

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.348 OF 2013

Vijay @ Ajay Murlidhar Dalvi,
Age-34 years, Occu:Prisoner,
No.C/16362, Confined in
Yerwada Central Prison,
Pune-6 Pin: 411 006

...APPELLANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.M.B. Kolpe Advocate appointed for
Appellant.
Mr.D.R. Kale, A.P.P. for Respondent-State
...

**CORAM: S.S. SHINDE AND
V.K. JADHAV, JJ.**

DATE OF RESERVING JUDGMENT : 14TH JUNE, 2018.

DATE OF PRONOUNCING JUDGMENT: 22ND JUNE, 2018.

JUDGMENT [PER S.S. SHINDE, J.] :

1. This Appeal is directed against the

Judgment and order dated 26th February, 2013, passed by the District Judge-1 and Additional Sessions Judge, Ahmednagar in Sessions Case No.320 of 2011 thereby convicting the accused-Appellant for the the offence of rape upon Ranjana Shelke, punishable under Section 376 of the Indian Penal Code (for short "I.P. Code") and sentencing him to suffer rigorous imprisonment for ten years and to pay fine of Rs.10,000/-, and in default of payment of fine, to suffer further rigorous imprisonment for three months. The trial Court also convicted accused for the offence punishable under Section 392 of the I.P. Code and sentenced him to suffer rigorous imprisonment for three years. The trial Court also convicted accused for the offence punishable under Section 452 of the I.P. Code and sentenced him to suffer rigorous imprisonment for three years. The trial Court further convicted accused for the offence punishable under Section 506 of the I.P. Code and sentenced him to suffer rigorous imprisonment for three years. The trial

Court also convicted accused for the offence of rape upon Kashibai Parbhane punishable under Section 376 of the I.P. Code and sentenced him to suffer rigorous imprisonment for ten years and to pay fine of Rs.10,000/- and in default of payment of fine, to suffer rigorous imprisonment for three months. The trial Court further convicted accused for the offence punishable under Section 452 of the I.P. Code and sentenced him to suffer rigorous imprisonment for three years. The trial Court also convicted accused for the offence punishable under Section 506 of the I.P. Code and sentenced him to suffer rigorous imprisonment for three years. The trial Court directed that both the sentences awarded to the accused Vijay under Section 376 of the I.P. Code shall run consecutively, however, the sentences awarded under Section 392, 452 and 506 of I.P. Code shall run concurrently.

2. The Prosecution case, in brief, is as under:

A) Complainant Ranjana Shelke aged 50 years, was residing along with her husband and daughter-in-law in a small hut at village Gunwadi, Tq-Nagar. Sahebrao shelke, husband of Ranjana Shelke was working as a labourer. Ranjana Shelke was residing along with her daughter-in-law Seema, but she had gone to meet her parental house. On 9th August, 2011, husband of Ranjana Shelke i.e. Sahebrao Shelke went to another village to meet his daughter Yamuna and so Ranjana was alone in the house. Ranjana Shelke worked during the day and in the evening after taking her meals went to sleep at about 8.30 p.m., after closing door of the hut from inside. In the night at 10.00 p.m. Ranjana saw that the accused Vijay @ Ajay Dalvi entered inside her hut from the roof. On seeing the accused Vijay Dalvi, Ranjana shouted at the accused, but the accused told her to keep quiet. Accused also told that he belongs to Pardhi community and has come to commit theft. Accused

Vijay then threatened Ranjana by wielding a knife and asked her to take out gold ornaments as well as cash. Out of fear, Ranjana took out cash of Rs.5000/- and handed over the same to the accused. Accused Vijay thereafter removed the electric bulb inside the room and then threw Ranjana on the bed. Ranjana protested, but accused Vijay gave a threat to finish her. Accused thereafter removed saree of Ranjana and thereafter committed rape upon her. While returning back, accused gave a threat to Ranjana not to disclose the incident to anybody else he will set her hut on fire. Accused Vijay then went away. Ranjana thereafter went to the house of Balasaheb Shelke and narrated the entire incident to Nanda Shelke as well as her sons. Son of Ranjana, namely Santosh, one Raosaheb Shelke and others then went to search for the accused, but he could not be located. Ranjana Shelke then went and lodged a report in Nagar Taluka Police Station. On the basis of the same, offence came to be registered vide Crime NO.141 of 2011 at Nagar

Taluka Police Station under Sections 376, 392 and 457 of the I.P. Code.

