

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

Criminal Appeal No.504 of 2013

Ravindra Navnath Salunke
Age 28 years,
Occupation : Labour,
R/o Nagapur Khurd,
Taluka and District Beed.

.. Appellant.

Versus

The State of Maharashtra
Through Police Inspector,
Police Station, Pimpalner,
Taluka and District Beed.

.. Respondent.

Shri. S.J. Salunke, Advocate, for appellant.

Shri. M.M. Nerlikar, Additional Public Prosecutor, for
respondent.

With

**Criminal Appeal No.215 of 2014
With
Criminal Application No.651 of 2018**

* Datta s/o Waman Javanjal,
Age 30 years,
Occupation : Labour,
R/o Nagapur Khurd,
Taluka and District Beed.

.. Appellant.

Versus

- 1) The State of Maharashtra
Through Police Station,
Pimpalner,
Taluka and District Beed.
- 2) Uma Uttamrao Gavali,
Age Major,
Occupation: Household,
R/o Nagapur Khurd,
Taluka & District Beed. .. **Respondents.**

Shri. N.S. Ghanekar, Advocate, for appellant.

Shri. M.M. Nerlikar, Additional Public Prosecutor, for
respondent No.1.

Respondent No.2 - served.

With

Criminal Appeal No.432 of 2014

- * The State of Maharashtra
Through Police Station Officer
Pimpalner Police Station,
Taluka & District Beed. .. **Appellant.**

Versus

- 1) Datta Waman Javanjal
Age 30 years,
Occupation: Labour,
R/o Nagapur Khurd,
Taluka & District Beed.
- 2) Ravindra Navnath Salunke,
Age 27 years
Occu. & R/o as above. .. **Respondents.**

Shri. M.M. Nerlikar, Additional Public Prosecutor, for
appellant - State.

With

Criminal Appeal No.449 of 2014

The State of Maharashtra,
Through Police Station Officer,
Pimpalner Police Station,
Taluka and District Beed. .. **Appellant.**

Versus

Sokit Fakir Javanjal
Age 50 years,
Occupation : Labour,
R/o Nagapur Khurd,
Taluka and District Beed. .. **Respondent.**

Shri. M.M. Nerlikar, Additional Public Prosecutor, for
appellant.

Shri. M.A. Tandale, Advocate, for respondent.

**Coram: T.V. NALAWADE &
K.K. SONAWANE, JJ.**

Date: 3 JUNE 2019

JUDGMENT : (Per T.V. Nalawade, J.)

1) Criminal Appeal No.504/2013 and Criminal
Appeal No.215/2014 are filed by two convicted accused
from Sessions Case No.10/2013 which was pending in the

Court of learned Sessions Judge Beed. They are convicted and sentenced for offences punishable under section 376(2)(g) of Indian Penal Code and each of them is sentenced to suffer rigorous imprisonment for 7 years and to pay a fine of Rs.5000/- each. These accused are also convicted for offence punishable under section 3(1)(xii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and each of them is sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.1000/- each for the said offence. The case was filed against one more accused viz. Sokit Javanjal (accused No.3) but he is acquitted by the trial Court. Criminal Appeal No.432/2014 is filed by the State for enhancement of sentence given to accused Nos.1 and 2. Criminal Appeal No.449/2014 is filed by the State against Sokit to challenge acquittal. Both the sides are heard.

2) The incident took place on 5-11-2012. At the relevant time the prosecutrix was aged about 17 years. She belongs to a scheduled caste. She was living with her maternal aunt Taramati in village Nagapur Khurd, Tahsil

and District Beed. She was doing labour work to earn the livelihood. Her sister who was elder to her, was also living at the same place with Taramati.

3) On 5-11-2012 at 10.00 a.m. the prosecutrix left home for doing labour work, for plucking cotton in the field of Mohammad Pahuna from Nagapur. Accused No.3 Sokit was working with Mohammad Pahuna. On that day she worked in the field of Mohammad Pahuna up to 4.00 p.m. and with her there were two daughters-in-law and the wife of Sokit doing the same work.

