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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL No. 69 OF 2016

Nitin Shamrao Patil	)
Age 30 years, Occupation Labour,	)
resident of Urun Islampur,	)
Taluka Walwa, District Sangli	)
Presently at Kolhapur Central Prison	)...Appellant
Versus	
The State of Maharashtra	)
through Islampur Police Station,	)
Dist. Sangli	)...Respondent

Mr. Nasreen S.K. Ayubi, Appointed Advocated for Appellant
Ms. P.N. Dabholkar, APP for the State.

CORAM : SMT.SADHANA S. JADHAV, J.

DATE : JANUARY 22, 2019

JUDGMENT:

1. The Appellant herein is convicted for the offence punishable under Section 376 of the Indian Penal Code and sentenced to suffer R.I. for seven years and to pay fine of Rs.25,000/-, in default, to suffer R.I. for one year. He is also convicted for the offence punishable under section 506 of the Indian Penal Code and sentenced to suffer R.I. for two years, in default, to suffer R.I. for two months by the Additional Sessions Judge, Islampur vide judgment and order dated 24th April, 2015 in

Sessions Case No. 3 of 2014. Such of the facts necessary for the decision of this appeal are as follows.

2. The Appellant happens to be the brother-in-law of the prosecutrix. On 14th August, 2013, the prosecutrix, who was residing with her mother and is the widow of the brother of the Appellant, lodged a report at Islampur Police Station alleging that she has got married in the year 2002 with the brother of the Appellant. She is a mother of two daughters. On 1st August, 2012, her husband had expired and since then she is residing in her maternal house. That on 13th August, 2013, at about 2.30 p.m., she was at her house with Sandip Jadhav (described as maternal cousin in the FIR), at that time, the present Appellant had been to their house to invite her for the first death anniversary of her husband which was falling on 20th August, 2013. He waited for some time and then left her house. Sandip Jadhav also left the house immediately. However, the Appellant returned back at about 4.00 p.m. He asked her to give water for drinking. He sat on the cot. The prosecutrix went to bring water, at that time, he closed the door and, thereafter, had committed forcible sexual assault upon her. He threatened her with dire consequences that in the eventuality she discloses it to anybody, he would kill her and

also her daughters. At 9.30 p.m. her mother returned home. However, she did not disclose it to her mother. At 11.30 p.m. Sanjip Jadhav had returned home. She had disclosed the incident to him. Thereafter, all three of them had been to the house of Shamrao Patil i.e. father-in-law of the victim and had disclosed to him about the incident. That her father-in-law did not pay any heed to her complaint and asked her to take appropriate steps. She, therefore, approached the police station and lodged a report. On the basis of the said report, Crime No. 153/2013 was registered at Islampur Police Station against the present Appellant for the offences punishable under section 376, 506 of the Indian Penal Code. After completion of the investigation, the charge-sheet was filed on 11th November, 2013. The case was committed to the Court of Sessions and registered as Sessions Case No. 3 of 204. The prosecution examined eight witnesses to bring home the guilt of the accused.

3. PW1 is the prosecutrix herself. She has deposed before the Court in consonance with the First Information Report. According to her, when she was disclosing the incident to Sandip Jadhav, her mother had overheard the same and, therefore, she decided to visit the house of the father-in-law and that her father-in-law was

adamant and, therefore, she was constrained to report to the police station. First Information Report is marked as Exhibit 15. On 15th August, 2013, PW1 was referred for medical examination at the Civil Hospital, Sangli. She was informed that she was carrying pregnancy of six weeks i.e. 1 and ½ months. Her supplementary statement was recorded. She and her mother had decided that she would get married to Sandip Jadhav after the death anniversary of her husband. She has admitted that she had consensual sexual intercourse with Sandip Jadhav as they were to get married. She had also disclosed to the police that Sandip Jadhav would be the biological father of the foetus. There was a scratch on her left side breast.

