

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

**CRIMINAL APPEAL NO.8 OF 2017 WITH
CRIMINAL APPLICATION NO.3877 OF 2019**

Yuvraj s/o Parbata Pawar
age 25 years, Occu. Education,
R/o Village Amdura,
Taluka Mudkhed, District Nanded
(At present in Nanded District Prison,
Nanded, Taluka and District Nanded ... **APPELLANT**
(Original Accused No.1.)

VERSUS

- 1) The State of Maharashtra
through the Police Station,
Mudkhed, Taluka Mudkhed,
District Nanded.
- 2) Varsha Babarao Pawar,
Age 26 years, Occu. Housewife,
R/o Amdura, Taluka Mudkhed,
District Nanded ... **RESPONDENTS**

.....
Shri R.S. Deshmukh, Senior Counsel for the appellant
Shri S.P. Sonpawale, A.P.P. for respondent No.1 – State
.....

WITH

**CRIMINAL APPEAL NO.387 OF 2020 WITH
CRIMINAL APPLICATION NO.1179 OF 2020**

Sudarshan s/o Govindrao Pawar
age 21 years, Occu. Education,
R/o Amdura, Taluka Mudkhed,
District Nanded ... **APPELLANT**
(Original Accused No.2.)

VERSUS

The State of Maharashtra
through the Police Inspector,
Mudkhed Police Station,
District Nanded.

... **RESPONDENT**

.....
Shri Satish A. Gaikwad, Advocate for the appellant
Shri S.P. Sonpawale, A.P.P. for respondent – State
.....

CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 3rd July, 2021

Date of pronouncing judgment : 28th October, 2021

J U D G M E N T :

Both these appeals are directed against the judgment and order dated 21/11/2016, passed by the Sessions Judge, Nanded in Sessions Case No.4/2015. The appellants herein have been convicted for the offences punishable under Section 376(D) (gang rape), Section 354(A) (1)(i) read with Section 354(A)(2) and 354-B of the Indian Penal Code and Section 506 read with Section 34 of the Indian Penal Code and, therefore, sentenced to suffer rigorous imprisonment for 20 years and to pay fine of Rs.2000/- each for the offence punishable under Section 376(D); and for offence punishable under Section 506, they have been

sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.1000/- each. In default of payment of fine, they have been directed to undergo rigorous imprisonment for three months and simple imprisonment for one month respectively. No separate sentence has been awarded for the offences punishable under Section 354(A)(1)(i) read with Section 354(A)(2) and 354-B of the Indian Penal Code .

2. Facts giving rise to the present appeals are as follows :

The prosecutrix is resident of village Amdura, Taluka Mudkhed, District Nanded. On 14/10/2013 by 4.00 p.m., she had been to panand road in the village for relieving herself. She sat under a tamarind tree for the purpose. Both the appellants came from behind. One of them covered her mouth with his hand. The other held her hand. They dragged her to a sugarcane field of one Anandrao Pawar. Yuvraj (A/1) fished out a knife and asked her not to raise shouts. He made her fall on the ground, gave his cell phone to Sudarshan (A/2) and asked him to shoot sex scene. Accused No.1 thereupon committed sexual intercourse with her. He then gave her threat of making the video viral. The prosecutrix came her

home. She made a call to her uncle, Prabhakar (P.W.3) (husband of maternal aunt) and informed him about the incident. He came her home. The husband of prosecutrix was away at Mudkhed. He too was informed. He returned home. The prosecutrix, her husband Babarao (P.W.8) and Prabhakar (P.W.3) went to the police station. The prosecutrix lodged the F.I.R. (Exh.27).

