

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

CRIMINAL APPEAL NO. 428 OF 2000

Hiralal Kasam Shaikh Age. 27 years, Occ. Nil, R/o. Dhanegaon, Tal. Jamkhed, Dist. Ahmednagar.	.. Appellant [original accused]
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Versus

State of Maharashtra	.. Respondent [original complainant]
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Mr.S.V. Sudrik, Advocate for the appellant.
Mr.P.N. Kutti, APP for the respondent/State.

CORAM :	S.M.GAVHANE, J.
RESERVED ON :	25.03.2019
PRONOUNCED ON :	12.04.2019

J U D G M E N T :-

. By this appeal, the appellant/accused has challenged the judgment and order dated 19.10.2000, passed by the Sessions Judge, Ahmednagar, in Sessions Case No.104 of 1997, thereby convicting and sentencing him for the following offences :

i. He was sentenced to suffer simple imprisonment for a period of one year and to pay a fine of Rs.500/- or in default to suffer further simple imprisonment for a period of two months for the offence punishable under sections 376 read with section 511 of the Indian Penal Code (for short "the IPC").

ii. He was sentenced to suffer simple imprisonment for a period of six months and to pay a fine of Rs.100/- or in default to suffer further simple imprisonment for a period of two weeks, for the offence punishable under section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,1989 (for short "the SC and ST (Prevention of Atrocities) Act").

iii. He was sentenced to suffer simple imprisonment for a period of three months and to pay fine of Rs.100/- or in default to suffer further simple imprisonment for a period of three weeks, for the offence punishable under section 506 of the IPC.

. The substantive sentences were directed to run concurrently. Appellant was also given set off for the period undergone by him as under-trial prisoner against the substantive sentences as mentioned in clause (3) of the operative order of the impugned judgment and order. The appellant has deposited the fine amount.

2. Facts of the prosecution case, in short, are as under :-

A] The prosecutrix – Meena Balu Pawar (PW-3) is a member of Scheduled Caste i.e. Mahar. At the material time of incident, she was residing with her parents at village Dhanegaon. She used to look after she-goats and used to graze she-goats on the bank of a river, namely, Khairi at her village. The appellant is also from the same village.

B] On 25.06.1997 the prosecutrix lodged a complaint (Exh.15) in Police Station, Jamkhed at about 13.45 hours alleging that on 24.06.1997 at about 05.30 pm near bank

of the river, when she had gone to graze her she-goats as usual and while she was bringing she-goats back to home in the evening, the appellant came to her and said her whether she is grazing the she goats and that he has some important work with her. He called her to him. She refused. He then rushed upon her, caught hold her and embraced her. He then fell her on the ground. He inserted his hands in her Punjabi dress, pulled her brassier and started pressing her breast by his hands. He untied string of her Salwar and started pulling down it. She started shouting and pushing the appellant away. But she could not push him away, as he over-powered her. The appellant then slept on her person and made an endeavour to commit rape on her. She shouted loudly. On hearing her shouts, her parents came running from Zopadpatti to the spot of incident and on seeing them, the appellant got up from her person and threatened her not to disclose the incident to her parents and on saying so he ran away.

C] It is alleged that, thereafter, the prosecutrix went to her house. As it was evening time and there was no conveyance available for going to Jamkhed, she could not go to Police Station, Jamkhed immediately. On the next day morning, she along with her parents went to Jamkhed Police Station and lodged complaint as above. Treating the said complaint as FIR, crime No.68 of 1997 under section 376, 511, 506 of IPC and section 3 (1)(xi) of the SC and ST (Prevention of Atrocities) Act, was registered against the appellant in said Police Station and investigation was commenced.

D] During the investigation, PSI Budhwant on 25.06.1997 seized the torn brassier of the prosecutrix under panchanama and recorded statements of witnesses. The prosecutrix was referred for medical examination and Dr.Satpute (PW-1), who was attached to the Rural Hospital, Jamkhed examined the prosecutrix on 25.06.1997 and noted two abrasions on her breast and contusion over sternum, swelling etc. on the person of the prosecutrix

and issued injury certificate (Exh.11). The appellant was also arrested on that day and subsequently he was released on bail. After completion of the investigation, charge-sheet was submitted in the Court of JMFC, Jamkhed, who then committed the case to the Sessions Court, Ahmednagar.

