

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 507 OF 2013**

Samundersing Mahipal Sing,
Age : 30 years, Occ.: Service,
Residing at 17, Rajrif, Sawaiman
Aundh Camp, Pune
(At present lodged in Yerawda Central Prison, Pune 411 006) ...Appellant
(Orig. Accused No.1)
Versus
The State of Maharashtra ...Respondent
(At the instance of Sangavi Police Station,
Pune)

**WITH
CRIMINAL APPEAL NO. 1465 OF 2018**

Rajnishkumar Sureshchandra Kumar,
Age : 30 years, Occ.: Service,
Residing at 17, Rajrif, Sawaiman
Aundh Camp, Pune
(At present lodged in Yerawda Central Prison, Pune 411 006) ...Appellant
(Orig. Accused No.2)
Versus
The State of Maharashtra ...Respondent
(At the instance of Sangavi Police Station,
Pune)

Mr. Shirish Gupte, Sr. Advocate I/b Mr. Abhaykumar Apte for the Appellant
in Appeal/507/2013

Mr. Hrishikesh Mundargi a/w Ms. Shraddha Sawant for the Appellant in
Appeal/1465/2018

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

CORAM : REVATI MOHITE DERE, J.
WEDNESDAY. 27th MARCH 2019

JUDGMENT :

1 By these appeals, the appellants have impugned the judgment and order dated 6th May 2013 passed by the learned Additional Sessions Judge, Pune, in Sessions Case No. 639/2010, convicting and sentencing them as under :

- for the offence punishable under Section 376(2)(g), to suffer RI for 10 years and to pay Rs. 5,000/- each, in default, to suffer RI for 1 years;

- for the offence punishable under Section 506(ii) r/w 34 of the IPC, to suffer RI for 5 years and to pay a fine of Rs. 5,000/-, in default, to suffer further RI for 6 months;

Both sentences were directed to run concurrently.

The accused were, however, acquitted of the offences punishable under Section 394 r/w 34 of the IPC.

2 The prosecution case in brief is as under :

According to PW 1 (prosecutrix), the incident took place on 7th April 2010, when she had gone to meet her boyfriend-Salman (PW 5) near Pimpale Saudagar, at around 8:30 p.m. She has stated that she was accompanying PW 5, who was going to bring petrol for his bike, when both the appellants came towards them. PW 1 has stated that the appellants took them to an open courtyard and thereafter, she was taken to a ditch, where both the appellants, one after the other, sexually assaulted her. PW 5-Salman is stated to have been assaulted by the appellants, as a result of which, he became unconscious at the spot. The appellants are alleged to have threatened PW 1 and PW 5 that they should not inform the incident to the police. On 8th April 2010, PW 1 along with PW 5 went to the Sangavi Police Station and narrated the incident to the police, pursuant to which, a complaint/FIR was registered (Exhibit 38). PW 1 was thereafter taken to the Yashwantrao Chavan Memorial Hospital ('YCM Hospital'), however, was asked to come on the next day. Accordingly, PW 1 was

taken to the YCM Hospital on 9th April 2010, where she was medically examined and the samples of her nail clipping, blood and vaginal swab, etc. were collected. On the basis of the FIR lodged by PW 1, the investigation commenced, and the appellants were arrested. Test identification parade was held on 2nd May 2010, in which, PW 1 identified the appellants. The blood sample, etc. of the appellants were collected and the clothes of the prosecutrix as well as the appellants were seized under a panchanama.

After investigation, charge-sheet was filed in the Court of the learned Judicial Magistrate First Class. Since the offence under Section 376(2)(g) was triable by the Sessions Court, the case was committed to the Court of Sessions. The learned Sessions Judge framed charge as against the appellants for the offences punishable under Sections 376(2)(g), 394, 506(ii) of the Indian Penal Code ('IPC').

The appellants pleaded not guilty to the said charge and claimed to be tried.

The prosecution, in support of its case, examined 9 witnesses- PW 1 (prosecutrix, aged 19 years at the relevant time), PW 2-Dr. Meena Kharat, the Medical Officer at YCM Hospital, who examined the prosecutrix; PW 3-Dr. Madhuri Deshpande, who examined PW 5; PW 4-Mahadeo Kachi, panch to the seizure of clothes of the prosecutrix (hostile), PW 5-Salman Usmano (PW 1's boyfriend); PW 6-Kiran Madane, panch to the seizure of clothes of appellant No.1; PW 7-Jainath Kate, panch to the spot panchanama; PW 8-PSI Digambar Jadhav, Investigating Officer, who recorded the FIR; and PW 9-PI Bhagwat Sonawane, who conducted the investigation.