3. The Police Station Officer registered the crime vide C.R. No.68/2014 for the offence punishable under Sections 376(D), 354(A)(1)(i) read with Sections 354(A)(2), 354-B, 323, 506, 294 read with Section 34 of the Indian Penal Code and Section 66-E of the Information and Technology Act. Clothes on the person of the prosecutrix at the time of the offence and one anklet were delivered to the police officer. She was thereafter medically examined. On the next morning, the investigating officer Ashok Patil (P.W.13) went to the village. He drew scene of offence panchanama. A knicker and an anklet came to be seized from the scene of offence. Statements of persons acquainted with the facts and circumstances of the case were recorded. The appellants came to be arrested. Their cell phones were taken charge of. A knife came to be seized pursuant to a disclosure statement

made by accused No.1 – Yuvraj. Seized articles were sent for Forensic Science Laboratory, Aurangabad. On completion of the investigation, the appellants were proceeded against by filing charge sheet in the Court of Judicial Magistrate, First Class, Mudkhed. The learned Judicial Magistrate, First Class, Mudkhed committed the case to the Court of Sessions.

4. The learned Sessions Judge framed the charge (Exh.9) against both these appellants for offences punishable under Sections 376(D), 354(A)(1)(i) read with Sections 354(A)(2), 354-B, 323, 506, 294 read with Section 34 of the Indian Penal Code and Section 66-E of the Information and Technology Act. The appellants pleaded not guilty. To bring home the charge, the prosecution examined 14 witnesses and tendered in evidence various documents. It is the case of the appellants that they have been falsely implicated on account of a political rivalry with the husband of the prosecutrix. It is their case that, there were two groups in the village. A fight had ensued in two groups over appointment of a President of Tanta Mukti Samiti (Disputes Resolution Committee). A murder took place over the same. The husband of the prosecutrix and over 30 persons of his group were behind the bars. They had requested the appellant Yuvraj and his

brothers to give evidence in their favour. Since they refused, a false F.I.R. came to be lodged to take revenge.

5. Heard. Learned counsel for both the appellants would submit that, the medical evidence does not reinforce the testimony of the prosecutrix. Her husband was informed the appellants to have had outraged her modesty. A written F.I.R. was lodged. The prosecutrix and her relations had a deliberation before lodging of the F.I.R. The Trial Court, therefore, ought not to have relied on uncorroborated testimony of the prosecutrix. Learned counsel, therefore, urged for allowing the appeal.

6. The learned A.P.P., on the other hand, reiterated the reasons given by the Trial Court in support of the impugned judgment. He took this Court to the relevant evidence on record to ultimately submit that, the conviction could be based on the sole testimony of the prosecutrix. He, therefore, urged for dismissal of the appeals.

7. The incident took place by 4.00 p.m. on 13/10/2014. The prosecutrix had been towards the field of one Ananda Pawar. She had been there to answer nature's

call. She sat under a tamarind tree to relieve herself. Both the appellants approached her from behind. One of them covered her mouth. The other held her hand. Both of them took her in the sugarcane field. The appellant Yuvraj made her fall on the ground. He then handed over his cell phone to appellant Sudarshan and asked him to shoot the scene. Yuvraj fished out a knife and gave threat at its point to the prosecutrix. He asked her to keep quiet and then committed rape of her. All these facts have been narrated by the prosecutrix in her examination-in-chief. It is further in her evidence that, she came home, contacted her uncle Prabhakar on cell phone. He came. She shared her ordeal with the uncle. Her husband was away at Mudkhed. He too was informed. He came home within an hour. The prosecutrix, her uncle and husband then went to the police station. She lodged there the F.I.R. Exh.27.

8. The prosecutrix was subjected to extensive cross-examination. She denied to have falsely implicated both the appellants on the ground of village politics. It has, however, come in her evidence that she knew appellant Yuvraj since after her marriage. Both Purbhaji Pawar, the Director of Sugar Factory and one Datta Gangaram Pawar hail from the

very village. There was a quarrel over the post of President of Tanta Mukti Committee. Many persons from the village were arrested. Her husband had also been in jail in that connection. About 30 persons from a group to which her husband belongs, were behind the bars. She, however, categorically denied the suggestion that her husband and Purbhaji were expecting the appellant Yuvraj to give evidence on their side in the court of law. Since he did not, false F.I.R. is said to have been lodged.