B) During the same night, accused Vijay also entered into another hut of Kashibai Parbhane, aged 55 years, between 1.00 a.m. to 2.00 a.m., by opening the latch of her house. Kashibai Parbhane was sleeping alone in her hut. Kashibai Parbhane also recognized the accused Vijay @ Ajay, but accused threatened Kashibai by telling her that he belongs to Pardhi community and he will kill her. Accused Vijay threw her on the bed and removed her saree. Accused thereafter also committed rape upon Kashibai Parbhane. Kashibai Parbhane tried to resist, but the accused gagged her mouth. After committing rape, accused Vijay gave a threat to Kashibai not to disclose the incident or else she would be finished. Kashibai Parbhane then came out of the house and narrated the incident to her nephew Ganesh Parbhane. Kashibai Parbhane also then went to the police station.

C) After receipt of complaint, police machinery started investigation. Police thereafter visited earlier spot of incident i.e. hut of Ranjana Shelke. Police then drew spot panchnama of hut of Ranjana Shelke. Police also seized one bed-sheet from the house of Ranjana Shelke. Police thereafter went to the house of Kashibai Parbhana and prepared spot panchnama regarding the spot of second incident in the presence of panchas. Police also seized clothes i.e. blouse and saree of the informant Ranjana Shelke. Similarly, the police also seized the saree of another victim Kashibai Parbhane and prepared seizure panchnama. Police thereafter sent both victims, Ranjana Shelke as well as Kashibai Parbhane to the General Hospital at Ahmednagar for medical examination. Medical Officer attached to the General Hospital, Ahmednagar then conducted medical examination of Rajnaja and Kashibai. Medical Officer also obtained sample of pubic hair and vaginal swab of

both victims, Ranjana and Kashibai.

D) During the course of investigation, accused Vijay also came to be arrested and arrest panchnama came to be prepared in the presence of panchas. Police also sent Vijay for medical examination and obtained medical report relating to accused Vijay. During investigation, the police also seized the clothes of accused and seizure panchnama came to be prepared. Police also obtained the map of the spot of the incident. Police thereafter sent the clothes as well as other samples to the office of Chemical Analyzer and report of Chemical Analyzer was duly received. After completion of investigation, charge-sheet came to be filed before the Court of J.M.F.C., Ahmednagar, who committed the case to the Court of Session.

E) A charge for an offence punishable under Section 376, 392, 324 and 452 of the I.P. Code was

framed against the accused Vijay, and the same was read over and explained to him. Accused pleaded not guilty and claimed to be tried. The defence of the accused is of total denial and false implication.

3. After recording the evidence and conducting full fledged trial, the trial Court convicted the accused Vijay for the offence punishable under Section 376, 392, 452, 506 of the I.P. Code and sentenced him to suffer rigorous imprisonment as afore-stated and to pay fine, and in default of payment of fine, to suffer further rigorous imprisonment as afore-stated.

4. Heard learned counsel appearing for the Appellant and learned A.P.P. appearing for the State, at length. With their able assistance, we have carefully perused the entire notes of evidence so as to find out whether the findings recorded by the trial Court are in consonance with

the evidence brought on record or otherwise.