The defence of the appellants was that of total denial and false implication.

The learned Sessions Judge, after considering the evidence on record, convicted and sentenced the appellants as stated aforesaid in para 1.

3 Mr. Gupte, learned senior counsel for the appellant No. 1 submitted that the appellants have been falsely implicated in the said case. He submitted that the conduct of the prosecutrix, prior, at the time of the incident and post incident, renders her evidence with respect to sexual assault by the appellants on her, doubtful. He further submitted that the incident of sexual assault by the appellants also becomes doubtful, considering the prosecutrix's admission that post the sexual assault on her by the appellants and prior to the registration of the FIR, she had physical relations with her boyfriend (PW 5). He submitted that the FIR has been lodged belatedly, after deliberation on the next day i.e. on 8th April 2010. He further submitted that the test identification parade cannot be relied upon, inasmuch as, the prosecutrix as well as PW 5 had the opportunity to see the appellants at the police station, soon after their arrest and as such, reliance cannot be placed on the said test identification parade. He further submitted that the medical certificate shows that there were no injuries on the person of the prosecutrix, thus, belying the prosecutrix's case that she was taken near a ditch, where she was sexually assaulted by the appellants. He further submitted that the

prosecutrix and PW 5 have falsely implicated the appellants, as the prosecutrix and PW 5 were caught behaving indecently in the military area and as such were reprimanded by the military men. According to the learned senior counsel, feeling humiliated, a false complaint was lodged against the appellants. He further submitted no disclosure of sexual assault was made by the prosecutrix either to PW 5 or to her parents. He further submitted that the spot where the incident took place is far away from her residence and that there was no reason for the prosecutrix to come near Pimpale Saudagar. Learned counsel further submitted that the injuries sustained by PW 5 were not sufficient to make him unconscious, thus, belying the case of the PW 1, that he was assaulted by the appellants, as a result of which, he became unconscious. Alternatively, learned senior counsel submitted that the evidence on record does not suggest that it was a case of consent, inasmuch as, the prosecutrix had deposed that the appellants had called her on the next day and offered her money.

4 Mr. Hrishikesh Mundargi adopted the submissions advanced by learned senior counsel Mr. Gupte. He further submitted that as far as

appellant No. 2 is concerned, the DNA report does not show his complicity, as the report is inconclusive. He submitted that even the questioning of the appellant No. 2 under Section 313 was mechanical and that though the DNA report was not incriminating as against the appellant No. 2, the said question was put to appellant No. 2.

5 Mr. Gavand, learned A.P.P submitted that no interference was warranted in the impugned judgment and order. He submitted that the prosecutrix was a young girl aged 19 years, who had gone to meet her boyfriend (P.W.5) near Pimpale Saudagar on 8th April 2010, when the incident took place. He submitted that considering the threats extended by the appellants and considering her age, she did not report the incident immediately i.e. on 7th April 2010. He submitted that it is only when the appellants started calling her on her mobile that she went to the police station along with PW 5 and lodged an FIR against the accused. He submitted that there was no reason for PW 1 and PW 5 to falsely implicate the appellants, inasmuch as, the said appellants were not known to them prior to the incident. He submitted that the DNA report clearly corroborates the prosecutrix's evidence that she was sexually assaulted.

Learned A.P.P further submitted that there is no delay in lodging the FIR, having regard to the peculiar facts of this case and the explanation offered by the prosecutrix in this regard. He further submitted that the prosecutrix was immediately taken to the YCM Hospital on the day when she lodged the FIR i.e. 8th April 2010, however, the doctor on duty asked the police to bring the prosecutrix on the next day i.e. on 9th April 2010, on which date, she was examined by the doctor. Learned A.P.P relied on the judgment of the Apex Court in the case of ***Bharwada Bhoginbhai Hirjibhai v. State of Gujarat***¹, in support of his submission.

