutrix or her mother cannot be a basis for convicting the accused. In view of the material on record, both the aforesaid objections

are liable to be rejected. In catena of judgments the Honourable Apex Court has consistently ruled that the testimony of the victim of rape is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the Courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict the accused where her testimony inspires confidence and is found to be reliable. The very nature of the offense makes it difficult to get direct corroborating evidence. If the victim of rape states on oath that she was forcibly subjected to sexual intercourse, her statement has to be normally accepted unless the material on records requires drawing of an inference that there was consent or that the entire incident was improbable or imaginary.

26. On perusal of the testimony of the prosecutrix, it is revealed that she has given an honest account of the alleged incident. Her testimony appears to be quite natural. From the facts as are deposed by the prosecutrix, it is evident that she had resisted the attempt of sexual assault on her by the accused. It has come on record that when the prosecutrix attempted to shout, the accused pressed her mouth and also slapped on her cheek. The conduct of the prosecutrix revealed

as above leaves no doubt that there was no consent from her and the accused had sexual intercourse with her forcibly and against her wish. Nothing has been brought on record in the cross examination of the prosecutrix so as to disbelieve her version. The facts stated by the prosecutrix in her testimony before the Court are sufficiently corroborated by the evidence of PW 1 Chandrakala, the mother of the prosecutrix. The medical evidence on record has lent support to the allegation made by the prosecutrix. PW 4 Gavlanbai though did not fully support the prosecution, has stated that on the day of the incident, she had heard shouts of the prosecutrix and had, therefore, reached to the house of the prosecutrix. The omissions in the statements of PW 4 Gavlanbai recorded during the course of investigation under Section 161 of Code of Criminal Procedure have been duly proved by the prosecution through the evidence of PW 11 Ajit Chintale, the investigating officer. In his evidence before the Court, PW 11 Ajit Chintale has testified that PW 4 Gavlanbai Makhane had stated the contents of the portion marked 'A' which were referred to him during the course of his evidence. The said portion 'A' has been, therefore, marked as Exh.45. The contents of the said portion at Exh.45 indicate the sexual overt act committed by the accused with the prosecutrix. After having considered the

entire material on record, it does not appear to me that the trial Court has committed any error in holding the accused guilty for the offenses punishable under Sections 376 and 323 of the IPC.

27. Alternative argument was made by the learned Counsel Shri Sawant that from the evidence on record the prosecution at the most can be held to have proved that the accused had been to the house of the prosecutrix and attempted to have sexual intercourse with her but there is no unimpeachable evidence proving that the accused had forcible sexual intercourse with the prosecutrix. My attention was again invited by the learned Counsel towards the medical evidence to urge that from the medical evidence on record there are reasonable doubts whether the prosecutrix was really subjected for forcible sexual intercourse. Inviting my attention to the evidence of Gavlanbai, PW 3, it was argued by the learned Counsel that from the evidence of said Gavlanbai it is quite evident that in response to the shouts given by the prosecutrix, she along with one other woman had immediately reached to the spot i.e. at the house of the prosecutrix. Learned Counsel submitted that it is the contention of the prosecutrix herself that after she gave shouts for help, around ten persons had assembled out of her house. Referring to

the above evidence, learned Counsel submitted that in such circumstances, it is quite improbable that the accused could have had forcible sexual intercourse with the prosecutrix. In the circumstances, according to the learned Counsel, the accused, at the most, can be punished for an offense under Section 354 of IPC or for committing an attempt of committing sexual intercourse i.e. under Section 376 read with Section 511 of IPC. In order to buttress his contention, the learned Counsel placed his reliance on the judgment of the learned Single Judge of this Court in the case of Shakeel Mastan Pathan Vs. State of Maharashtra (2015 ALL MR. (Cri) 4590).

28. The submission so made by the learned Counsel also does not deserve any consideration in view of the distinguishable facts in the present case. As elaborately discussed by me in the earlier paragraphs, the testimony of the prosecutrix in the present matter inspires full confidence and appears fully dependable. From the facts which have come on record through the evidence of the prosecutrix, it is quite evident that the accused did have penetrative sexual intercourse with the prosecutrix. As has been recorded by the learned Sessions Judge while deposing before the Court, the prosecutrix by signals has communicated to the Court that

the accused had sexual intercourse with her. As about the medical evidence, I reiterate that the opinion given by Dr. Manisha Rathod, PW 9, is sufficient to draw an inference that prosecutrix was subjected for sexual intercourse.

29. In the case of Shakeel Mastan Pathan, cited supra, the victim girl was of the tender age of eight years. It was the allegation that the accused in the said matter inserted his penis in the vagina or the anus of the prosecutrix, however, in the medical examination of the victim girl, it was noticed that her hymen was intact and there was no injury over the genital area. In the circumstances, the learned Single Judge reached to the conclusion that the prosecution evidence was insufficient to prove that the accused committed rape on the victim girl. From the available evidence on record, the learned Single Judge, however, recorded a finding that it was an attempt on the part of the accused to commit rape on the prosecutrix and resultantly, the learned Single Judge held the accused in the said case guilty for the offense punishable under Section 377 read with Section 511 of IPC. The facts involved in the cited case and the case involved in the present case are thus quite different. In the instant case, looking to the evidence on record, the submission made by the learned Counsel for the

accused that at the most it was only an attempt on the part of the accused to commit rape on the prosecutrix is difficult to be accepted.

30. I reiterate that after having carefully considered the entire material on record, I do not find that any case is made out by the appellant accused to cause interference in the impugned judgment and order. Hence, the following order:

ORDER

1. Criminal Appeal (No.328 of 2016) is dismissed.

(P.R.BORA)
JUDGE

agp/-

..