5. The prosecution has examined in all 11 witnesses. PW-1 Yogesh Suryabhan Nagwade is a panch witness to the spot panchnamas, Exh.20 in respect of house of victim Ranjana, and Exh.21 in respect of house of victim Kashibai. PW-2 Nilesh Ashok Shelke is a panch witness to the seizure panchnama Exhibit 23, regarding seizure of clothes of victim Ranjanabai and seizure panchnama Exhibit 24 regarding seizure of clothes of another victim Kashibai.

6. PW-3 Ranjana Sahebrao Shelke is an informant. She deposed that her husband's name is Sahebrao. She has three children viz. Krishna, Santosh and Vishal. She herself and her husband only are residing in the village. On the date of incident, she was alone in her house. The incident took place at about 10.00 p.m. in the night. She had gone to sleep after taking meals and the

electric bulb in the house was on. At that time accused Viju Dalvi came from outside. She saw the accused coming inside her house. Accused Viju Dalvi then removed the electric bulb. She asked the accused and the accused told her that he belongs to Paradhi community. The accused also said that he has come to commit theft. Accused then demanded her gold articles and valuables and also of her daughter-in-law. She told the accused that she does not have any gold ornaments. Accused Dalvi then demanded cash from her. She was having cash of Rs.5,000/- with her. The accused Dalvi then snatched the cash of Rs.5,000/- by threatening her. Accused gave a threat that if she would disclose about the incident she would kill her.

. PW-3 Ranjana further deposed that accused Dalvi committed rape upon her and also had pressed her breasts. The accused was having a knife in his hand and he threatened her not to disclose about

the incident to anyone otherwise he will finish her. The accused was wearing only an underpant and no other clothes. The accused had entered into her house by jumping over from the wall of back side. The accused had come inside by jumping from the roof through one space. Accused Dalvi returned back by opening the door of her house. Accused then also gave a threat that he will burn her hut if she disclosed the incident to anyone. She then went to her relatives. She further deposed that she went to her nephew Balasaheb Kisan Shelke and narrated the incident to him and others. Balasaheb then made telephone calls to her sons and called them. Her son Santosh then came from the field where he was residing. Balasaheb and Santosh then went to search accused Vijay in his locality, but accused was not present in his house. His wife and children were present. In the said process, it was about 4.00 a.m. She went to the police station on the next day. She then narrated the incident to the police. She further deposed that complaint

Exhibit 26 bears her thumb impression and the contents of the same are correct.

. PW-3 Ranjana further deposed that she cannot read or write as she had not gone to school. She knows the accused Viju Dalvi, as he is resident of her village. She knows Kashibai Parbhane, as she is from her village. On the earlier day she had come to know that similar incident had taken place with Kashibai Parbhane and the act was committed by accused Viju Daliv. PW-3 Ranjana further deposed that she was then sent to civil hospital where her medical examination was conducted. She had given the history about rape to the doctor. She then handed over her clothes to the police in the police station.

. During the course of cross-examination, PW-3 Ranjana stated that she did not tell the name of the person who had committed rape to the doctor

as she was not asked. There are many houses near her house. She further stated that her house is not in good condition. She denied the suggestion that now no one is residing in the house. She admitted that adjacent to her house, there is a temple and activities are going on in the temple like Pooja, and people are sitting in the temple till late night. Her house was having a thatched roof. She further stated that accused is son in law of one Mr. Kute, resident of her village. She further admitted that accused Vijay Dalvi had purchased land in her village from Parbhane. Kashibai Parbhane is the cousin sister of said Parbhane. The land purchased by the accused was earlier mortgaged with Shankar Maina. She is paying the necessary electric bills regarding electric meter in the house. She denied that on 10th August, 2011 there was no electricity in her house. She further stated that on 9th August, 2011 also there was electricity in the village. The electric meter is in the name of her husband. Her