6 Heard learned counsel for the parties. Perused the evidence with their assistance.

7 With regard to the incident of sexual assault, the evidence of PW 1 and PW 5 is material.

8 PW 1 (prosecutrix) was aged 19 years at the relevant time. She has stated that she was residing in a hutment near Chinchwad Station

1 AIR 1983 SC 753

with her mother, brother and sister; that for some time, she had worked as a maid servant at Chinchwad, however, had quit, as she received less payment. She has stated that one of her friend introduced her to PW 5, pursuant to which, she started meeting him often and their friendship developed into a love affair. According to PW 1, PW 5 called her on 7th April 2010 near a hotel at Pimpale Saudagar; that she went to meet PW 5 at about 8:30 p.m; that as the petrol in PW 5's bike was over, he asked her to wait near the bridge; that she informed him that she will accompany him to bring petrol; that at that time, both the appellants came towards them and asked PW 5 what he was doing there; that one of the accused took out the key from the motorbike and took them to an open courtyard; and that one of the accused asked PW 5 to wait near the open courtyard. PW 1 has further stated that one of the accused was wearing a military uniform and the other was wearing a banian; that the accused who was wearing the military uniform (appellant No. 2) asked her to accompany him in the ditch; that the said person inquired her name and address and told her that he wanted to do something with her, however, she refused and hence, the said person left the spot and sent the other person who was wearing a banian (appellant No.1) towards her; that the said person told her to witness

PW 5 lying on the spot, as he was assaulted by him; that the appellant No. 1 asked her to have physical relations with him and forcibly made her remove her clothes; that he forcibly raped her by using a condom; that he told her that he was going to send the other accused (appellant No.2) and asked her to allow him to have physical relations with her; that thereafter, the other accused (appellant No.2) who was in military clothes, came towards her and forcibly raped her without a condom; then the said person asked her to wear her clothes and come to the spot, where PW 5 and the other accused (appellant No.1) were. She has stated that when she came to the spot, she saw PW 5-Salman lying on the spot. She has further stated that thereafter, both the appellants took her mobile number and saved her number in their mobiles and inquired with her about her bank account, to which, she informed that she had no bank account. She has stated that after the incident of sexual assault by the appellants, she and PW 5-Salman left the spot for their respective homes. She has further stated that thereafter, at 11:00 p.m, she received a phone call from the accused, who asked her to visit on the same spot on the next day along with her four girl friends and offered to pay her Rs. 40,000/-; that the said person also instructed her not to inform the incident to police and that if she informed, they would shoot

her down. She has further stated that on the next day at about 8:30 a.m, she received a call from PW 5-Salman, who asked her to see him. Accordingly, she met him at Chinchwad. She has stated that he inquired with her about what had taken place on the previous night, pursuant to which, she narrated the entire incident that had occurred. PW 5 informed her that he also had received a phone call from the accused in the night and apprehending danger to their lives from the appellants-accused, suggested that they lodge a report with the police. Accordingly, on 8th April 2010, PW 1 along with PW 5 went to the Sangavi Police Station and narrated the entire incident to the police. The FIR is at Exhibit 38. According to PW 1, she was sent to YCM Hospital at about 11:00 p.m, but the doctor instructed the constable to bring her to the Hospital on the next day, pursuant to which, she was again taken to the YCM Hospital on 9th April 2010 at about 10:00 to 10:30 a.m. She has stated that she narrated the history to the Medical Officer and that she was medically examined and samples of her nail clipping, blood, vaginal swab, etc. were collected. She has further stated that she was called to the Yerwada Jail to identify the accused on 2nd May 2010, and that she identified both the accused.

The tenor of the cross-examination of the prosecutrix is to suggest that no such incident as alleged by her, took place on 7th April 2010 and to discredit her testimony. The prosecutrix, in her cross-examination, has admitted that in her presence, the accused were arrested and brought by the police in the police station on 8th April 2010. She has also admitted that when she reached home on 7th April 2010 at about 11:00 p.m, she did not narrate the incident to any of her family members, including her mother, though she was at home, till lodging of the report. Although, it was sought to be suggested to the prosecutrix that she had never been to the spot of the incident and that no incident of rape had taken place and that she was deposing falsely, she has denied the same. She has also denied the suggestion that on 8th April 2010, she and her friend had been to the Military area at night and were behaving indecently, pursuant to which, they were assaulted by the military personnel and hence, a false complaint was lodged against them.