9. It is further in her evidence that, on the next morning, the police had come to the village. Scene of offence panchanama Exh.29 was drawn. An anklet and a knicker came to be seized from the site. She further testified that, she had put up a resistance against the sexual advance made by appellant Yuvraj. She even pushed him behind. As she was made to lie on the ground, she suffered abrasions to her neck and back as well. It is further in her evidence that, it was time for farmers to return home from their respective fields by the time the incident took place. According to her, there was no one around or in the nearby of the scene of offence.

10. Both Prabhakar (P.W.3) and husband (P.W.8) of the prosecutrix gave evidence consistent with the evidence of the prosecutrix. It is in evidence of P.W.3 Prabhakar that he received phone call of prosecutrix on his cell phone. He immediately rushed to the village and came to know about the incident. She related him entire incidence. It is further in his evidence that he gave a phone call to her husband. He too came home from Mukhed. The prosecutrix related him what had happened with her. It is in evidence of Babarao (P.W.8), husband of the prosecutrix that, he was away at Mudkhed for attending a public meeting of Shri Ashok Chavan. He had been there taking some of the villagers in his tempo. In response to call from Prabhakar, he rushed back to the village to learn from his wife (prosecutrix) her ordeal. He accompanied his wife to the police station.

11. P.W.2 Bishansingh is a panch witness to the scene of offence panchanama (Exh.29). He gave his evidence in support of the prosecution. It is in his evidence that, the knicker and anklet came to be seized from the site.

12. P.W.4 Ramdas was a witness to the disclosure statement made by the appellant Yuvraj and consequent

recovery of a knife pursuant thereto. By his evidence, it has been proved that the appellant made a disclosure statement to have concealed the knife at a particular place. He took out the same.

13. P.W.5 Ananda is resident of the very village. He deposed to have had seen the prosecutrix proceeding towards Panand Road with a pot in her hand. He found her returned from the field. She was seen dejected. Nothing could be elicited from his cross-examination.

14. P.W.6 Datta Pawar would run a flour mill in the village. It is in his evidence that, the appellant Sudarshan had come to his flour mill with grains to have it grind. He saw the prosecutrix went towards the field and appellant Sudarshan followed her.

15. P.W.7 Lakdoji Pawar is the resident of the village. It is in his evidence that, the appellant Sudarshan met him in the village by little past 3.00 p.m. He took his cell phone and went aside. He talked on cell phone and then returned it to him (P.W.7). He gave his cell phone Number as 9860305931.

16. P.W.10 Gangareddi Potalgaonkar is the Circle Officer (Revenue), who prepared the sketch of the scene of offence. P.W.11 Madhav Mahabale is a Police naik who had carried the seized articles to Forensic science Laboratory, Aurangabad. P.W.12 Milind Kolwadkar was a Nodal Officer with Bharati Airtel. He placed on record the Call Data Records (CDRs). P.W.13 Ashok Patil and P.W.14 Vishal Nande did the investigation of the crime. The medical evidence would be adverted to later on.

17. In case of **Radhu Vs. State of Madhya Pradesh** [(2007) 12 SCC 57], the Apex Court observed :-

“A finding of guilt in a case of rape, can be based on the uncorroborated evidence of the prosecutrix and her testimony should not be rejected on the basis of minor discrepancies and contradictions – It is further held, absence of injuries on the private parts of the victim will not by itself falsify the case of rape, nor can be construed as evidence of consent, nor the opinion of a doctor that there was no evidence of any sexual intercourse or rape sufficient to disbelieve the victim – However, courts should, at the same time, bear in mind that false charges of rape are not uncommon, and there are some rare instances where a parent has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to get rid of financial liability – Whether there was rape or not would depend ultimately on the facts and circumstances of each case.

Minor injuries found on her body, by themselves not sufficient to establish rape, wrongful confinement or hurt, where evidence of prosecutrix was not found trustworthy and there was no corroboration – Failure by defence to prove motive for false implication, inconsequential.”