4) After 4.00 p.m. when the prosecutrix started collecting fuel sticks in the vicinity of field of Mohammad Pahuna accused No.1 Datta approached her and asked her to come with him towards side of a tree by saying that he wanted to have talk with her. The prosecutrix said that she wanted to return to home and she would not go with him. After that accused No.1 used force, virtually assaulted her and took her towards a neem tree. Near the neem tree accused No.2 Ravindra and accused No.3 Sokit were present. Under the tree Sokit held her legs,

Ravindra held her hands and after removing her clothes accused No.1 raped her. When Datta left her she somehow escaped and ran towards a brook. It was dark at that time and she went towards the field where there was standing cotton crop. Accused No.2 Ravindra had seen that she had gone to that field and he went there. By giving threats he raped her in that field. When this incident was going on, accused No.1 Datta also went there and they together took her to other place and there she was left after giving her threats and after tying her *Odhani* around her neck and after putting a big stone on her chest. Due to the fear of the accused the prosecutrix became unconscious. She was lying there on the night between 5th and 6th November 2012.

5) In the early hours of 6-11-2012 one Nitin Bongane, a rickshaw driver of village It, Tahsil and District Beed noticed the prosecutrix who was lying by the side of the road, he gave phone call to constable Bhagyawant who was working in Pimpalner Police Station and informed that the prosecutrix was lying there. One more person noticed the prosecutrix and he gave message

to the maternal aunt and sister of the prosecutrix. Police Constable Bhagyawant went with police staff and jeep to the spot. They noticed that the maternal aunt and sister of the prosecutrix had already reached there. On inquiry the prosecutrix narrated the incident dated 5-11-2012 to police. She was taken to the police station and after recording the report she was referred to Government Hospital Beed for medical examination. During medical examination the medical officer found that there was tear to the hymen.

6) Names of all the accused were disclosed by the prosecutrix and all the three accused came to be arrested on 6-11-2012. They were referred for medical examination. One injury like abrasion was found on the neck of accused No.1. During investigation the clothes of the prosecutrix were taken over. There was stain like that of semen on her inner wear. The clothes of the accused were also taken over. The prosecutrix showed the spot where the incident had taken place and spot panchanama came to be prepared on 6-11-2012. Statements of the persons like Nitin Bongane, rickshaw driver, Police

Constable Bhagyawant and others including the sister of the prosecutrix came to be recorded. After completion of investigation charge-sheet came to be filed against three accused for the aforesaid and other offences.

7) Charge was framed against all the three accused for the aforesaid offences and other offences like for offence punishable under section 307 of IPC. All the accused pleaded not guilty. The prosecution examined in all 12 witnesses. Statements of the three accused were recorded under section 313 of the Code of Criminal Procedure. The accused took defence of total denial. Two defence witnesses were examined by the accused. The trial Court convicted accused No.1 Datta and accused No.2 Ravindra for the aforesaid offences. They are acquitted of the offence punishable under section 307 of IPC. Accused No.3 Sokit, who was aged about 50 years, is acquitted by giving benefit of doubt and also due to the circumstance that there is no allegation that he had committed sexual intercourse with the prosecutrix.

8) At the time of appreciation of the evidence it needs to be kept in mind that on 6-11-2012 the age of the prosecutrix was mentioned as 17 years. Due to that it was open to the defence to say that there was possibility of consent by the prosecutrix. Though some suggestions are given to the prosecutrix to show that she could have resisted, her shouts could have been heard by some persons, no specific suggestions are there on the line of the consent or previous relations with any of the accused. Some vague suggestions are given and attempt was made to show that the maternal aunt of the prosecutrix was not of good character and she was involved in manufacture of illicit liquor and prostitution and as there were complaints against her, she used the prosecutrix to implicate the accused persons. For proof of defence, two witnesses are examined by accused but they do not say that accused persons had taken any lead in making complaints and further not a copy of the complaint given to the appropriate authority in the past against even the maternal aunt of the prosecutrix is produced on the record. There is no specific suggestion and there is no record to show that there was some enmity between the

family of the prosecutrix and the accused persons. On the contrary, it is admitted through the evidence of the employer of accused No.3 that the prosecutrix was working as a labour in the field of the employer of accused No.3.

9) The prosecutrix (PW 5) has given evidence that on that day she had completed the work of plucking of cotton at 4.00 p.m. and after that she had started collecting fuel sticks. Her deposition does not show that after 4.00 p.m. lady members of the accused No.3 were present in the field. The evidence shows that after 4.00 p.m. she alone was collecting fuel sticks in the vicinity of the land of Mohammad Pahuna.

