

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

CRIMINAL APPEAL NO.221 OF 2017

Ramdas Gendev Reddy,
age 27 years, Occu, : JCB Driver,
R/o gondhalwadi, Taluka Tuljapur,
District Osmanabad

... **APPELLANT**

VERSUS

1. The State of Maharashtra
Through : Tamalwadi Police Station,
Gondhalwadi, Tq. Tuljapur,
District Osmanabad
(Copy to be served on the office of
Public Prosecutor, High Court of
Judicature of Bombay,
Bench at Aurangabad)
2. X Y Z (Victim)
Age major, Occu. Nil (Differently abled),
Through her legal guardian -
Padminbai Pandit Mote,
Age 50 years, Occu. Agri.,
R/o Gondhalwadi, Tq. Tuljapur,
District Osmanabad

... **RESPONDENTS**

.....
Shri Abhay D. Ostwal, Advocate for appellant
Shri R.D. Sanap, A.P.P. for respondent No.1/ State

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CORAM: R.G. AVACHAT, J.

Date of reserving judgment :14th July, 2020

Date of pronouncing judgment : 8th September, 2020

JUDGMENT:

This appeal is directed against the judgment of
conviction dated 7/4/2017, passed by Additional Sessions Judge,

Osmanabad in Sessions Case, being S.C. No.75/2015, whereby the appellant has been convicted for the offence punishable under Sections 323, 376(2)(I) and 452 of the Indian Penal Code. He has, therefore, been sentenced to suffer rigorous imprisonment (R.I.) for six months, 10 years and 3 years respectively. The appellant has also been directed to pay a fine of Rs.10,000/- and Rs.2000/- for offence punishable under Section 376(2)(1) and 452 of the Indian Penal Code respectively. In default of payment of fine, he has been directed to undergo R.I. for one year and six months respectively.

The substantive sentences have been directed to run concurrently. The appellant has been acquitted of the offence punishable under Section 504 of the Indian Penal Code.

2. In short, the prosecution case is that, P.W.2 Padminbai, is a resident of village Gondhalwadi, Taluka Tuljapur, District Osmanabad. P.W.10 Sunita (victim) is a daughter of P.W.2. She is mentally challenged. P.W.4 Ashwini is the daughter-in-law of P.W.2. On 2/7/2015, P.W.2 Padminbai was away at Gaothan of the village for grazing cattle. P.W.4 Ashwini had gone out of the house to throw garbage/waste. It was about 3.00 p.m. Appellant, residing at the neighbourhood, took advantage of the fact that the victim was alone home, committed rape of her. He gave her a fist blow if she went public. The

victim got frightened. She first approached Sidhavabai and gave her the account of the incidence. Meanwhile, P.W.4 Ashwini returned home. She too realised what had happened with her sister-in-law. She asked P.W.3 Kalavati to call P.W.2 from Gaothan. She did the needful. On enquiry with the victim as to who did behave with her this way, she took P.W.2 to P.W.4 to the house of the appellant and identified him as a culprit. P.W.2 Padminbai, therefore, took the victim to Tamalwadi Police Station. She lodged the report of the incidence. The victim was referred for medical examination. She was medically examined by P.W.5 Dr. Kiran.

3. Pursuant to the report lodged by P.W.2 Padminbai, a crime vide C.R. No.63/2015 came to be registered at Police Station, Tamalwadi. P.W.9 Suresh Shinde, P.S.I. took up the investigation. He paid visit to the scene of offence and drawn panchanama thereof in the presence of panchas, seized the frock of the victim and collected earth from the scene of offence. He arrested the accused and got him medically examined. Sample of his semen was taken. Victim's vaginal swab was also obtained. All the seized articles were sent to Forensic Science Laboratory (FSL), Aurangabad for analysis and report. He also recorded statements of persons acquainted with the facts and circumstances of the case. On completion of investigation, the

appellant was proceeded against by filing charge sheet in the Court of Judicial Magistrate, First Class, Tuljapur. The learned J.M.F.C. committed the case to the Court of Sessions, Osmanabad.

4. The case, in turn, came to be assigned to the Additional Sessions Judge, Osmanabad for trial in accordance with law. The trial Court framed charge (Exh.7). The appellant pleaded not guilty. His defence was of false implication.

5. I have heard Mr. Abhay Ostwal, learned counsel for the appellant. He would submit that, no independent witnesses have been examined. Those who have been examined are interested witnesses. Admittedly, there are two groups in the village. The appellant has been falsely implicated as he belongs to rival group. There are inconsistencies between the evidence of P.W.3 to P.W.5. C.A. Reports run counter to the prosecution case. The trial Court did not discuss in its judgment, the C.A. Reports. According to learned counsel, the Deputy Sarpanch of the village had accompanied the informant to lodge the First Information Report (F.I.R.). The informant is an illiterate lady. The averments in the F.I.R. have been influenced by the version given by the Deputy Sarpanch. According to learned counsel, the appellant has a wife and two minor children to look after. His parents are old. The evidence of the prosecution does not

establish the guilt of the appellant beyond reasonable doubt. He, therefore, urged for allowing the appeal.