family is below poverty line. She admitted that thefts are taking place in her village and in many cases of thefts the persons from Paradhi community came to be arrested. She further stated that no part of the thatched roof had fallen down due to coming of the accused. Her husband had gone to the house of their daughter in the month of Shrawan. It was the first week of month of Shrawan. She further admits that house of her nephew Balasaheb Shelke is close to her house. Ganesh Parbhane was Up-Sarpanch of her village at that time. Ganesh Parbhane is nephew of Kashibai Parbhane. She admits that brother of accused Vijay died prior to the incident. She further admits that some persons from her village had assaulted brother of the accused and so he died. She admits that Ganesh Parbhane, Uddhav Shelke, Raosaheb Shelke, Nilesh Shelke and others were behind the same. She further stated that the persons namely, Uddhav Shelke, Ganesh Parbhane, Bapurao Shelke, Ashok Unde, Nilesh Shelke and Kashibai were with her

when she lodged the report.

. During the course of cross-examination, PW-3 Ranjana further admitted that, some days prior to the incident, election of Sarpanch and Up-Sarpanch took place in her village. Father-in-law of accused, namely, Kute had also contested the said election. She further admits that accused was also working for his father-in-law in the election. Party of Ganesh Parbhane was opposing his election. It was possible that scuffle had taken place between the accused and Ganesh Parbhane. She admits that she was working on behalf of Ganesh Parbhane and following his instructions as he is from her village.

. During the course of further cross-examination of PW-3 Ranjana, an omission is brought on record that she has not mentioned in her complaint that after the incident she had gone to the house of Balasaheb Shelke and narrated the

incident to him. She admitted that in the absence of electricity supply, she is making use of Chimney in her house. She was unable to tell whether Kashibai was not cohabiting with her husband. She volunteered that she had no connection with Kashibai. She did not know whether Kashibai was residing in the village or not. She was unable to tell whether the knife in the hands of accused was Rampuri knife or was steel knife.

. During further cross-examination, PW-3 Ranjana stated that she did not try to go out of the house by opening the door when the accused was trying to remove the electric bulb. Further she has denied all the suggestions put to her during the course of cross-examination.

7. Thus, PW-3 Ranjana admits that Appellant is from opposite party and his father-in-law, namely, Kute was candidate for election of Grampanchayat. She further admits that there was

quarrel between the accused and one Ganesh, who was Up-Sarpanch of Gram panchayat and was from the opposite party. She also admits that some persons from her village had assaulted brother of accused and so he died, and persons like Ganesh Parbhane, Uddhav Shelke, Raosaheb Shelke, Nilesh Shelke were behind the same. She further admits that during Grampanchayat elections, she was working for Ganesh Parbhane, nephew of Kashibai. Thus, defence has brought on record, that there was political rivalry between the father-in-law of the accused and the informant due to Grampanchayat election.

8. The prosecution has examined PW-5 Kashibai Bhausahab Parbhane. She deposed that she is residing alone at village Gunwadi. Her husband has deserted her. Ganesh Parbhane is her nephew and he resides in front of her house. Ganesh Parbhane is working as a tailor. She had studied up-to 7th standard and can read. Incident had taken place on Tuesday, but she cannot tell the

exact date. She had worked during the whole day and had prepared the meal. After taking meals she went to sleep at about 8.30 p.m. Between 1.00 a.m. to 2.00 a.m. one person suddenly entered in her hut by opening the latch by inserting his hand. Subsequently he then caught hold of her neck and gave a threat that he is from Pardhi community. Subsequently, the said person tried to outrage her modesty. She offered resistance. Subsequently, the said person forcibly took out her clothes and thereafter committed rape upon her. The said person also gave a threat that if she tried to resist, then he will kill her. There was light of kerosene lamp in her house. Kerosene lamp was working. She saw the accused in the light of kerosene lamp. Accused then gave threat to her. Accused also gave threat to her that in case she tried to disclose the incident, then he will not leave her alive. On the next day, she narrated the incident to her nephew Ganesh. She can identify the accused, if shown to her. Subsequently police

had come to her village Gunwadi. She then went to the police and narrated the incident. Her statement was recorded by the police. She further deposed that accused present in the dock is the same person who has committed rape upon her. She is able to see with spectacle for long distance.