9 The evidence of PW 5-Salman with respect to the incident dated 7th April 2010 and 8th April 2010 corroborates the evidence of the

prosecutrix. According to PW 5, he had called PW 1 to meet him on 7th April 2010, when the alleged incident took place. He has stated that he was pulling his motorcycle, as the petrol was over, when two persons came towards them, one was in a military uniform and the other had worn a banian and night pant; that the person who was in military uniform, removed the key from his motorcycle and inquired what they were doing on the spot; that the said person pushed his motorbike on the ground; that he was armed with a stick; that the said person assaulted him with a stick; that the other person wearing a banian, held his collar and took them towards the open ground, where there was a ditch; that he heard PW 1 shouting, pursuant to which, she was asked not to shout, as it was a military area; that the person who was in the banian, kicked him on his face, waist and back and the other accused assaulted him with a stick; that due to the said incident, PW 1 was frightened and due to the assault on him, he fell down and became unconscious and regained consciousness after some time, only to notice that PW 1 was sitting next to him and was weeping; that PW 1 informed him that both the persons threatened her with dire consequences and raped her one after the other; that he instructed PW 1 not to do anything, as the people involved were military men; and that

thereafter, he dropped PW 1 at her house and went to his own house. PW 5 has further stated that on the next day i.e. on 8th April 2010, he received a phone call from PW 1 informing him that the military men had called her on her mobile and asked her to come on the spot. He has stated that when he was assaulted by the two persons, their cell phones were withdrawn by them and the accused had taken their numbers and had accordingly called PW 1. He has stated that they decided to lodge a complaint with the police and accordingly, he took PW 1 to the Sangavi Police Station at about 8:00 – 8:30 p.m. He has stated that after two months, he was called to Yerwada Jail to identify the accused. PW 5 identified the accused in the test identification parade as well as in the Court.

Certain omissions were sought to be brought on record but the said omissions are minor omissions and would not affect the substratum of the prosecution case and as such, much importance cannot be given to the same. PW 5 specifically, in his cross-examination, has stated that before the incident, he had no occasion to witness the accused. Similarly, after the incident, and prior to the test identification parade, he had no occasion to witness the accused. PW 5 was also sent to Aundh Government Hospital

for medical examination, as he too had suffered injuries on his person in the said incident.

10 As far as the medical evidence with respect to sexual assault on the prosecutrix is concerned, the prosecution has examined PW 2-Dr. Meena Kharat. PW 2-Dr. Kharat was the Medical Officer attached to the YCM Hospital, Pimpri, at the relevant time, as a Gynecologist. She has stated that PW 1 gave her details and narrated the history with respect to the incident of 7th April 2010, which took place at around 9:30 p.m, when she was with her boyfriend (PW 5) in the military area. PW 2-Dr. Kharat has stated that PW 1 had also narrated history of sexual intercourse with her boyfriend, the last intercourse being on 8th April 2010 at 4:00 p.m, with her boyfriend, with her consent and willingness. She has further stated that PW 1 had disclosed to her that on 7th April 2010 at 9:30 p.m, when she was with her boyfriend in the military area, two unknown persons, out of whom, one was in the military uniform and other was in banian, came to the spot, forcibly took her away from her boyfriend; threatened her and then assaulted her boyfriend (PW 5) and thereafter raped her one after the other. PW 2-Dr. Kharat found one scar on left hand below little finger and

other scar on left hand wrist. No injuries were found on her person. However, her hymen was torn and was irregular. Samples of her blood discharge, vaginal discharge were collected. PW 2-Dr. Kharat opined that in her opinion, there was sexual intercourse with the prosecutrix. Samples were also collected for DNA test and thereafter, PW 1 was discharged from the Hospital on 13th April 2010.

In her cross-examination, PW 2-Dr. Kharat has admitted that in the medical examination report of PW 1, there is no mention that out of two persons, one person was in military uniform and other was in civil uniform, states that the entry of the same has been made in the case papers. The said witness has denied the suggestion that she was deposing falsely at the instance of the police and that no such samples were collected.