10) The prosecutrix has given evidence that when she was collecting fuel sticks, accused No.1 came towards her and asked her to come with him near a neem tree where he wanted to have talk with her. She has deposed that when she said no to it, she was forcibly taken towards the tree by accused No.1 and there accused No.1 had made her to fall on the ground and after that with the help

of accused Nos.2 and 3, the clothes of the prosecutrix were removed and when accused No.2 was holding her hands, accused No.1 committed rape on her. She has deposed that it was dark and she somehow went towards streamlet and beyond that there was standing crop of cotton. She has deposed that accused No.2 Ravindra followed her and by giving threat to her he committed rape on her in that field. She has given evidence that accused No.1 also came there and then accused Nos.1 and 2 took her towards Nagapur Road, in the field of one Landge and there they pressed her neck by using her scarf and when she was lying on the ground they kept a big stone on her chest and they left the spot. She has deposed that on the whole night she was lying there and at about 6.30 a.m. she felt that somebody had removed the stone from her chest and then she noticed that her maternal aunt and sister had come there. She has given evidence that police also came there and in the police station when inquiry was made she gave the report. The FIR at Exhibit 30 is proved in her evidence. Her evidence shows that her statement was recorded by Judicial Magistrate First Class on 7-12-2012. Nothing inconsistent

is brought on the record between her evidence, FIR and the statement recorded by the Judicial Magistrate.

11) In the cross-examination attempt was made to show that there were many houses in the vicinity of the spot where rape was committed and persons from there could have rushed to the spot if anybody had shouted at the spot of the offence. She has denied that the houses were there at the distance of 300 feet from the spot where the offence was committed.

12) The spot panchanama at Exhibit 22 is proved in the evidence of PW 2 Rajesh Kshirsagar. Rajesh hails from village Chinchgavhan, Tahsil Majalgaon, District Beed and his evidence shows that he is M.Sc. B.Ed. He has deposed that on 6-11-2012 he had gone towards Pimpalner Police Station for some work and there he was requested by police to act as panch witness on the spot panchanama. His evidence does not show that he knew the prosecutrix prior to that day or he had any reason to give evidence against the accused persons. His evidence shows that the prosecutrix showed the spot to police and

accordingly panchanama was prepared. At one place one empty match box was found and it was seized by police. At other place in cotton crop, pieces of broken bangles of the prosecutrix (goats) were found and they were taken over. At the first place where the match box was found, the incident had not taken place but at some distance from the first spot the incident had taken place. At second spot one comb was also found. The third place where the second incident had taken place was at some distance from the second place as per his version. He has given evidence that one big stone was also taken over by police.

13) In Exhibit 22, the spot panchanama, hand sketch map is shown in which various places shown by the prosecutrix are marked. These places were away from Pimpalner - Beed road. It can be said that in the land of Mohammad Pahuna there was one house and the second incident took place at about 50 feet from this house. On this spot one condom which was used and empty pouch of condom were found and they were taken over. The other spot shown was the spot from land Gat No.253 where the prosecutrix had gone to collect fuel sticks. There accused

No.2 had approached her. Another spot situated at a distance of 100 feet from this spot was shown by the prosecutrix and there accused No.1 had raped the prosecutrix. At this place the pieces of goats were found and one comb was also found. It appears that the bangle, goat was prepared by using thread and some material. The substantive evidence shows that the incident took place when it was dark and the first incident took place at some distance from Gat No.239 belonging to Mohd Pahuna. These circumstances are consistent with oral evidence of the prosecutrix. Further the prosecutrix was aged about 17 years and as against her there were at least two youngsters like accused Nos.1 and 2. The time of work in the field was over as per the version of the prosecutrix and so there was no possibility that farmers of other fields or labours of other fields were present there. Only for collecting fuel-fire wood the prosecutrix had stayed back and this circumstance needs to be kept in mind at the time of appreciation of evidence of the prosecutrix. Thus, there was no possibility of hearing the shouts of the prosecutrix by others or of offering resistance by the prosecutrix to accused Nos.1 and 2 at

such a place. Specific evidence is given that threats were given to her. In such a case the circumstance that the prosecutrix belongs to scheduled caste needs to be kept in mind. There is evidence of her sister and no male person was in her family. Her maternal aunt was not living with her husband and all these circumstances must have been considered by the accused before committing the offence. These circumstances and the suggestion given that the maternal aunt of the prosecutrix was of bad character need to be kept in mind in such a case. These suggestions and the circumstances can be used against the accused and not in favour of the accused.