Learned A.P.P., on the other hand, supported the impugned judgment.

6. Admittedly, the victim is mentally retarded. It had been suggested to P.W.2 Padminbai in her cross-examination that since the victim was mentally unsound, she was never allowed to be left alone. In view of this suggestion, learned counsel for the appellant could not be heard to say that the report of P.W.1 Dr. Mahesh is not correct.

P.W.1 Mahesh Kanade did M.B.B.S. For 10 years he had been serving as a Psychiatric Medical Officer with Osmanabad Civil Hospital. Suhas Shinde was his Assistant. Suhas did M.A. in Clinical Psychology. It is in evidence of P.W.1 that pursuant to the requisition by the police, he examined the victim on 9/9/2015. He applied following intellectual testing material, namely :-

1. Raven's progressive intices.
2. Weschler adult kit.
3. S.F.B.T.
4. B.K.T.

7. He found the victim co-operative. She could speak and understand simple sentences. Her sensory and motor-ability were normal. In his opinion, he found the victim to have border line intellectual functioning capacity. He gave his report Exh.17. From his evidence, it has been transpired that it was Suhas Shinde who gave the certificate Exh.16 under his signature. It was, therefore, contended that, non-examination of Suhas Shinde proves fatal to the prosecution case. True, Mr. Suhas Shinde could have been a best witness in proof of the certificate Exh.16. It is also true that the certificates Exhs.16 and 17 are silent to state on what basis the conclusion was reached. It needs no mention that, in view of Section 45 of the Evidence Act, opinion of an expert is a relevant fact. P.W.1 is an independent witness. He examined the victim with the assistance of Shri Suhas Shinde. On applying the aforesaid tests. Both of them gave their opinion. Moreover, while the victim was brought before the Court, the trial Court was pleased to find her to have not been sufficiently grown up. She was looking like a small girl. Furthermore, when the victim was examined as a witness, through an interpreter.

8. P.W.2 Padminbai is the mother of the victim. She is a widow. It is in her evidence that she has two daughters and a son. One of the daughters is married. The second one is the

victim. Her family is comprised of herself, her married son, his wife, their two children and the victim. It is further in her evidence that, on the given day, her son Prakash had gone to her daughter's house on account of "Dhonde Dan" ceremony. She was away at Gaothan for grazing her cattle. Victim and her daughter-in-law were the only persons home. It is further in her evidence that, by 3.00 p.m., her co-sister Kalavati (P.W.3) came to her and informed what had happened with the victim. She, therefore, came home to find the victim to have suffered a head injury. There was bleeding from her private part. Victim started weeping. On enquiry, victim told her by sign and in stammering voice that her breast was fondled. She was ravished. When she was enquired as to who did behave with her this way, she took P.W.1 and P.W.2 to the house of the appellant and identified him as one who deflowered her. It is further in her evidence that, when she questioned the appellant as to why did he do so, he attempted to assault her. It is further in her evidence that, she then brought the victim first to the police station, lodged the report of the incidence and then got the victim medically examined at Civil Hospital.

9. P.W.2 was subjected to searching cross-examination. She has admitted that her nephew, Appa was a Deputy Sarpanch of the village. She went on to admit that there were two groups

in the village. Appa is head of one group. Other group is of Popat Mote. The appellant belongs to the other group. She was, however, categorical to deny to have lodged a false F.I.R. on the ground of political rivalry.

During her cross-examination, it has also come on record that, distance between the place she was grazing cattle and her house was of 100 ft. A road runs from in front of her house. There is a cross road nearby. The appellant had passed from the Gaothan area. Her F.I.R. is, however, silent to make mention of the fact that the appellant had passed twice from the Gaothan while she was grazing cattle. The omission was in respect of the word 'twice'. In my considered view, the omission does not constitute material contradiction so as to disbelieve P.W.2. True, it has also come in her evidence that Appa had accompanied her to the police station to lodge the F.I.R. This fact has itself been reflected in the F.I.R. Admittedly, P.W.2 is a widow and illiterate too. Her son was away from the village. The fact that Appa, Deputy Sarpanch of the village accompanied her to the police station, would, therefore, be but a natural fact.

10. P.W.3 Kalavati is a co-sister of P.W.2. She gave her evidence very much consistent with the evidence of P.W.2. It is in her evidence that, Ashwini (P.W.4) came to her by 3.00 p.m. and told that something amiss had happened with the victim.

Ashwini told her that she was away from her house along with her children to dump/throw waste. On her return, she saw the victim near the house of Sidhavabai. She found the victim weeping. On her enquiry, the victim related her ordeal. It is further in her evidence that on return of her mother-in-law (P.W.2) home, the victim took them to the house of the appellant and identified him as one who ravished her. During cross-examination of P.W.3, it has come on record that, her statement to the police is silent to make mention of the fact that the victim took her and P.W.2 and P.W.4 to the house of the appellant. This omission may sound material one, but this fact has already been reflected in the F.I.R. that had been lodged long before her statement was recorded. This witness too has admitted that there are two groups in the village and the appellant belongs to the other group.