11 Dr. Madhuri Deshpande was examined as PW 3. She was attached as a Medical Officer to the Aundh General Hospital, Pune. She has stated that on 9th April 2010, PW 5-Salman was brought by the police for medical treatment with history of assault on 7th April 2010 at 9:30 p.m. On medical examination, she has noted the injuries found on P.W. 5 i.e. a

superficial abrasion on left chest near shoulder (4 abrasions 7 x 0.1 cm); 3 superficial abrasions over left shoulder (5 x 0.3 cm, 5 x 0.1 cm, and 3 x 0.1 cm); superficial abrasions over back left side near shoulder (7 x 0.1 cm); superficial abrasion on right chest and shoulder (12 x 0.1 cm). The medical certificate is at Exhibit 44. She has stated that the said injuries could have been caused by stick. PW 3 denied the suggestion that she had issued a false certificate at the instance of the police. Insofar as non-mentioning of history of assault in the MLC papers is concerned, PW 3 has stated that as there was no column in Exhibit 44 to mention history of assault, it was not mentioned in the certificate Exhibit 44, however, the same was mentioned in the MLC register. A perusal of the MLC register (Exhibit 44) shows that there is mention of history of assault on 7th April 2010 at 9:30 p.m and the injuries sustained by PW 5.

12 PW 7 – Jainath Kate is the panch to the spot panchanama, where the incident of sexual assault took place on the prosecutrix. PW 7- Jainath has stated that on 9th April 2010 at about 8:00 to 9:00 a.m, he was called by Sangavi Police at Pimpale Saudagar in the military area; that there was one ditch of 11 x 30 x 5 ft. along with heap of earth; that on

inspection of the said ditch, one used condom and one unused condom, one lipstick, 2 coins of Rs. 1/- were found; that in one condom, there was semen, which was collected by the police; thereafter, the seized property was sealed and a panchanama was drawn on the spot (Exhibit 50).

There is nothing noteworthy which has come in the cross-examination of the said witness to disbelieve his testimony with respect to finding of articles at the spot. Certain cloth pieces found on the spot were also seized.

13 PW 8 – Digambar Jadhav was attached to Sangavi Police Station as PSI. He has identified his signature on the complaint/FIR (Exhibit 38), pursuant to which, he registered C.R. No. 153/2010 with the Sangavi Police Station, Pune. He has stated that soon after the registration of the report, the prosecutrix produced her black colour odhani, black colour ladies jean trouser, black colour full T-shirt, black colour underwear; that the said property was seized in the presence of PW 4- Mahadeo Kachi and another panch Suhas Joshi; that the said articles were seized and sealed and a panchanama was drawn in the police station (Exhibit 55). He has

stated that the said muddemal clothes were deposited with the muddemal clerk of the police station. He has identified the clothes i.e. articles 1 to 4 as being the same clothes. He has further stated that on 9th April 2010, the spot where the incident of sexual assault took place was shown by PW 5-Salman, i.e. it was near a vacant ground belonging to the military; that there was one ditch of 30 x 11 x 5 ft. and that in the said ditch, one used condom, part of its cover, lipstick, chewing gum one coin of Rs. 2/- etc. were found; that an investigation car was summoned on the spot and the articles lying on the spot were shown to Mr. Mali and Mr. Binawade and with the help of the said experts, the articles were collected; that in the used condom, semen was found and the same was collected. Accordingly, the property was seized under a panchanama (Exhibit 50).

The tenor of the cross-examination of the said witness is to show that PW 1 had come alone to the police station on 8th April 2010 at 8:00 p.m, pursuant to which, a report was taken. The said witness has admitted that although there were phone calls made by the appellants to the prosecutrix on 8th April 2010, no inquiry was made by him with regard to the same. The said witness has denied the suggestion that the FIR was

ante-timed; that the spot panchanama was not prepared in the presence of panchas and that no property as alleged was seized by the police.

14 PW 9 – Bhagwat Sonawane was attached to the Sangavi Police Station as PI at the relevant time. He has stated that he was present at the time when PW 1 lodged a report/FIR on the basis of which CR No. 153/2010 was registered by PSI Digambar Jadhav (PW 8). He has stated that although the prosecutrix was sent to YCM Hospital for medical examination on 8th April 2010 itself, she was not medically examined and was asked to return on the next day i.e. 9th April 2010. He has stated that on 9th April 2010, the prosecutrix was again taken to YCM Hospital for medical examination. He has stated that he recorded the statement of PW 5-Salman on 9th April 2010. He has stated that before the investigation was handed over to him on 9th April 2010 at 10:00 a.m., both the accused were arrested by PW 8-Digambar Jadhav and both the accused were referred for medical examination. Both the appellants have admitted their medical examination and hence, the Certificates were exhibited as Exhibits 65 and 66. The clothes of the appellants were also seized under a panchanama on 9th April 2010 and were deposited with the Muddemal Clerk. On 12th April