4. It is elicited in the cross examination that at the time of marriage with Santosh Patil, she was 14/15 years' old. Sandip Patil was a truck driver. They lived in a joint family consisting of 50 members. They had owned a two storied building and the brothers were separated. That Santosh and his uncle are the owners of the huge agricultural land in Urun, Islampur. There is no partition effected between the brothers and uncle inter se. That Santosh and Nitin belonged to a respectable family in Islampur. Out of nine uncles of Santosh, eight are cultivating their

agricultural lands. The Appellant herein is a father of 22 years' old son and 20 years' old daughter. Since marriage, the present Appellant is residing at Kolhapur and not at Islampur. Her elder brother-in-law Satish is mentally challenged. Therefore, Nitin i.e. the present Appellant is in-charge of all the transactions and the family affairs. There is no partition between her husband and his brothers. She has also admitted that the wife and son of the Appellant are also working and his daughter is taking college education. It is further elicited in the cross examination that Sandip Jadhav is not her maternal cousin, but, he is distantly related to her.

5. It is also elicited in the cross examination that Suvarna Patil is the one door neighbor of the prosecutrix. She has also admitted that there is a grocery shop towards southern side of her room, which is open till 10.00 p.m. There is no partition in their room. According to her, her marriage with Santosh was performed secretly. She has admitted that she had left the house of her father-in-law when her elder daughter was hardly one and ½ years' old. She had returned to her matrimonial house only after 20 months. Her husband used to remain outdoor at a stretch for 10/15 days. Her mother was working as a maid in the house of

Advocate Patil. She has admitted that Sandip Jadhav used to sleep on the cot in her house. That if anything happened in her house, it was easily audible in the kitchen of Suvarna Patil. She has also admitted that Santosh had died due to HIV positive. Since the death of her husband Santosh, she had not been to the house of her father-in-law. She has denied the suggestion that she wants the share of her daughters. She has also admitted that she would require money for education and medical treatment of her daughters. She has also admitted that when the Appellant visited her house in the afternoon, Sandip Jadhav was present in the house with her since she had come in contact with Sandip Jadhav within two months from the demise of her husband.

6. It is pertinent to note that according to her after medical examination, for the first time, she learnt that she was carrying pregnancy. She had married Sandip after the incident. She has denied the suggestion that the Appellant had seen her in a compromising position with Sandip Jadhav and she feared that he would disclose the same to the family members. In answer to the query of the Court, she has stated that she had not referred to her marriage with Sandip Jadhav in the FIR since she was not in mental condition.

7. PW1 has categorically admitted that she did not raise any hue and cry when she was caught hold by Nitin, who expressed his desire to have sex with her. She has denied the suggestion of false implication. That she had gone for medical examination in civil hospital, the gynecologist of Sub District Hospital, Islampur had directed her to take HIV test, she had refused to undergo HIV test.

8. Upon perusal of the evidence of PW1, it can be inferred that the contentions raised before the Trial Court did not form part of investigation.

9. PW2 Dr. Harshand Mane working as Medical Officer Ashta has stated before the Court that PW1 was referred to her. She had undergone UPT and the report was positive. She has produced the original certificate on record. The victim had given the history of amenorrhea for two months. She has placed on record the photocopy of Exhibits 19 and 20. She had issued medico legal certificate on 14.8.2013. On 17th August, 2013, the victim had been to the Sub-District Hospital, Islampur and she had given in writing that she is not ready and willing to undergo sonography and HIV test. The said application was attested and endorsed.

10. Exhibit 19 is the medical certificate. It shows that the victim

was suffering from pain. Left side chest, above left side aerola medial to axillary region. No other injuries were seen. The Medical Experts report was called and his diagnosis is black abrasion 1mm left side chest, above left aerola. The doctor has further opined that it is a case with history of amenorrhea for two months. The opinion of the medical experts is as vague, as possible as, it does not give a definite opinion. The certificate issued by the Sub-District Hospital, Islampur shows blackish colour abrasion of 1 mm. on left side chest. The nature of injury could not be described. However, it appeared to be a simple, non-significant injury.

