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

CRIMINAL APPEAL NO. 233 OF 2002

The State of Maharashtra	]	
(Through Valsang Police Station	]	
Dist.: Solapur)	]	... Appellant
V/s.		
Mallikarjun Sidram Morde	]	... Respondent

Ms P.P. Shinde, APP for the Appellant.
Mr. P.M. Bopardikar i/b Mr. Shrishail Sakhare for the Respondent.

CORAM : **SMT. SADHANA S. JADHAV &
N.R. BORKAR, JJ.**

RESERVED ON : **JANUARY 27, 2021.**
PRONOUNCED ON : **FEBRUARY 15, 2021.**

JUDGMENT (*PER N.R. BORKAR, J.*)

1] This appeal at the instance of State has been filed against the judgment and order dated 1.12.2001 passed by learned IInd Ad-hoc Assistant Sessions Judge, Solapur in Sessions Case No. 60 of 2001. By the impugned judgment and order, the respondent who was an accused before the Trial Court, has been acquitted for the offences punishable under Sections 376 and 506 of the Indian Penal Code (for short "IPC").

2] It is the case of the prosecution that during the relevant period, the prosecutrix was residing with her mother at village Musti, Taluka and Dist. Solapur. The prosecutrix was married, however, due to differences with her husband she was residing with her mother. The prosecutrix and her mother were cultivating land bearing Gat No. 475 and earning their livelihood. The said land was at the distance of about 3 Km from their village. The prosecutrix used to go to her field in the morning and used to return in the evening.

3] It is alleged that on 8.12.2000, at about 11.00 a.m., the prosecutrix went to her field and worked there for entire day. It is alleged that while prosecutrix was returning home, the accused accosted her near the field owned by one Gandhi. It is alleged that the accused then committed rape on the prosecutrix. On the next day of incident, the prosecutrix lodged the complaint about the incident with Valsang Police Station.

4] On the basis of complaint lodged by the prosecutrix, the said Valsang Police Station registered the crime against the accused for the offences punishable under Sections 376 and 506 of the IPC. On

completion of investigation, a charge-sheet was filed against the accused. The Trial Court framed the charges against the accused for the said offences. The accused pleaded not guilty to the charges and was thus tried for the said charges. As stated earlier, the Trial Court acquitted the accused of all the charges by the impugned judgment and order.

5] We have heard learned APP for the State and learned counsel for the respondent - accused.

6] Learned APP for the appellant- State has submitted that the prosecutrix, in no uncertain terms has stated that the accused committed sexual intercourse with her against her wish. It is submitted that no material is brought on record to suggest that the prosecutrix had implicated the accused in false case. It is submitted that the trial Court thus committed an error in acquitting the accused. It is submitted that the judgment and order of the Trial Court thus needs to be quashed and set aside and the accused needs to be convicted for the above-mentioned offences.

7] On the other hand, learned counsel for the respondent – accused has supported the judgment of the Trial Court. He submits that there is delay in lodging the first information report. It is, further, submitted that version of the prosecutrix with regard to place of incident is not consistent. It is submitted that view taken by the trial Court is not shown to be perverse. It is submitted that the appeal may, therefore, be dismissed.

8] The entire prosecution case is based on the sole testimony of the prosecutrix.

9] The prosecutrix has stated in her evidence that the accused was known to her. She has stated that the incident occurred in December, 2000. On the day of incident, she was returning home after finishing agricultural work for the day in her field. At about 6.00 p.m. when she was near the field of Gandhi, the accused suddenly came in front of her. The accused said to her that he loves her. She has stated that the accused then caught hold of her and dragged her in the Toor (Pigeon Peas) crop. She resisted, however, she could not release herself from the clutches of the accused. She stated that the accused made her to lie down and thereafter committed sexual intercourse with her. She raised cries, but no one came to her rescue. She further

stated that the accused threatened to kill her, if the incident is disclosed to anybody in the village.

10] The prosecutrix in her cross-examination, has admitted that the field of Gandhi is adjacent to the field of Degaonkar and there is Vasti in the field of Degaonkar. (Labourer residing in the field). Contrary to the version in examination-in-chief, she has further admitted that she did not shout while accused was committing sexual intercourse with her. She has further admitted that she did not sustain any injury on her person in the alleged incident. She has further admitted that she had not disclosed about the incident to anyone till lodging of the report with the police station. She has further stated that before going to the police station, she took bath.

11] After lodging of the report, the prosecutrix was referred for medical examination and she was examined by PW 3 Dr. Umesh M. Karanjkar. PW 3 has stated in his evidence that on 9.12.2000, he was attached to Civil Hospital, Solapur. The prosecutrix was referred to him for medical examination by Casualty Medical Officer of the said hospital. He has stated that on external examination, no injury marks were found. He has stated that on internal examination, old tear of

hymen was seen. He stated that he reserved the opinion till receipt of report of FSL. After receipt of C.A. report his opinion was sought. He stated that opinion cannot be given.

12] In the cross-examination, PW 3 Dr. Umesh Karanjkar has admitted that in the history given by the prosecutrix she had stated that she was raped in the store room at Musti.

13] According to the prosecutrix, on the day of the incident, while she was coming back to home from her field, the accused accosted her near the field of one Gandhi, dragged her inside the field and inspite of her resistance accused could make her to lie down on the ground. The spot panchanama is at Exhibit 14. According to spot panchanama, the crop of Toor (Pigeon peas) was there in the field of said Gandhi. It further appears that surface at the place of incident was rough. According to PW 3 Dr. Umesh Karanjkar, no injury marks were found on the person of the prosecutrix. Absence of external injury on the person of prosecutrix creates a doubt as to whether the incident as alleged had taken place in the agricultural field or in the store room as narrated by her before the doctor .

14] According to the prosecutrix, the alleged incident occurred on 8th December, 2000 at about 6.00 p.m. However, the prosecutrix had lodged the report on the next day i.e. on 9th December, 2000. PW 5 Dr. Umesh Karanjkar has stated that opinion cannot be given with regard to the alleged rape on the prosecutrix.

15] In the facts and circumstances of present case, it would not be safe to accept the uncorroborated testimony of the prosecutrix in relation to the alleged incident. Hence, no interference is called for in the impugned judgment and order of acquittal. In the result, following order is passed :

ORDER

- i] Appeal is dismissed.
- ii] The Judgment and order dated 1st December, 2001, passed by the IInd Ad-hoc Assistant Sessions Judge, Solapur, in Sessions Case No.60 of 2001, is confirmed.

[N.R. BORKAR, J]

[SMT. SADHANA S. JADHAV, J]