E] Charge was framed against the appellant for the offences punishable under sections 376 read with 511, 506 of the IPC and under section 3 (1) (xi) of the SC and ST (Prevention of Atrocities) Act. The appellant pleaded not guilty and claimed to be tried.

F] To bring home the guilt of the appellant, the prosecution has examined in all five witnesses, namely, Dr.Satpute (PW-1) - who examined the prosecutrix, Prabhakar Kulkarni (PW-2) - punch to the panchanama of seizure of the brassier of the prosecutrix (Exh.13), Meena Pawar (PW-3) - the prosecutrix, Sajarabai Balu Pawar (PW-4) - mother of the prosecutrix and Dagadu

Kharat (PW-5) – retired Police Head Constable, who had registered the crime against the appellant.

G] The statement of the appellant under section 313 of the Code of Criminal Procedure was recorded. He filed written statement (Exh.22) stating that his one of the legs has no portion below knee. Therefore, he is unable to walk without crutches. Therefore, he cannot do any work and hence he was doing the work of guarding field of one Balu Mohite from his village. While he was guarding the field of Balu Mohite, she-goats of the prosecutrix had come in the said field and they had damaged crop in the said field. He tried to drive away the she-goats, but taking disadvantage of his lameness, the prosecutrix was again leaving she-goats in the field and therefore he called Balu Mohite. Said Balu Mohite confined the she-goats. Thereafter, the prosecutrix went to her house and brought her parents and said that the appellant who is lame has told Balu Mohite and therefore her she-goats have been confined. Thereafter, there was hot quarrel

between them and it was said that false complaint would be filed against the appellant. Further, it is stated that no incident as alleged by the prosecutrix has taken place. He is innocent and he has been falsely implicated in the case. Thus, the defence of the appellant was total denial.

H] On considering the evidence adduced by the prosecution and defence of the appellant, learned Sessions Judge held that the prosecution has proved offence against the appellant with which he was charged and convicted and sentenced him as mentioned in the opening para of this judgment by the impugned judgment and order. Therefore, this appeal by the appellant challenging the said conviction and sentence recorded against him.

3. The appeal was admitted and the impugned judgment and order was suspended and the appellant was ordered to be released on bail as per order dated

13.11.2000, of this Court.

4. I have heard Mr. Sudrik, learned Counsel for the appellant and Mr. Kutti, learned APP for the respondent/ State and with their assistance I have perused the impugned judgment and order and the evidence adduced by the prosecution.

5. Mr. Sudrik, learned Counsel for the appellant submitted that the alleged incident is dated 24.06.1997 and the FIR was lodged on the next day i.e. on 25.06.1997 at 13.45 hours and as such there is delay of a day in lodging the FIR. The prosecution has not explained said delay. It is submitted that as per the evidence of prosecutrix (PW-3) after the incident she had gone to her house with her parents and that there was police patil of village Dhanegaon and house of the police patil is half km away from the house of her parents, but she had not disclosed the incident to police patil. According to learned Counsel, non-disclosure of the incident to police

patil by PW-3 creates doubt about the happening of incident. Moreover, according to learned Counsel, in the Zopadpatti in which the parents of the prosecutrix were residing, there were houses of other residents, but no other person from the said Zopadpatti has been examined by the prosecution. In-fact, the prosecution should have examined independent witness from the said Zopadpatti, who had chance to witness the incident. It is submitted that the appellant has no one leg below knee and therefore the allegation against him that he caught hold the prosecutrix and embraced her is not appearing natural. Moreover, as per evidence of the prosecution in the cross-examination, she states that she was embraced by the appellant for one hour and if she was embraced for one hour, it was possible for all other people in the Zopadpatti to witness the said incident. It is submitted that according to the prosecutrix, at the material time of incident, Balu Mohite – owner of the field was present, but he did not do anything. If Balu Mohite was present at the time

of incident, according to learned Counsel, he was required to be examined by the prosecution and as such non-examination of Balu Mohite creates doubt about the incident. Thus, learned Counsel for the appellant has submitted that defence of the appellant is probable and acceptable and hence whatever evidence is adduced by the prosecution is not sufficient to state beyond doubt that the prosecution has proved the offences with which the appellant was charged. Therefore, according to learned Counsel, the impugned judgment and order are liable to be set aside and the appellant is entitled to be acquitted of the offences for which he has been convicted and sentenced, by allowing the appeal.

