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

CRIMINAL APPEAL NO.900 OF 2010

Balus Vilas Gajbhiv Age 30 years, Occ. Driver, R/At Behind Boudha Vihar, Gandhinagar Zopadpatti, Pimpri, Pune and Erandgaon, Tal. Shevgaon, District – Ahmednagar.	...Appellant (Original Accused)
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Versus

The State of Maharashtra Through Pimpri Police Station District – Pune.	...Respondent (Original Complainant)
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Mr.Vijay Killedar, for the Appellant.

Mr.S.V.Gavand, A.P.P. for the Respondent - State.

CORAM : REVATI MOHITE DERE, J.

DATE : 10th APRIL, 2019

ORAL JUDGMENT :

1. The Appellant vide Judgment and Order dated 12th November, 2010, passed by learned Additional Sessions Judge, Pune, in Sessions Case No.604 of 2006, has been convicted and sentenced as under:-

- for the offence punishable under Section 376 of the Indian Penal

Code to suffer rigorous imprisonment for 7 years and to pay fine of Rs.5,000/- in default, to suffer further rigorous imprisonment for 6 months;

- for the offence punishable under Section 342 of the Indian Penal Code to suffer rigorous imprisonment for 6 months;

- for the offence punishable under Section 452 of the Indian Penal Code to suffer rigorous imprisonment for 3 years and to pay fine of Rs.1,000/- in default, to suffer further rigorous imprisonment for 1 month.

The sentences were directed to run concurrently.

2. The prosecution case in brief is as follows:-

According to the prosecution, the incident took place on 1st June, 2006, at about 11.00 a.m. to 12.00 noon. It is alleged that the appellant entered the house, gagged PW2 (prosecutrix), laid her on cot, pressed her neck, lifted her frock and committed rape on her, as a result of which, PW2 (prosecutrix) became unconscious. The prosecutrix's sister, aged 9 years informed PW4, her neighbour, pursuant to which, PW4 and PW5 (both neighbours) went to PW2's (prosecutrix) house and found her on the bed in an unconscious and naked condition. PW2 narrated the

incident of rape to PW1, PW4 and PW5, pursuant to which, she was take to the police chowky. As there was pain in her private part, PW2 (prosecutrix) was admitted to the Y.C.M. Hospital, Pimpri, Pune, where the police recorded her statement. The FIR was lodged by PW2's sister i.e. PW1. The appellant was arrested by the neighbours on the very same day, soon after the incident of rape. During the course of investigation, PW2's (prosecutrix) clothes were seized under a panchanama and so were the clothes of appellant. After investigation, police filed charge sheet as against the appellant in the Court of the learned JMFC. Since the offence under Section 376 of Indian Penal Code was triable by the Sessions Court, the case was committed to the Court of Sessions.

The learned Additional Sessions Judge, Pune, framed charge as against the appellant, who pleaded not guilty and claimed to be tried.

The prosecution in support of his case examined 14 witnesses. The prosecutrix, the complainant, neighbours, panchas, doctor and the Investigating Officer.

The defence of the appellant was that of total denial and false implication. It was tried to be suggested that it was a case of consent.

The learned Additional Sessions Judge, Pune, after considering

the evidence on record, vide Judgment and Order dated 12th November, 2010, convicted and sentenced the appellant, as mentioned in paragraph 1 of this Judgment.

3. Learned Counsel for the appellant submitted that the appellant has been falsely implicated in the said case. He submitted that the learned Additional Sessions Judge, Pune, had rightly observed that the prosecution had failed to prove the date of birth i.e. the age of the prosecutrix. He submitted that there are certain discrepancies *inter se* between the evidence of PW1 and PW2, PW4 and PW5. He further states that it appears to be a case of consent.

4. Learned APP supported the impugned Judgment and Order of conviction and sentence and submitted that no interference was warranted in the same.

5. Heard learned counsel for the parties and perused the papers with the assistance of the learned counsel.

6. The evidence of the prosecutrix (PW2) shows that she was at home when the incident took place on 1st June, 2006, at about 11.00 a.m. She has stated that she was present at the house, along with her two sisters and her married sister's two children. According to her, the door was open, pursuant to which, the appellant entered the house, gagged her mouth, laid her on the cot, pressed her neck, lifted her frock and committed rape on her, against her wish, pursuant to which, she became unconscious. She has stated that prior to committing rape, the appellant drew her sisters and her sister's children out of the house and closed the door from inside. She has stated that she did not know when the appellant left the house, as she had become unconscious and that when she re-gained consciousness, she saw that some ladies from Mahila Mandal had come to her house and were serving her water. PW2 (prosecutrix) has further stated that she narrated the said incident to the ladies. She has stated that as there was pain in her private part, she was taken to the police chowky, who referred her to Y.C.M. Hospital, Pimpri, Pune, where she was admitted for about 12 days. She has identified the appellant as being the person who ravished her. Although PW2 (prosecutrix) was cross examined extensively, there is nothing on record, to discredit or disbelieve her testimony. PW2

(prosecutrix) in her cross examination has stated that on re-gaining consciousness, she narrated the incident first to PW4 – Munni Shaikh and others. She has also admitted that there was no inimical relations between her and the appellant's/accused family.

7. PW2's (prosecutrix) evidence is duly corroborated by her sister (PW1), who lodged the complaint/FIR, as against the appellant, pursuant to the disclosure made to her by PW2. PW1 has stated that she was at work, when PW4's daughter and her younger sister, aged 9 years, came where she was working and informed her that the appellant had raped PW2, pursuant to which, she immediately rushed to the house. The evidence of PW1 is consistent with that of PW2 (prosecutrix).

8. PW4 and PW5 are the neighbours, who rushed to the house of PW2, after the incident took place, on being informed by PW 2's younger sister, aged 9 years. According to PW4, PW2's younger sister asked her to come to their house and that when she went, she saw PW2 (prosecutrix) lying on the bed with blood oozing from her private part. She has stated that PW2 (prosecutrix) narrated her that the appellant had rape her,

pursuant to which, she informed the other persons in the vicinity, who apprehended the appellant. PW5 also a neighbour has also corroborated the said statement of PW4.

9. There is nothing in the cross examination of any of the witnesses to disbelieve their testimony. No foundation is laid by the appellant in the cross examination of any of the witnesses, why any of the witnesses would falsely depose as against him. The appellant's clothes which were seized soon after the incident were found to be bloodstained. Although, the blood grouping is inconclusive, what was found was human blood. No explanation is afforded by the appellant, as to how blood had appeared on his clothes.

10. PW7 – Dr. Meena Kharat examined the prosecutrix, soon after the incident. She has stated that she found a laceration of approximately 1 cm, superficial red in colour, in libia majora and libia minora. She has stated that the injury was because of slightest attempt of partial penetration and not complete penetration.

11. The evidence on record clearly shows the complicity of the Appellant. Thus, no infirmity can be found in the impugned Judgment and Order, convicting and sentencing the Appellant as aforesaid.

12. Accordingly, the Appeal is dismissed.

REVATI MOHITE DERE, J.