. During the course of cross-examination, PW-5 Kashibai admitted that Ganesh is Up-Sarpanch of the village. She further admits that she is residing in village Gunwadi since 10-15 years. She stated that she did not know whether accused Vijay was residing in the field. She did not know whether the family of the accused had settled in village Gunwadi. She further stated that she knows Kute, the father-in-law of the accused Vijay. After the incident, she did not immediately go to the house of Ganesh Parbhane to narrate the incident as she was disturbed and afraid. She had reached the police station at about 8.00 a.m. Police had recorded her statement between 8.00

a.m. to 9.00 a.m. Her statement was recorded as per her say. She further stated that she had a talk with Ganesh Parbhane early in the morning. She admits that in the night she had also not gone to the house of any other person. She further stated that, she had not stated to the Police that she had narrated the incident to her nephew Ganesh between 10.00 a.m. to 12.00 noon. She further stated that portion marked "B" in her statement is not correct. She was unable to assign any reason as to why the Police had recorded portion marked "A" and "B". She further denied all the suggestions put to her by the defence. She admits that she is not wearing spectacles while sleeping. She stated that she cannot identify person from long distance but she can identify the person from short distance. She is having bifocal spectacles. She does not require spectacles for seeing from short distance.

9. Upon careful perusal of the oral

testimony of both the victims i.e. PW-3 Ranjana and PW-5 Kashibai, it is clear that they have narrated almost same and similar incidents. Both of them have stated that, during the night time accused entered in their houses, he had told them that he is from Pardhi community and had came there to commit theft. Both of them have stated that, though they have tried to resist, the accused had committed rape upon them in the same night by showing them knife. Upon careful perusal of the first information report, it reveals that the details of the incident happened with PW-3 Ranjana are stated, and at the end of the said report there is mention that similar incident had been happened with PW-5 Kashibai. Thus it is crystal clear that in respect of the incident happened with Kashibai there is no separate first information report. Further, it is specifically stated by victim Ranjana in the First Information Report that, that she had made discussion with the relatives and thereafter the report was lodged.

Even PW-8 Nanda Balasaheb Shelke, relative of victim Ranjana, had admitted in her cross-examination that, before going to police station to lodge the report all the relatives had assembled together and there was discussion. Thus the evidence on record reveals that before lodging the first information report, all the relatives had assembled together, thereafter there was discussion wherein it was decided to lodge the report, and then report was lodged. Thus, we find considerable force in the argument advanced by learned counsel appearing for the accused that after due deliberation the first information report was lodged with an intention to falsely implicate the accused. It is highly improbable that the accused entered in the house of the informant from the roof of the house with an intention to commit theft and disclosed his identity to the informant.

10. Now we will consider the medical evidence

brought on record by the prosecution. The prosecution has examined PW-6 Dr. Jaya Amit Sardesai. She deposed that she was working as Medical Officer and attached to Civil Hospital, Ahmednagar since the year 2006. On 10th August, 2011, she was on duty as Casualty Medical Officer from 9.00 a.m. to 9.00 p.m. On that day at about 1.05 p.m. Ranjana Sahebrao Shelke was brought to her for examination along with Police Yadi. Nagar Taluka Police Station had made a request by letter to carry out medical examination of Ranjana. Accordingly, she conducted medical examination of the said lady. The patient had given history of assault. She collected the sample of pubic hair, blood and vaginal swab. After examination she did not notice any injury on the body of the victim. After medical examination she sent the victim Ranjana to Gynecologist expert. She also received the Gynecological opinion. After receiving the opinion of the Gynecologist, she prepared her own report. She then prepared the medical certificate

Exhibit-33. She further deposed that in case when the victim of sexual assault is lady and her age is 50 years, then the injury may be possible.