6. Mr.Kutti, learned APP on the other hand submitted that the prosecution has properly explained the delay caused in lodging the FIR, as observed in para 11 of the impugned judgment. It is further submitted that the prosecutrix is a rustic village woman and therefore even if she deposed that she was embraced by the

appellant for one hour, the same cannot be considered to state that the incident lasted within one hour but her entire evidence is to be considered, which suggests that immediately after she was caught by the appellant and the appellant attempted to sexually exploit her, her parents had come to the spot of incident on hearing her shouts and therefore it can be said that the incident lasted within short time. According to learned APP, there is no substance in the defence of the appellant. The Trial Court has rightly disbelieved the said defence and rightly convicted and sentenced the appellant. Therefore, the appeal sans merit and is liable to be dismissed.

7. Considering the nature of the charge under section 376 read with section 511 of the IPC, at the outset, I would like to consider the evidence of the prosecution regarding the age of the prosecutrix. In the FIR Exh.15, the prosecutrix has given her age as 17 years. So also, in her evidence recorded on 11.09.2000,

she has given her age as 18 years and deposed that the incident took place about three years back. Thus, as per her version, the incident took place when she was about 15 years of age. In her cross-examination on behalf of the appellant, her evidence that on the date of recording her evidence, she was 18 years old and the incident took place three years back has not been challenged by the appellant. Learned Counsel for the appellant has also not seriously disputed the age of the prosecutrix as deposed by her. Therefore, I find that on the date of incident, the prosecutrix was about 15 years of age.

8. As regards, the incident of attempt to commit rape on the prosecutrix on 24.06.1997 by the appellant is concerned, the prosecution has mainly relied upon the evidence of prosecutrix (PW-3), her mother – Sojarbai (PW-4) and evidence of Dr.Kantrao Satpute (PW-1). The prosecutrix (PW-3) in her evidence in para 2 deposed that on the date of incident she went to bank of river Khairi for grazing she-goats as usual. Her parents were at

home. There was nobody else on the spot. She grazed she-goats. In the evening at about 05.00 pm she was going to take she-goats back to home. The appellant came there. He asked her what she is doing. He called her to him. She told him that he should contact his father if he had got any work. He rushed upon her. He caught hold her by his hands and embraced her. He made her to fall on the ground. He started assaulting her criminally. He untied her Salwar. She cried. He fell on her person. He was trying to commit sexual intercourse with her. He was pulling down her Salwar. On hearing her cries, her parents came there as her house was near to that spot. On seeing her parents coming, the appellant got up from her person. He threatened her by saying that she should not disclose the incident to her parents, otherwise, he would kill her. Her parents took her to home. She narrated the incident to them. The appellant ran away. She got frightened and was shivering due to fear. She has further stated about lodging FIR on the next day in the police station.

9. In the cross-examination, the prosecutrix stated that she raised shouts when the appellant rushed upon her. At that time she raised 2-3 shouts. The appellant did not run away. After she was caught hold by the appellant, she raised shouts. The appellant had caught hold and embraced her for long time. She could not tell the exact time. She was caught hold and was embraced by the appellant for one hour. Her parents immediately came there and nobody was present in the Zopadpatti. Further, she has denied that as the appellant caught her she-goats and detained them and he called Balu Mohite, she filed false complaint at the instance of her parents to teach lesson to the appellant. She further denied that the appellant neither rushed upon her nor did he catch her, nor did he fall her on the ground, nor did he untie string of her Salwar, nor did he try to commit sexual intercourse with her. Thus, nothing is found in favour of the appellant in the cross-examination of the prosecutrix. Her evidence that the appellant rushed upon

her, caught hold her by his hands, he embraced her, he made to fall her on the ground, he untied her Salwar, he fall on her person and tried to commit sexual intercourse with her has not been shattered in her cross-examination.