18. In case of **Om Prakash Vs. State of U.P. [(2006) 9 SCC 787]**, the Apex Court observed :-

“It is settled law that the victim of sexual assault is not treated as accomplice and as such, her evidence does not require corroboration from any other evidence including the evidence of a doctor. In a given case even if the doctor who examined the victim does not find sign of rape, it is no ground to disbelieve the sole testimony of the prosecutrix. In normal course a victim of sexual assault does not like to disclose such offence even before her family members much less before public or before the police. In the instant case the suggestion given on behalf of the defence that the victim has falsely implicated the accused does not appeal to reasoning. There was no apparent reason for a married woman to falsely implicate the accused after scathing her own prestige and honour.

The Courts while dealing with such cases should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires

confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case”

19. The offence punishable under Section 376(D) of the Indian Penal Code is punishable with imprisonment for a term which shall not be less than 20 years. The offence is serious one. More the severe offence, stricter be the proof. In case of **Paramjeet Singh Alias Pamma Vs. State of Uttarakhand [(2010) 10 SCC 439]**, the Apex Court observed:-

“11. In *Sarwan Singh Rattan Singh v. State of Punjab [AIR 1957 SC 637]*, this Court observed :-

“12. considered as a whole the prosecution story may be true; but between ‘may be true’ and ‘must be true’ there is inevitably a long distance to travel and the whole of this distance must be covered by legal, reliable and unimpeachable evidence before an accused can be convicted.”

12. Thus, the law on the point may be summarised to the effect that in a criminal trial

involving a serious offence of a brutal nature, the Court should be wary of the fact that it is human instinct to react adversely to the commission of the offence and make an effort to see that such an instinctive reaction does not prejudice the accused in any way. In a case where the offence alleged to have been committed is a serious one, the prosecution must provide greater assurance to the Court that its case has been proved beyond reasonable doubt.”

20. Here the prosecutrix gave her evidence very much consistent with the F.I.R. (Exh.27). The F.I.R. was lodged within a few hours of the alleged offence. The offence took place in a sugarcane field when the prosecutrix had been there to relieve herself. She gave the details as to how both the appellants approached her and appellant Yuvraj sexually ravished her. Appellant Sudarshan is said to have video-recorded the sexual assault. On his arrest, the cell phone was taken charge of. It was sent to CSFL. No recorded version, however, found therein. Both the prosecutrix and her husband in their examination-in-chief testified that the prosecutrix lodged an oral report (F.I.R.). She, however, corrected herself in cross-examination to state that she herself wrote down the F.I.R. Whereas the endorsement appearing on the side margin of the F.I.R. does indicate that the informant submitted a written First Information Report.

Admittedly, the prosecutrix was accompanied by her husband and uncle Prabhakar to the police station. Both of them had been with her for little over two hours before submitting a written F.I.R. Admittedly, there are two groups in the village. The husband of the prosecutrix belongs to one of the groups. Over appointment of President of Tanta Mukti Committee, there was a fight. Murder took place. The husband of the prosecutrix was in jail for about six months. It is true that, the prosecutrix and her husband denied the appellant Yuvraj to have been requested to give evidence in support of the husband of the prosecutrix. The fact remains that, there were two groups in the village. The husband of the prosecutrix was in jail for little over six months. Moreover, P.W.3 Prabhakar, the uncle of the prosecutrix had informed her husband that her modesty was outraged by the appellant. It is true that he was not expected to inform her husband about his wife having been ravished sexually. The fact, however, remains that, her husband was told that the appellants had outraged modesty of his wife. It is not that the prosecutrix is being branded as a liar. The medical evidence does not support her claim. Admittedly, on registration of the crime, the prosecutrix was medically examined. It is in evidence of P.W.9 Dr. Santosh Bhosle that

on her examination, the prosecutrix was found well oriented as to time, place and person. She had changed her clothes and taken bath at home. The prosecutrix, however, did not state in her evidence to have had taken a bath after the incident. P.W.9 Dr. Santosh Bhosle found the following injuries on her person:-