2010, two letters were sent to the YCM Hospital, Pimpri, for collecting DNA samples of the appellant-accused and accordingly, on 13th April 2010, the samples of the appellants were collected and all the collected samples were sent to the Chemical Analyser ('CA'), Kalina, Mumbai. He has stated that on 21st June 2010, he received the DNA samples from CA, Kalina, Mumbai (Exhibit 64). He has also deposed about the test identification parade, which was held on two different dates i.e. on 2nd May 2010 (when PW 1 identified the appellants) and on 26th June 2010 (when the identification parade was held for PW 5).

There are certain omissions and contradictions which are brought on record in the cross-examination of PW 9. However, the said contradictions/omissions are not so material that they affect the substratum of the prosecution case.

15 The injury certificates of the appellants have also been exhibited as Exhibits 55 and 56. The injury certificate (Exhibit 55) of appellant No.1-Samundersing Mahipal Sing showed that he had sustained superficial abrasions on left elbow laterally reddish $\frac{1}{2}$ cm x 0.1 cm and 4

superficial abrasions on the right back i.e. 3 cm x 0.1 cm (3 abrasions) and 1 cm x 0.1 cm (4th abrasion). The semens as well as blood samples of the appellant No. 1 was taken during the medical examination and as noted above, the said certificate has been admitted. The injury certificate (Exhibit 56) of appellant No.2-Rajnishkumar Sureshkumar Kumar showed no injury on his private part. The samples of appellant No.2's pubic hair, semen, blood samples as well as nails of his both hands were taken during the medical examination and as noted above, the said certificate has been admitted.

16 Much ado was made by the learned senior counsel for the appellants with respect to the conduct of the prosecutrix (PW 1) i.e. her conduct was unnatural post the incident of sexual assault, non-disclosure of such a serious incident to her family members, etc. The evidence of the prosecutrix was also assailed on the ground that there were discrepancies in her evidence, when compared to the evidence of PW 5. The evidence of the prosecutrix will have to be viewed having regard to the totality of circumstances in which the incident took place. The prosecutrix was about 19 years of age and PW 5, her boyfriend, was around 23 years of age.

They were in love with each other and as a result of which, they would meet each other. On the day of the incident i.e. on 7th April 2010, the prosecutrix had gone to meet PW 5, when both of them were stopped by the appellants; they were taken to an open courtyard i.e. in the military area, where PW 5 was assaulted (the medical certificate and the evidence of PW 3-Dr. Madhuri Deshpande corroborates the same), after which, the prosecutrix was taken in the ditch, where she was sexually assaulted one after the other by the appellants. The finding of condoms at the spot gives credence to the prosecutrix's evidence. The spot panchanama as well as evidence of PW 7-Jainath Kate (panch to the spot panchanama) and PW 8 – PSI Digambar Jadhav show that at the spot, where the sexual assault took place on the prosecutrix, condoms and certain other articles were found. The aforesaid evidence is fortified by the DNA report (Exhibit 64) as well as CA report (Exhibit 13), which are on record. Exhibit 13 (CA report) shows that Exhibit 1 (condom), Exhibit 2 (cloth piece), Exhibit 3 (cloth piece) and Exhibit 10 (jeans pant) were sent for DNA analysis being MLC Case No. DNA-149/2010. The result of the analysis of the aforesaid exhibits reads as under :

“Report for DNA analysis, please refer FSL ML Case No.DNA-142/2010.”

17 It is also pertinent to note that certain other articles i.e. blood of the prosecutrix, her vaginal swab, nail clippings as well as the blood and semen of both the accused were sent to the Chemical Analyser. The result of the analysis of all the articles as stated aforesaid shows that the DNA extracted from control samples of the prosecutrix and both the accused, prosecutrix's vaginal swab, nail clippings, suspected semen stains detected on Exhibits 1, 2, 3 and 10 of FSL ML Case DNA-149/2010 shows that Exhibit 3 (nail clipping) of FSL ML Case DNA-149/2010 gave female DNA profile, which matched all the obligate alleles present in the DNA profile obtained from the blood sample of the prosecutrix. Similarly, all the 15 different STR loci analysed with PCR Exhibit 1 (condom) of FSL ML Case DNA-149/2010 gave male DNA profile which matched all the obligate alleles present in the DNA profile obtained from the blood sample of appellant No.1-Samundersing. Similarly, all the 15 different STR loci analysed with PCR Exhibit 3 (clothe piece) of FSL ML Case DNA-149/2010 gave mix DNA profile which matched all the obligate alleles