10. The prosecutrix has stated that after the incident, she came to her home and on that day ST bus was not available and there was no other conveyance and hence on the next day along with her parents she went to Jamkhed Police Station and lodged complaint with police. Said piece of evidence of the prosecutrix has also gone unchallenged in the course of her cross-examination on behalf of the appellant. Another aspect to be noted is that in case of offence of the present nature, some times even the prosecutrix or her family members do not wish to make the incident public immediately after happening of the incident and it is natural for them to think over before filing complaint in the offence of such nature which has repercussions on the character of prosecutrix or on the image of the family. Therefore, I find that

the delay in lodging the FIR (Exh.15) is explained by the prosecution and said cannot be a ground to reject the evidence of the prosecutrix (PW-3), which is trustworthy.

11. The next is the evidence of Sojarbai Pawar (PW-4) – the mother of the prosecutrix and according to her on the day of incident which took place three years prior to her recording evidence on 15.09.2000, she heard cries of the prosecutrix from the river side. Therefore, she and her husband ran to the river. On going there, she saw that the appellant was sleeping on the person of the prosecutrix. On seeing them, he got up and ran away. The brassier of the prosecutrix was torn. She was in the state of giddiness. On enquiry with her, the prosecutrix disclosed to her that the appellant came, caught hold her, fell her on the ground, torn her brassier, pressed her breast, untied her Salwar and fell on her person. She deposed that on the next day along with the prosecutrix and her husband, she went to Jamkhed Police Station. Though, she has been cross-examined at length

on behalf of the appellant, nothing has been found in favour of the appellant. She has also denied suggestion given to her in the light of defence of appellant. She has stated that when the incident took place, Balu Mohite was present, but he did nothing. Thus, there is no reason to disbelieve the evidence of PW-4, which is quite natural.

12. Learned Counsel for the appellant submitted that Balu Mohite, who was present, has not been examined. When the evidence of the prosecutrix and her mother is natural and convincing and inspires confidence, even if Balu Mohite has not been examined by the prosecution, it does not affect on the credibility of the evidence of the prosecutrix and her mother.

13. As regards defence of the appellant, in the cross-examination, the prosecutrix has denied that the appellant was doing labour work in the field of Balu Mohite. Further, she stated that she does not know

whether the appellant was employed by Balu Mohite for guarding the crops in his land. Both the prosecutrix (PW-3) and her mother (PW-4) have denied the suggestions given to them that as Balu Mohite – the owner of the field has confined she-goats of the prosecutrix at the instance of the appellant, the appellant has been falsely involved by the prosecutrix at the instance of her parents. Therefore, there is no substance in the defence of the appellant.

14. Thus, on the basis of evidence of the prosecutrix (PW-3) and her mother (PW-4) one thing is certain and proved beyond doubt that on the date of incident at the material time, the appellant rushed upon the prosecutrix, caught hold her, fell her on the ground, torn her brassier, he was pulling down her Salwar and fell on the person of the prosecutrix. In such circumstances, it is necessary to see whether such act of the appellant amounts to attempt to commit rape on the prosecutrix. Aforesaid act of the appellant certainly

amounts to preparation to commit offence and to state whether said act amounts to attempt to commit offence of rape, it is necessary to find out whether the appellant has done further act towards committing rape by making attempt of penetrating or attempting to insert his male organ/penis in the vagina of the prosecutrix, but said act was failed, to state that the attempt was made by the appellant, but it was not successful. Neither the prosecutrix nor her mother have stated that when the appellant was lying on the prosecutrix, the appellant made the prosecutrix undressed and their evidence that the appellant was pulling down her Salwar or untied her Salwar, does not necessarily mean that she was undressed or necked. So also, their evidence does not show that when the appellant was lying on the person of the prosecutrix, he was undressed or necked and that in any manner, he attempted to insert his male organ in the private part or vagina of the prosecutrix. In the absence of this type of evidence, it cannot be said that the appellant attempted for penetration.