. PW-6 Dr. Jaya further deposed that, on 10th August, 2011, she examined another victim Kashibai Parbhane. She then found history of sexual assault. Secondary sexual character developed, abrasion on the right breast. She further deposed that, in medical examination no abnormality detected. She has also collected samples of pubic hair, vaginal swab and blood. She then sent said samples for chemical analysis. She then referred the victim Kashibai to the Gynecologist for expert's opinion. After receipt of the report from the Gynecologist, she has prepared the medical certificate Exhibit-35.

. During the course of cross-examination, PW-6 Dr. Jaya has stated that in medical certificate Exhibit-33, the name of the police

authority is not mentioned. She further stated that, it is possible when rape takes place on the victim and no bath is taken, then there can be stains of semen on the clothes. She further stated that it is possible that in case of forcible rape external injuries or internal injuries may take place. She admits that, during medical examination carried out by her, she did not notice any injury on the private part of victim Ranjana. She was shown medical certificate Exhibit-35 in respect of another victim Kashibai. She admitted that, she did not notice any injury on the private part of Kashibai during her medical examination. She had sent the samples for the chemical analysis to the Chemical Analyst. She further stated that, unless the report of Chemical Analyst is received, no clear opinion can be given whether the victim was subjected to rape.

11. Thus upon careful perusal of the medical evidence, it did not support the prosecution case.

PW-6 Dr. Jaya has specifically stated that, she did not found any injuries on the private part of both the victims i.e. Ranjana and Kashibai. Dr. Jaya has stated that it is possible that in a case of forcible rape external or internal injuries may take place. Therefore, the case of the prosecution that accused had committed forcible sexual intercourse with both the victims against their wish, is not at all corroborated by the medical evidence. Both the victims were grown up ladies and when accused tried to commit rape upon them, then it was expected that they would have strongly resisted the accused and in that course, there was every possibility that they would have received at least some injuries. But medical evidence shows that both the victims have not received any internal or external injuries and therefore, the prosecution case is not at all believable. Though it is alleged by the informant in the first information report that the accused has bitten to the left chest of the informant,

however there is no mention about the said injury in the report of the doctor namely PW-6 Jaya, who has medically examined the informant and issued medical certificate. Though medical officer PW-6 Jaya has stated in the medical certificate that there was abrasion on the right chest of PW-5 Kashibai, the same is minor injury and much importance cannot be given to the same. Further, it is to be noted that PW-5 Kashibai has never mentioned in her oral testimony that during the alleged incident, she had received any injury to her chest.

12. The C.A. Report in respect of the samples of clothes sent for chemical analysis of both the victims and accused is at Exhibit 13/1. Exhibit-9 is underwear. It is stated in the C.A. report that Exhibit-9 has one blood stain of about 2 c.m. in diameter on middle portion, no semen is detected on Exhibit-9. Exhibit-1 is bed-sheet, Exhibit-2 is blouse, Exhibit-3 and 4 are Sarees, Exhibit-5 is

petticoat, Exhibit-6 is another blouse, Exhibit-7 is full pant and Exhibit-8 is full shirt. It is stated in the C.A. report that neither blood nor semen is detected on Exhibits- 1, 2, 3, 4, 5, 6, 7 and 8. It is further stated in the C.A. report that, species origin and ABO Grouping result is inconclusive.

13. Exhibit 13/2 is C.A. report in respect of samples of victim Ranjana. Exhibit-1 and 2 are blood samples, Exhibit-3 is pubic hairs, Exhibit-4 is nails and Exhibit-5 is vaginal swab. It is stated in the C.A. report that, neither blood nor tissue matter is detected on Exhibit No.4, no semen is detected on Exhibit Nos. 3 and 5, blood group of Exhibit Nos. 1 and 2 cannot be determined as the results are inconclusive, opinion regarding presence of foreign hair in Exhibit No.3 cannot be given as they are unsuitable for examination.