- (1) Linear abrasion of size 1 cm x 0.1 cm present over lower right side of back (situated on) 3 cm lateral to spine and 11 cm from inferior angle of scapula. It was reddish in colour, simple in nature.
- (2) Linear abrasion of size 1 cm x 0.2 cm present over lower right back (situated on) 3 cm lateral to spine 15 cm from inferior angle of scapula. Reddish in colour, simple in nature.
- (3) Abrasion of size 2 cm x 1 cm present over right scapula region 2 cm from midline with brownish tab, simple in nature.

21. On genital examination, found no loose matted hair present. No injuries to labia minora. Multiple old healed tears were present on hymen. Samples of vaginal swab and smeared blood, pubic hair, nail clips were collected.

P.W.9 Dr. Bhosle further stated that, the victim was examined nine hours after the incident. There were no fresh injuries over genitals. There were two linear abrasions over lower right on backside (as mentioned above). Age of aforesaid injury Nos.1 and 2 were fresh and injury No.3 was 2

to 3 days old. The opinion was reserved till receiving the report of forensic science laboratory. Accordingly, the examination report in 6 pages (in prescribed proforma) was prepared. It is in the handwriting of Dr. Pampatwar. The doctor further stated that report is signed by him and Dr. Pampatwar.

22. The doctor further stated that, after receiving the C.A. reports, he had gone through the same. Those C.A. reports are on record at Exhibits 46, 47 and 48 respectively. After going through the said C.A. reports, the doctor gave final opinion that the findings as to sexual assault neither confirmed nor refuted.

23. It is further in the evidence of Dr. Bhosle that, the injuries found on the person of the prosecutrix were simple in nature. Only one of the injuries was fresh. While she was medically examined, in his opinion, sexual assault was not confirmed. It was not possible for him to give opinion on her medical examination. Her vaginal swab was obtained. The C.A. report Exh.47 indicates that, no semen was detected on her pubic hair, vaginal swab and smear slide. As such, the medical examination report does not reinforce the prosecution

case. It is reiterated that, the offence is punishable with imprisonment of not less than 20 years. The appellants have already been behind the bars for little over 7 years. The offence has to be proved beyond reasonable doubt. The seizure of knife pursuant to disclosure statement made by appellant Yuvraj and taking charge of knicker and anklet from the scene of offence are of little consequence. There is nothing to suggest that the very knife was used by the appellant Yuvraj to threaten the prosecutrix. The F.I.R. is silent to state that, knicker and anklet were left at the scene.

24. As such, it is a case based on the sole testimony of prosecutrix. Learned counsel for the appellants were, therefore, justified in submitting that some incident might have happened but blown out of proportion. They may or may not be right in their submissions. This Court is left with the evidence in the nature of testimony of the prosecutrix not supported by medical evidence. The facts and circumstances referred to hereinabove lead this Court to conclude that, based on the sole testimony of the prosecutrix without there being any corroboration, either by medical evidence or otherwise, it would be unsafe to confirm the judgment of conviction and the order sentencing the appellants to

imprisonment for a period of 20 years. The benefit of doubt deserves to be extended to the appellants, who were of the age of 21 and 20 at the relevant time.

25. In the result, both the Criminal Appeals are allowed. Conviction and sentence recorded by learned Sessions Judge, Nanded in Sessions Case No.4/2015 is set aside. The appellants are acquitted of offences punishable under Sections 376(D), 354(A)(1)(i), 354(A)(2), 354-B, 506 read with Section 34 of the Indian Penal Code. The appellants be set at liberty forthwith if not required in any other case. Fine amount, if paid, be refunded to them.

In view of the above, Criminal Application No.3877/2019 and 1179/2020 are disposed of.

(R. G. AVACHAT)
JUDGE

fmp/-