present in the DNA profile obtained from the blood samples of the prosecutrix and the appellant No.1-Samundersing. Similarly, all the 16 different Y-STR loci analysed with PCR the DNA profile obtained from Exhibit 1 (condom) and Exhibit 3 (cloth piece) of FSL ML Case DNA-149/2010 matched all the obligate alleles present in the DNA profile obtained from the blood sample of appellant No.1-Samundersing.

18 It is thus evident that the evidence of the prosecutrix, her boyfriend (PW 5), the spot panchanama and the evidence of PW 6- Kiran Madane (panch) and PW 8- PSI Digambar Jadhav (IO), coupled with the CA report and the DNA report, clearly show the complicity of the appellants in the offence.

19 As noted above, the prosecutrix was a young girl aged 19 years, coming from a lower strata of the society having gone to meet her boyfriend, without informing at home, when she was sexually assaulted and therefore, under these circumstances, non-disclosure to her parents when she returned home, would not lead to an inference that no such incident took place. It appears that it is only when the appellants tried

calling her again, that she gathered courage and went to the police station along with PW 5 to lodge a complaint. Thus, it cannot be said that the complaint lodged by the prosecutrix is an afterthought, lodged after due deliberation. Infact, there is nothing on record to indicate that there was any grudge or any reason for the prosecutrix or PW 5 to falsely implicate the appellants, whom they had never seen or met prior to the incident. No doubt, there are few discrepancies and contradictions in the evidence of the prosecutrix and PW 5, however, the said discrepancies/contradictions are not such that go to the root of the matter and shake the basic foundation of the prosecution case, and therefore, the said discrepancies cannot be given undue importance. More so, it cannot be lost sight of, that in a case of sexual assault, prosecutrix/victim cannot be expected to recall the incident and sequence of events, which took place in rapid succession or in a short time span, with mathematical accuracy. If the evidence of the prosecutrix and PW 5 is seen, things happened in quick succession,; that there was no time for anyone to contrive and confabulate against the appellants, who were admittedly unknown to them, prior to the incident. The evidence of the prosecutrix cannot be said to be fundamentally improbable. Promptness in FIR in a case like this and explanation for not lodging an

FIR on the very day, but on the next day, coupled with wealth of details in the FIR, lends credence and assurance, that the incident of sexual assault happened. Needless to state, that corroboration is not a *sine-qua-non* for a conviction in a rape case, neither absence of injuries would show that no sexual assault has taken place. All these factors will have to be assessed keeping in mind the facts of the particular case. Similarly, merely because the prosecutrix has admitted in her cross-examination that she had physical relations with PW 5 prior to lodging of the complaint/FIR i.e. on 8th April 2010, would not discredit her testimony. In the present case, the evidence of the prosecutrix is duly corroborated by the medical evidence, CA report and the DNA report. It is not the case of the appellants that it was a case of consent, but to the contrary, their case is that no such incident had taken place. The facts disclose that the prosecutrix was a young, unmarried girl, who would not take the risk of falsely implicating the appellants, unless the said persons were responsible for the incident. The same is evident from her non-disclosure of the incident to her parents on 7th and it was only when the appellants called her again, she and PW 5 gathered courage to lodge the complaint. Testing the evidence from this perspective, the evidence of PW 1 and PW 5 inspires confidence. Although it was suggested to the

prosecutrix that she and her boyfriend (PW 5) were behaving indecently in the military area, pursuant to which, military men assaulted them and that out of vengeance, a false complaint was lodged by the prosecutrix, the said defence is noted only to be rejected, in the light of the overwhelming evidence that has come on record pointing to the complicity of the appellants.

20 Considering the aforesaid, there is no merit in the appeals. Accordingly, the appeals are dismissed and the judgment and order dated 6th May 2013 passed by the learned Additional Sessions Judge, Pune, in Sessions Case No. 639/2010, is confirmed.

REVATI MOHITE DERE, J.