14. Exhibit 13/3 is C.A. report in respect of

samples of victim Kashibai. Exhibit-1 and 2 are blood samples, Exhibit-3 is pubic hairs, Exhibit-4 is nails and Exhibit-5 is vaginal swab. It is stated in the C.A. report that, no semen is detected on Exhibit Nos.3 and 5, neither blood nor tissue matter is detected on Exhibit No.4, blood group of Exhibit Nos.1 and 2 cannot be determined as the results are inconclusive, opinion regarding presence of foreign hair in Exhibit No.3 cannot be given as they are unsuitable for examination.

15. Exhibit 13/4 is C.A. report in respect of samples of accused Ajay @ Vijay. Exhibit-1 and 2 are blood samples, Exhibit-3 is chest hairs. It is stated in the C.A. report that, neither semen nor vaginal fluid is detected on Exhibit No.3, blood group of Exhibit Nos.1 and 2 cannot be determined as the results are inconclusive.

16. Thus, upon careful perusal of all the C.A. reports, referred herein above, it is clear

that no semen was detected on the samples of pubic hairs as well as nails. The blood groups were inconclusive, neither semen nor vaginal fluid was detected on Exhibit No.3 - chest hairs of the accused. Thus, the evidence in respect of C.A. report is not at all conclusive to prove that there was rape on the victims.

17. PW-4 Uddhav Dattatraya Shelke is uncle of informant Ranjana. He deposed that Nandabai (PW-8), wife of his cousin brother called him and stated about the incident. Thereafter he visited the house of Ranjana, who told him about the incident. PW-7 Dr. Amit Balkrishna Gosawi deposed that he was directed by the investigating officer to give opinion by way of medical examination as to whether accused was capable of doing sexual intercourse. He further deposed that he gave opinion that the accused is capable of doing sexual intercourse and he may be having sexual activities. PW-9 Maruti Asaram Thorat is police

naik of Nagar Taluka Police Station, who carried the muddemal articles as well as the samples to the office of Chemical Analyst at Nashik.

18. PW-10 Sachin Sitaram Sanap is an investigating officer. He deposed about the manner in which he has carried out the investigation of the crime. During the course of cross-examination, he has admitted that no cash amount came to be recovered from the accused during the period of police custody. He further admits that no knife came to be recovered from the possession of accused during investigation. He further admitted that during the period of investigation in the present crime, he was having good relations with Sarpanch and Up-Sarpanch of village Gunwadi.

19. PW-11 is Machindra Rangnath Birangal, head constable, Nagar Taluka Police Station. He deposed that he has recorded the complaint lodged by the informant Ranjana.

20. We have carefully examined the oral evidence of PW-3 Ranjana and PW-5 Kashibai. The same is not trustworthy to come to the definite conclusion that the Appellant has committed the offence of rape. As already observed, it is the case of the prosecution that the Appellant had committed forcible intercourse with both the victims, however as per the medical evidence no external or internal injuries were found on the person of PW-3 Ranjana and PW-5 Kashibai. Though in their oral testimonay, both the victims have stated that accused forcibly entered in their houses and committed rape upon them, the said evidence suffers from serious contradictions, omissions and improvements and makes it unbelievable. As already observed, regarding the alleged incident happened with PW-5 Kashibai, no separate first information report was registered. Therefore, oral evidence of PW-3 Ranjana and PW-5 Kashibai is not at all trustworthy and reliable.

The evidence brought on record reveals that there was political rivalry between two groups in the said village and the Appellant and the victims belong to rival groups, and therefore the possibility of false implication cannot be ruled out. The factum of rape is not at all proved. There is no corroboration to the testimony of PW-3 Ranjana and PW-5 Kashibai, and in absence of it to rely upon only oral testimony of PW-3 and PW-5, which suffers from contradictions and omissions, would not be safe. Therefore, the prosecution has failed to prove, beyond reasonable doubt, that the accused had committed an offence under Section 376 of the I.P. Code.