15. The next evidence relied upon by the prosecution, to prove that the appellant had attempted for penetration and thus attempted to commit rape on the prosecutrix, is of Dr.Kantrao Satpute (Medical Officer) (PW-1). His evidence shows that on 25.06.1997, while he was on duty in emergency ward in Rural Hospital, Jamkhed, as a Medical Officer, the prosecutrix was brought in the hospital and he examined her in presence of a nurse. According to him, the prosecutrix had sustained following injuries.

(i) Two linear abrasion over right breast direction sternum to nipple – size 5 cm x 1 mm.

(ii) Two linear abrasion over left breast direction sternum to nipple – size 4 cm x 2 mm.

(iii) Contusion over sternum, swelling and tenderness present – size 4 cm x 3 cm.

. According to Doctor, the cause of above injuries was hard and blunt object. The age of said injuries was within 24 hours. They were simple injuries and he issued

certificate (Exh.11). He further stated that the aforesaid injury Nos.1 and 2 are possible, if breasts are pressed by hands with force and third injury was possible if blow of fist is given or breast is pressed. In the cross-examination, he stated that he did not examine the patient for determination of her age. He stated that the injuries stated above are possible by self infliction and denied that the injuries were not caused by nails. Thus, nothing is found in favour of the appellant in cross-examination of the Doctor. Therefore, on the basis of his evidence, it can be said that the injuries as deposed by him were noticed by him on the person of the prosecutrix. There is possibility of causing said injuries on the earlier day of examination of the prosecutrix i.e. on the date of incident. But, as he has not at all stated about the internal examination of the prosecutrix or about the injury on genital organ of the prosecutrix and about position of hymen i.e. as to whether it was intact or absent, the evidence of the Doctor is of no help to the prosecution to state that

after lying on the person of the prosecutrix, the appellant attempted for penetration, so as to say that the appellant has crossed the line between preparation and attempt. It is true that three injuries referred earlier were noticed by the Doctor on the person of the prosecutrix, but as those were not on genital organ of the prosecutrix, it cannot be said on the basis of said injuries that the appellant made attempt for penetration.

16. For all the reasons discussed above, the evidence of PW-1, PW-3 and PW-4 is not sufficient to prove that the appellant has done any act beyond preparation to commit offence and that necessarily he did further act towards commission of offence i.e. the act of penetration, so as to state that he crossed the line between preparation and attempt, to say that he attempted to commit rape on the prosecutrix. Therefore, above evidence is not sufficient to infer beyond doubt that the appellant attempted to commit rape an offence punishable under section 376 read with section 511 of the IPC.

However, on the basis of evidence of PW-3 – prosecutrix and PW-4 – mother of the prosecutrix, it can be said that the appellant did outrage modesty of the prosecutrix and committed offence punishable under section 354 of the IPC.

17. In paragraph 14 of the impugned judgment, learned Sessions Judge has observed that on appreciation of the evidence of the prosecutrix, her mother and the medical evidence, the conclusion is drawn that the said evidence is clinching and inspires confidence and thus the learned Sessions Judge, relying upon the aforesaid evidence held the appellant guilty to the charge levelled against him. The learned Sessions Judge has not considered the aspect whether the appellant's act as deposed by the prosecutrix of embracing her, falling down her, pulling down Salwar of the prosecutrix and lying upon her body only amounts to preparation to commit offence, and it does not amount to attempt to commit rape on the prosecutrix by observing that there is nothing to show that at any cost the

appellant tried for penetration, because in case of attempt to commit rape also some sort of evidence of penetration, even slightest, is necessary. Therefore, the finding of the learned Sessions Judge that the prosecution has proved offence punishable under section 376 read with section 511 of the IPC is not correct and sustainable.