11. Next one is P.W.4 Ashwini. The victim is sister-in-law of Ashwini. Both of them were home till 2.30 p.m. on the given day. It is in her evidence that she along with her two children left the house to throw/dump waste. When she returned home by 3.00 p.m., she saw victim with Sidhavabai. She (victim) was weeping. On her query, the victim told her what had happened with her. P.W.4 Ashwini also saw that the victim bled from her private part. The victim took them to the house of the appellant.

12. It is true that, P.W.2 to P.W.4 are the close relations of the victim. They were, however, natural witnesses. Sidhavabai has not been examined as a witness although her statement was recorded by the investigating officer. In my view, non-examination of Sidhavabai would be of little consequence in view of there being clinching medical evidence to reinforce the prosecution case. It is also true that there were two groups in the village. The appellant belonged to the other group. There is, however, nothing in the evidence to indicate that anything had happened between the two groups in the recent past so as to falsely implicate the appellant in this case. It is a matter of common knowledge that in every village there are at least two groups. P.W.2 to P.W.4 are the rustic and illiterate women. There was, therefore, bound to be some inconsistency inter-se their evidence. Their testimonies are consistent with material particulars.

13. The F.I.R. has been lodged within hours of the incidence. The victim has also been medically examined immediately. P.W.5 Dr. Kiran was a Medical Officer, Sub-District Hospital, Tuljapur. Her evidence indicates that she examined the victim on 7/7/2015. She found there was genital bleeding. Hymen was ruptured. Blood stains on inner side of thighs, right foot, Tibia Majora and Clitoris were seen reddish. Vaginal

bleeding and spotting was seen. She issued medical certificate, reserving her opinion up to receipt of C.A. Report. The Certificate issued by her (Exh.37) states that her overall findings were consistent with sexual intercourse. However, final opinion was kept pending till receipt of F.S.L. Report. During recording of her evidence before the Court, she perused the C.A. Reports and concluded that it is a case of rape. One may be surprised as to how the C.A. reports which do not positively bolster the prosecution case, could be relied upon by P.W.5 Dr. Kiran to give her conclusive opinion.

14. Dr. Kiran is an independent witness. She examined the victim within hours of the incidence. As stated above, she noticed that ruptured hymen. There was bleeding from private part of the victim. Dr. Kiran was specific to deny the suggestion that the victim was in her periods at the relevant time. Certificate issued by Dr. Kiran specifically notes the same. It, therefore, cannot be said that she improved her version and first time deposed before the Court that the victim had not attained her minarche. Moreover, non-existence of external injury does not rule out rape.

15. True, the trial Court did not refer the C.A. Reports (Exhs.57 to 60). I have carefully perused them. The C.A. Reports neither support nor run counter to the prosecution case.

True, no semen was detected on vaginal swab. The incidence took place on 2/7/2015. C.A. Reports were received on 5/1/2016 i.e. six months after the incidence. When there is conflict between an ocular evidence and medical evidence, the former prevails specifically in this case, since the evidence of P.W.2 to P.W.5 make out a prosecution case.

16. The victim was also examined as a witness through an interpreter. It appears that, before the trial Court, no objection was raised as regards expertise of the interpreter. It is only before this Court the learned Advocate would submit that the interpreter got her expertise from an open University. It has already been in the evidence of P.W.2 to P.W.4 that the witness could speak in stammering voice and signs as well. In my view, therefore, the interpreter had a very little role. The interpreter has candidly stated that the victim was unable to distinguish between right and wrong. Neither before the trial Court nor before this Court it has been urged to discard the evidence of victim on the ground of her competency to depose. The record indicates that the victim was examined in-camera. Her examination was in question-answer form. By words and signs, the victim described her ordeal. She identified the appellant before the Court as one who did ravish her. It appears that, the trial Court had asked one of the Court Peons to take seat by the

side of the appellant. A police guard was also by the side of the appellant. The victim first touched the police guard's belt and then identified the appellant

17. In short, the evidence of the victim herself, coupled with the evidence of P.W.2 to P.W.4, which has been reinforced by the medical evidence, lead me to conclude the prosecution to have brought home the guilt of the appellant. The evidence of remaining witnesses need not be referred to. Two of them are panch witnesses. Third one is investigating officer. Next one is P.W.7 Namdeo. It is he who made a phone call to the Police Station. In response thereto, the police came and arrested the appellant. This witness categorically stated that, phone number of P.S.I. Shinde was registered in his cell phone. This witness has not been cross-examined in detail so as to hold him unworthy of credit.

Since the prosecution brought home the guilt of the appellant, no interference with the impugned judgment is called for.

18. In the result, the Criminal Appeal fails. It is, therefore, dismissed.

(R.G. AVACHAT, J.)