21. The Supreme Court in the case of Dinesh Jaiswal vs. State of M.P.¹, in the facts of the case, observed that, a young man alleged to have entered house of victim, inflicted injuries on her and raped her. Victim an elderly woman also said

¹ 2010 CRI. L.J. 1917

to have snatched weapon from accused and injured accused on head. Prosecution witnesses though close relatives, did not support the prosecution case. Husband of victim had not entered the witness box. The doctor was unable to confirm factum of rape. The story of prosecution that victim over powered accused who was young man, was unbelievable. It is held that the conviction cannot be based on sole testimony of prosecution and the appeal was allowed. In the present case in hand also, the story of the prosecution is unbelievable. The doctor was unable to confirm the factum of rape. It is the case of the prosecution that though both the victims resisted, the appellant has committed forcible intercourse, however the medical evidence does not support the case of the prosecution. No external or internal injuries were found on the person of both the victims. The C.A. reports are also not supporting the case of the prosecution. Further, the prosecution has failed to prove that the Appellant

has committed robbery.

22. Upon perusal of the entire evidence, it is clear that the prosecution has utterly failed to prove the offence under Section 392, 452 and 506 of the I.P. Code. Though it is alleged by the informant Ranjana that accused had snatched Rs.5000/- from her, there is no recovery of the said amount at the instance of the Appellant. As observed earlier, PW-10, investigating officer has specifically admitted that no cash amount came to be recovered from the accused during the period of police custody. Thus, there is no iota of evidence that the Appellant has committed robbery. Though PW-3 Ranjana and PW-5 Kashibai alleged that Appellant has committed house-trespass, there is no corroborative evidence to support the said allegations. Though it is the case of the prosecution that accused, with the help of knife, threatened PW-3 Ranjana and PW-5 Kashibai, as observed earlier, the investigating officer PW-10

Sachin Sitaram Sanap, during the course of cross-examination, admitted that no knife came to be recovered from the possession of accused during investigation.

23. The trial Court has not appreciated the entire evidence brought on record in its proper perspective and reached to a wrong conclusion. The findings recorded by the trial Court are not in consonance with the evidence brought on record. The sentence awarded under Section 376 of the I.P. Code in respect of Kashibai is contrary to the settled principles of law, as no crime is registered in respect of incident narrated by Kashibai for offence punishable under Section 376 of the I.P. Code.

24. We have serious reservation about awarding consecutive sentences for the offence punishable under Section 376 of the I.P. Code for the alleged commission of rape on PW-3 Ranjana and

PW-5 Kashibai by the learned trial Court in view of the provisions of Section 31(2) of the Code of Criminal Procedure.

25. In the light of discussion in foregoing paragraphs, an inevitable conclusion is that the Appellant is entitled for the benefit of doubt. Hence, we pass the following order:

O R D E R

(I) The Criminal Appeal is allowed.

(II) The impugned Judgment and order dated 26th February, 2013, passed by the Additional Sessions Judge, Ahmednagar in Sessions Case No.320 of 2011 convicting and sentencing the Appellant for the offence of rape upon Ranjana and for the offence of rape upon Kashibai punishable under Section 376, 392, 452, 506 of the Indian Penal Code, is quashed and set aside.

(III) The Appellant is acquitted of the offence punishable under Section

376, 392, 452, 506 of the Indian Penal Code.

(IV) Fine amount, if deposited as per the impugned Judgment and order, be refunded to the Appellant.

(V) The Appellant is in jail, he be set at liberty forthwith, if not required in any other case.

(VI) The Appellant shall furnish the Personal Bonds of Rs.15,000/- and surety of like amount under Section 437-A of the Code of Criminal Procedure, before the concerned trial Court at Ahmednagar.

(VII) We appreciate the sincere efforts taken by learned counsel Mr. M.B. Kolpe (appointed), appearing for the Appellant, and we quantify Rs.8,000/- (Rupees Eight Thousand) towards his fees and expenses.

[V.K. JADHAV, J.]

[S.S. SHINDE, J.]