18. To draw the aforesaid conclusion, I rely upon following judgments :-

A) In the case of **Tukaram Govind Yadav Vs. State of Maharashtra 2011 Cri.L.J. 1501 (Bombay High Court)**, the appellant/accused was convicted for the offence punishable under Section 376 read with Section 511 of the IPC. In the appeal challenging the said conviction and sentence in paragraph 14,15 and 17, it was observed as under:-

"14. The medical evidence in the present case do not indicate as to whether the accused has tried to force his penis inside the private part of the girl but could not succeed. Evidence of PW-2 Parvati Yadav before the Court, in para - 3 of her

deposition, indicate that when she went there (in the house of the accused), she found Ujwala sleeping on the floor and the accused was lying on her. Nothing appears to have been stated beyond this by Parvati except that knicker which was removed was brought back by her alongwith granddaughter to her house.

15. Under these circumstances, it must be held that the offence committed by the accused did not amount to attempt to commit rape punishable under Section 376 read with Section 511 of IPC, but, was one under Section 354 of IPC. Therefore, the appeal has been partly allowed by convicting the appellant/accused for minor offence under Section 354 of IPC.

17. In the result, therefore, appeal is partly allowed The order of conviction and sentence recorded by the learned Additional Sessions Judge, Kolhapur dated 06.07.1996 in Sessions Case No.49 of 1996 against the appellant for the offence punishable under Section 376 read with Section 511 of IPC set aside the modified. Instead, the appellant is convicted for the offence punishable under Section 354 of IPC. The impugned order regarding the conditional release and punishment, however as directed by the trial Court is maintained. R & P be sent back to the trial Court. Both Criminal Appeal and Criminal Revision Application are disposed of accordingly."

B) In the case of Baburao s/o Govinda Kumoti.

Vs. State of Maharashtra, 2019 All MR (Cri) 310.

As per the facts of the said case the victim aged 17 years was asked to remove her cloths by the appellant/accused. The accused too removed his clothes and demanded sexual favour. The victim refused to oblige and attempted to raise an alarm. The accused threatened to kill her with an iron bar. The accused made the victim lie down on the floor and subjected her to forcible sexual intercourse. The evidence on record shows that the accused and the victim were seen lying together naked. In paragraph 8 of the said decision it was observed that the pivotal question is whether the accused can be convicted for attempt to rape under Section 376 read with Section 511 of the IPC. It is proved beyond reasonable doubt, that the accused did outrage the modesty of the victim and Section 354 of the IPC is clearly attracted. However, the evidence on record is not sufficient to prove that the accused crossed the line between preparation and attempt. It is well settled that every offence has four facets. The first is intention, the second is preparation, the third is attempt and fourth is the completion of the offence if the attempt is successful. The

intention of the accused, in the present case, may be vile. The fact that he asked the victim to undress and that he too undressed and both were found naked when the door was forcibly opened is suggestive at the most the preparation. However, it is difficult to record a finding that the accused did any overt act towards commission of the offence and thereby crossed the line between preparation and attempt. The appeal against conviction of the appellant was partly allowed and appellant/accused was acquitted of the offence punishable under Section 376 read with Section 511 of the IPC and Section 4 read with Section 17 of the Protection of Children from Sexual Offences Act (POCSO) Act. However, the accused was convicted for offence punishable under Section 354 of the IPC and was sentenced to suffer rigorous imprisonment for three years.

19. As regards, offence punishable under section 506 of the IPC is concerned, the prosecutrix, has as referred earlier, deposed that after the incident of embracing, falling her on the ground, pulling down her Salwar and appellant falling on her person, he fled away when her

parents came to the spot of the incident on hearing her cries and the appellant had threatened her saying that she should not disclose the incident to her parents otherwise he would kill her. Said evidence has gone unchallenged in the course of her cross-examination. Therefore, there is no reason to disbelieve the evidence of the prosecutrix and on the basis of her evidence, it can be said that the appellant has threatened to kill her and committed offence of criminal intimidation punishable under section 506 of the IPC. The learned Sessions Judge has properly considered the aforesaid evidence and held that the offence punishable under section 506 of the IPC is proved against the appellant.