14) The prosecutrix was aged about 17 years and her medical examination made by Dr. Dipali (PW 7) shows that she found that hymen was ruptured though there is no mention that the tears were recent. The doctor has given evidence that rupture of hymen is indicative of sexual intercourse. Though the medical evidence does not show that other injuries were found on the person of the prosecutrix, the circumstance needs to be kept in mind that the prosecutrix is of scheduled caste and she was

referred by police for medical examination, almost in the evening when she was found by police at 7.00 a.m. When crime was already registered for offence of rape (at 10.50 a.m.) in the history it is mentioned that history of giving slaps over the chick was only given by the prosecutrix. There was no male person and there was no influential person to support the prosecutrix or her maternal aunt and these things need to be kept in mind at the time of consideration of such discrepancies in the evidence. In any case, this Court has already observed that offering of resistance was not possible at the relevant time to the prosecutrix and so not much can be made out due to the circumstance that injuries like abrasions and bruises were not found on the person of the prosecutrix. One circumstance like presence of semen on her inner wear is there and the blood group of that semen tallies with the blood group of accused No.1. Though argument is advanced that evidence regarding seizure of clothes and sending them in proper way to CA office is not convincing, due to the circumstance in respect of prosecutrix already mentioned it does not look probable that any attempt was made by the investigating agency to concoct the things.

The village Sarpanch came forward to give evidence in favour of accused in the Court. There was no enmity as such between the prosecutrix and the accused at the relevant time and so there was no room or possibility for concoction for anybody.

15) There is circumstantial evidence which gives more corroboration to the version of the prosecutrix. The evidence of Nitin Bongane (PW 3), a rickshaw driver, shows that on 6-11-2012 at 6.30 a.m. when he was carrying vegetables in his rickshaw and he was going by that road he noticed that the prosecutrix was lying by the side of the road and there was a stone on her chest. He has given evidence that he contacted constable Bhagyawant of Pimpalner Police Station on his mobile phone and informed Bhagyawant about this incident. Cross-examination of this witness shows that he is an independent witness. He hails from village It. There is evidence of Bhagyawant (PW 4), Police Constable, which is in accordance with the evidence as of Nitin (PW 3). This evidence shows that by chance the prosecutrix was noticed lying there at 6.30 a.m. and due to her condition

attention was paid to her by Nitin (PW 3) and then by others. There is evidence of the sister of the prosecutrix (PW 6) which is to the effect that on 6th November 2012 one Yunus Pathan informed that he had noticed the prosecutrix lying at the aforesaid spot. She has given evidence that she and her maternal aunt went there and after some time police also arrived there and then action was taken. She has given evidence that the incident was disclosed to her by the prosecutrix. She has taken names of accused Nos.1 and 2 who had committed rape on the prosecutrix as per the disclosure made by the prosecutrix immediately to them. This evidence needs to be considered from two angles. Firstly, the prosecutrix was lying there in helpless condition and probably she had become unconscious due to the incident and secondly the incident was disclosed to police and other relatives by the prosecutrix immediately on 6th November 2012 and then the report was recorded by police and further steps were taken. These circumstances support the version of the prosecutrix and they also show that there was no room for concoction.

16) The prosecution has examined Amrapali Jadhav (PW 1), a panch witness on the panchanama of seizure of the clothes of the prosecutrix. The clothes were produced by the prosecutrix on 6-11-2012 and the panchanama was prepared between 11.00 a.m. and 11.45 a.m. In the seizure panchanama at Exhibit 20 there is a mention that one stain which was felt as hard was found on the inner wear, knickers of the prosecutrix. These clothes were sent to CA office through carrier constable though after about five days. The evidence of the investigating officer (PW 22) and the CA report show that blood sample of accused No.1 was collected and the blood group of accused No.1 is "O". Semen of the same blood group was found on the knickers of the prosecutrix. This is definitely incriminating circumstance. There was no reason for police to create such false evidence against accused No.1 Datta.

17) The prosecution examined Shaikh Suleman (PW 10) owner of the land where the prosecutrix was working on that date. In the examination-in-chief he has given evidence that accused No.3 was working in his field and he was looking after the agricultural operations. He gave

evidence that one Nilesh Javanjal was supplying labour to him and the prosecutrix was supplied as a labour and for that he had given amount of Rs.264/- to Nilesh as it was the amount of wages of the prosecutrix. In the cross examination he tried to say that on 5-11-2012 there was no work of plucking of cotton in his field. But his evidence shows that on 5th he had not gone to the field and only on 6th when police started taking action he went to the field. It is clear that as accused No.3 was supervising the agricultural operations for him there was no need for him to go to the field and he has tried to help the accused in the cross-examination by admitting the suggestions as accused No.3 is his man. In any case accused No.3 is acquitted but the evidence given as against accused Nos.1 and 2 cannot be discarded as there is more than sufficient evidence to corroborate the version of the prosecutrix.