11. PW3 Kanchan Ramchandra Khot, happens to be the mother of the prosecutrix. According to her at 9.30 p.m. when she returned home, she saw her daughter in nervous position. However, she did not disclose anything. The prosecutrix had informed her mother about the incident only after it was discussed with Sandip Jadhav and that Sandip had left the house within no time. Her evidence is in the nature of hearsay evidence. It was only after the medical examination that the prosecutrix had learnt that she had conceived pregnancy, she has concluded her examination-in-chief by stating that her daughter has borne a

child from Sandip Jadhav. It appears from her evidence that her daughter was in an abusive marital relationship. It is also admitted that within two months after the demise of her son-in-law, she had developed relations with Sandip Jadhav. She was not aware of the fact that her daughter was pregnant from Sandip Jadhav. She has also denied the suggestion that she had implicated the present Appellant in order to obtain the property of Santosh. It is also admitted that Sandip is doing labour work, he does not have any property. The brother of Nitin and family members had learnt about the relations between Sandip and prosecutrix. Doctor had advised the prosecutrix to undergo HIV test and sonography, which she had denied.

12. PW4 Nagesh Yeure and PW% are panchas for scene of offence and seizure of clothes.

13. PW6 Vijaykumar Gaikwad was attached to Islampur Police Station. He had investigated the offence. According to him, he had carried out the investigation in accordance with law. He had proved the omissions and contradictions in the evidence of PW1 and PW2. There is no reference to the minor scratch injury on breast of the victim in the FIR.

14. PW7 Shivaji Hawaldar is a police officer attached to

Islampur Police Station and PW8 Dr. Reshma Jadhav was attached as Gynecologist in Civil Hospital, Sangli. She examined the prosecutrix. There is no explanation as to why the certificate is not in the proper format.

15. In the statement of the accused, recorded under Section 313 of Cr.P.C., he has categorically stated in answer to Question No.9 i.e. last question that he had been to the house of the prosecutrix to invite her for the first death anniversary of her husband. At that time, he had found the prosecutrix. That the prosecutrix wanted partition but the property was in the name of the grand-father and, therefore, they could not execute partition. The prosecutrix has suspected that the Appellant would disclose what he saw to his family members and, therefore, he has been falsely implicated.

16. It is a matter of record that in fact on the day when the appellant visited the house of prosecutrix, she was in the company of Sandip Jadhav in a compromising position with Sandip Jadhav and hence the appellant was shocked. The said fact has been admitted by the prosecutrix as well as the accused. That he had left the house after he saw them in a compromising position and had not returned. In the same night, a story was concocted to implicate the present Appellant. The prosecutrix was carrying

pregnancy of 1 and ½ months from Sandip Jadhav. She had not disclosed about the incident to her mother. It is admitted that she was not shocked by the action of the Appellant and, therefore, had not raised any hue and cry. Naturally, there was no attempt to rescue herself. The medical certificates would clearly establish that she had refused to undergo HIV test and sonography. There are inherent omissions and contradictions in the evidence of the prosecutrix, so much that there is no reference about visit to the house of her father-in-law. There is no reason to discard the defence of the accused

17. The learned counsel appointed for the Appellant submits that the Appellant has been falsely implicated only for the purpose of obtaining landed property from the joint family and to secure the interests of the daughters of the victim.

18. There is no material on record to indicate that the present Appellant had indulged into an act as alleged by the prosecutrix. The prosecution has not examined Sandip Jadhav, a person to whom she had disclosed about the incident.

19. In view of the above discussion, the appeal deserves to be allowed.

20. Hence, the following order:

ORDER

- (i) Appeal is allowed and stands disposed of.
- (ii) The judgment and order dated 24th April, 2015 passed by the Additional Sessions Judge, Islampur in Sessions Case No. 3 of 2014 is quashed and set aside and the Appellant is acquitted of the offence punishable under Section 376 and 506 of the Indian Penal Code. He be released forthwith if not required in any other offence.
- (iii) The Learned counsel appointed for the Appellant has put in the best of her efforts to espouse the cause of the Appellant, hence, she is entitled for her professional fees as per Rules, to be paid by High Court Legal Aid Committee.

[SMT.SADHANA S. JADHAV, J.]