20. As regards, offence punishable under section 3 (1) (xi) of the SC and ST Prevention of Atrocities Act is concerned, it has come in the evidence of the prosecutrix, that she is Mahar by caste and her said evidence has also gone unchallenged in her cross-examination. There is no dispute that the appellant is a

Mohammedan and he belongs to the caste other than scheduled caste. As held earlier, the prosecution has failed to prove offence punishable under section 376 read with section 511 of the IPC against the appellant, but on the basis of evidence on record, the prosecution has established offence punishable under section 354 of the IPC. Moreover, it is held that the appellant has committed offence punishable under section 506 of the IPC. Therefore, it can be said that the appellant used force to the prosecutrix belonging to scheduled caste, with intend to dishonour her or outrage her modesty and thereby committed offence punishable under section 3 (1) (xi) of the SC and ST Prevention of Atrocities Act. Learned Sessions Judge has rightly held that the prosecution has proved said offence against the appellant.

21. The conclusion of the aforesaid discussion is that the prosecution has failed to prove offence punishable under section 376 read with section 511 of the

IPC, beyond reasonable doubt against the appellant, but on the basis of evidence, it is established that the appellant has committed offence of outraging modesty of the prosecutrix punishable under section 354 of the IPC. Therefore, the conviction and sentence recorded against the appellant by the judgment under challenge for the offence punishable under section 376 read with section 511 of the IPC is not sustainable and the same is liable to be quashed and set aside and the appellant is entitled to be acquitted of the said offence. However, he is to be convicted for the offence punishable under section 354 of the IPC.

22. Now, the question arises – whether separate sentence can be imposed on the appellant for the offence punishable under section 354 of the IPC, when he has been convicted and sentenced by the Trial Court for the offence punishable under section 3 (1) (xi) of the SC and ST (Prevention of Atrocities) Act, as observed earlier. The offence punishable under section 3(1)(xi) of the SC

and ST (Prevention of Atrocities) Act, deals with assault or use of criminal force to any woman belonging to Scheduled Caste or Scheduled Tribe with intent to dishonour or outrage her modesty is an aggravated form of offence punishable under section 354 of the IPC. The only difference between section 3(1)(xi) of the SC and ST (Prevention of Atrocities) Act and section 354 of the IPC is essentially the caste or the tribe to which the victim belongs. If the victim belongs to Scheduled Caste or Scheduled Tribe, section 3(1)(xi) of the SC and ST (Prevention of Atrocities) Act applies. The other difference is that in section 3(1)(xi) of the SC and ST (Prevention of Atrocities) Act, dishonour of such victim is also made an offence. Considering these aspects, as the offence punishable under section 3(1)(xi) of the SC and ST (Prevention of Atrocities) Act is an aggravated form of offence punishable under section 354 of the IPC, no separate sentence need to be awarded for the offence punishable under section 354 of the IPC.

23. As regards the conviction and sentence recorded against the appellant for the offence punishable under section 506 of the IPC and under section 3 (1) (xi) of the SC and ST Prevention of Atrocities Act is concerned, there is no ground to interfere with the said conviction and sentence and the same is required to be confirmed, by allowing the appeal partly to the extent indicated in paragraph Nos.21 and 22 (supra).

24. In the result, the following order is passed :-

i) Appeal is partly allowed.

ii) The impugned judgment and order dated 19.10.2000 passed by the Sessions Judge, Ahmednagar, in Sessions Case No. 104 of 1997, convicting and sentencing the appellant/accused for the offence punishable under section 376 read with section 511 of the IPC is quashed and set aside and he is acquitted of the said offence. Fine, if paid by the appellant in respect of said offence, be refunded to him.

iii) However, the appellant/accused is convicted for the offence punishable under section 354 of the IPC. But no separate sentence is imposed on the appellant for the offence punishable under section 354 of the IPC since he

has been convicted and sentenced for the offence punishable under section 3(1)(xi) of the SC and ST (Prevention of Atrocities) Act.

iv) The conviction and sentence recorded against the appellant/accused for the offence punishable under section 506 of the IPC and under section 3 (1)(xi) of the SC and ST Prevention of Atrocities Act, is confirmed.

v) Rest part of the impugned judgment and order is maintained.

vi) The appellant/accused to surrender to his bail forthwith before the learned Sessions Judge, Ahmednagar, to undergo remaining sentence imposed upon him.

[S . M . GAVHANE , J .]