18) The evidence of the prosecutrix and of other witnesses does not show that, there are material contradictions in the evidence of the prosecutrix or other witnesses. F.I.R. was almost very prompt and names of the accused persons were immediately given by the

prosecutrix, at the first chance. There was no reason for the prosecutrix to falsely implicate accused Nos.1 and 2 in such a case. She was hardly of 17 years and this circumstance needs to be kept in mind while appreciating her evidence. The trial court has believed the prosecutrix. When a witness is believed by the trial court the appellate Court is not expected to lightly interfere in that finding. There is sufficient corroboration to the evidence of the prosecutrix and due to that this Court holds that accused Nos.1 and 2 are guilty of the offence of gang rape.

19) Specific evidence is given by the prosecutrix that accused knew that he belongs to scheduled caste. Caste certificate is produced on the record. As the prosecutrix was working with accused No.3 and the incident took place in that field when she had gone there to work as labour, the prosecutrix needs to be believed on the point that accused knew that she belongs to scheduled caste. Further, the family background of the prosecutrix was known to accused Nos.1 and 2 and they must have felt that nobody would support the prosecutrix if they commit such offence. Only due to the circumstances

mentioned above, police found the prosecutrix lying in that condition, the incident was disclosed to police. For all the aforesaid reasons this Court holds that the trial court has not committed error in holding the accused Nos.1 and 2 guilty of the aforesaid offences.

20) Learned counsels for the convicted accused placed reliance on the observations made by the Apex Court in the case reported as **AIR 2006 SC 1267 (Dinesh @ Buddha v. State of Rajasthan)** and the decision of the Supreme Court in **Criminal Appeal No.2393/2010 (Parkash Chand v. State of Himachal Pradesh)**. Facts and circumstances of each and every case are always different. In the first case the Apex Court found that there was no evidence to show that rape was committed on the victim only because she was a member of scheduled caste and so it was held that provisions of section 3(2)(v) of the Act 1989 were not attracted. The facts of that case were different. Relevant facts of the present case are already quoted and this Court has no hesitation to observe that only because the prosecutrix belongs to scheduled caste and she had no support of any kind, the offence is

committed against her. Thus, the observations made in the aforesaid two cases are of no help to the accused persons.

21) Learned Additional Public Prosecutor argued for enhancement of sentence by submitting that in the year 2012 the minimum punishment provided for offence of gang rape was 10 years imprisonment but the sentence of 7 years is given. No special reasons are given which need to be given as provided by section 376 of IPC. Though it is true that special reasons are not recorded for giving sentence of imprisonment of 7 years, the circumstance that no injury was caused to the prosecutrix needs to be kept in mind. Further, she was taken to such a place that persons going by that road could notice her though on the next morning. These circumstances are there which can be used in favour of the accused. Further both the accused persons were married at the relevant time and they were aged about 30 and 27 years and they were also working as labour at the relevant time. These things need to be kept in mind. Due to all these circumstances this Court holds that interference is not possible in the sentence which is less than 10 years given

by the trial court. On this point learned Additional Public Prosecutor placed reliance on the observations made by the Apex Court in the case reported as **2012 DGLS (SC) 283 (State of Rajasthan v. Vinod Kumar)**. In view of the facts of the present case this Court holds that the observations made by the Apex Court are of no help to the prosecution.

22) Learned Additional Public Prosecutor submitted that the trial court has believed the prosecutrix and that evidence showed that accused No.3 had helped at least accused No.1 for commission of offence and so accused No.3 ought to have been convicted and sentenced. This Court has already described the places of the offence and the evidence shows that accused No.1 committed the offence of rape in other fields and not in the field where the prosecutrix had gone for work. Due to this circumstance and as the place of residence of accused No.3 is situated in Gat No.236, the trial court has given benefit of doubt. Age of the accused No.3 is also relevant. Due to all these circumstances this Court holds that it is not possible to interfere in the findings given by the trial

court of acquittal in favour of accused No.3. in the result, following order.

23) Both the appeals of the convicted accused and both the appeals of the State stand dismissed. The application filed for bail is disposed of.

Sd/-
(K.K. SONAWANE, J.)

Sd/-
(T.V. NALAWADE, J.)

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