

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 984 OF 2006**

The State of Maharashtra } Appellant

Versus

Dhondiba Sonu Mandhare } Respondent
Aged 42 years, Occ.: Labour, }
R/o. Slum Area, Mahabaleshwar, }
Dist-Satara. }

Ms. P.P. Shinde-APP for the Appellant/State.

Ms. Saili Dhuru, Court Appointed for Respondent.

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

RESERVED ON : 14TH JANUARY 2021.

PRONOUNCED ON : 9TH FEBRUARY 2021.

JUDGMENT :- (PER SADHANA S. JADHAV, J.)

1. The State of Maharashtra takes exception to the Judgment and Order dated 31st August 2004 passed by the II Adhoc Assistant Sessions Judge, Satara, in Sessions Case No. 65 of 2003, by which the respondent is acquitted of the offence punishable under Sections 376(1), 376(2) (e), 323 and 506 of Indian Penal Code.

2. The case of the prosecution in a nutshell is as follows:-

a) The victim Ms. 'X' is the daughter of PW.4-Vijaya Sapkal begotten from her first husband Sadu Dhanawale.

PW.4 is the mother of three daughters. She performed second marriage with Dattaram Sapkal. The respondent herein was looking after Ms. 'X'. Her eldest daughter was residing with her brother and the second daughter was residing with the present respondent who happened to be her relative. He was maintaining her as a daughter.

b) On 20th January 2003, PW.4 -Vijaya Sapkal lodged a report at the police station alleging therein that on 19th January 2003 she had visited the house of the respondent to meet her daughter. Upon seeing her the victim started crying. PW.4 enquired with her and at that time her daughter divulged to her that the respondent herein, in the absence of his wife and children ravished her and that she has conceived pregnancy. He had threatened her of dire consequences, in the eventuality, she had disclosed about it to anybody and therefore, she had to maintain silence. On the basis of her report, Crime No. 1/2003 was registered at Mahabaleshwar Police Station for the offence punishable under section 376(1), 376(2)(e), 323 and 506 of Indian Penal Code.

3. The prosecution has examined as many as 8 witnesses to bring home the guilt of the accused. The case rests on the evidence of the first informant PW.4-the mother of the victim, PW.3-the victim and PW.6-Suman Ranjane, who happens to be the president of slum area and the neighbour of the said respondent.

4. PW.3 is the victim. According to her she was residing in the house of the respondent along with his wife and two children of the respondent. She has alleged that the respondent was going for work in the morning time only for half an hour and thereafter remained at home. That during the day in the absence of his wife and children he used to misbehave with her, assault her, molest her and then ravish her. That, PW.6 Ranjana was residing as their neighbour. She delivered a male child in an institution at Pune and she had abandoned the child in the said institution. According to her, when the respondent had realised that she was pregnant he had taken her to the house of his elder sister at village Masar. Her mother was informed by the sister of the respondent. She has admitted before the Court that her maternal uncle resides at a walking distance from the house of the respondent. She was residing with the respondent ever since she was 3 years old. Since, the respondent had no daughter of his own he was maintaining her as a daughter. She was carrying on all domestic chores in the house of the respondent and she was also selling flowers. She used to meet her biological father quite often. She was residing in the institution at Pune since she was four months pregnant but she never visited her mother or sisters house.

5. PW.3 has admitted in the cross-examination that upon enquiry, by Tulsabai she had disclosed to her that she had conceived pregnancy from Nitin Sable but she had denied the suggestion that Nitin Sable maintained sexual relations with her.

6. The victim had further admitted that the cousin brother of the wife of Dhondiba i.e. Nitin Sable used to visit the house of the

respondent quite often in the afternoon. She used to be alone at home in the afternoon. Nitin Sable who was working in a Hotel at Mahabaleshwar had left the job after 3-4 months after she had conceived pregnancy and that the respondent was treating her as a daughter till she attained the age of 15 years. She has admitted in the cross-examination that she had made no complaints to her father against the respondent.

7. Vijaya Sapkal, PW.4 the mother of the victim has deposed before the Court that on 19th January 2003 before lodging the FIR she stayed in the house of PW.6 along with her daughter. She has admitted that she had not met her daughter for almost one year prior to lodging the FIR since her husband was in regular contact with her daughter and informed her about the welfare of her daughter. It is admitted that Tulsabai, the wife of the respondent is her maternal cousin.

8. The evidence of PW.7-Laxman Narwade who was working as the Head Master in Primary School, Mahabaleshwar. It is established that the victim was 15 years old at that time of incident. PW.7 has placed on record the School Leaving certificate of the victim which indicates, the date of birth of the victim as 28/06/1987. The said certificate is at 'Exhibit-27'.

9. It is admitted in the cross-examination that Tulsabai had been to her house along with victim, when the victim was pregnant. Tulsabai had also disclosed to her that the victim had disclosed to her that she had conceived pregnancy from Nitin Sable. According to her, she had returned to Mahabaleshwar with wife of Dhondiba and victim

and had directly met PW.6. PW.4 has also admitted that the victim had not levelled any allegations against the present respondent.

10. PW. 4 is declared hostile.

11. PW.6-Suman Ranjane, was the president of slum area in Mahabaleshwar. According to her, the respondent was an alcoholic. His wife used to go for work during day time and in the absence of his wife he used to ravish the victim who had actually seeing the respondent assaulting the victim just 15 days prior to the incident. The tenor of her cross-examination would show that PW.6 had some grudge against the respondent as he was working as a sweeper in the GramPanchyat Office for hardly half an hour in the morning. That, the FIR was lodged by PW.4 after due deliberation with PW.6 and that PW.6 had instigated her to lodge report against the respondent.

12. PW.8-the investigating officer, Sampatrao Jagdale has proved the omissions and contradictions in the evidence of the witnesses.

13. It is well settled that if two views are possible, in the facts of the case the Court would take a possible view in favour of the accused. In the present case there is a clear admission by the victim that initially she had disclosed to all concerned that she had conceived pregnancy from Nitin Sable. She had also delivered the child and he was in the custody of an institution, hence in the absence of D.N.A test it cannot be positively held that the respondent had ravished PW.3-the victim. PW.4-the mother of the victim has also corroborated the same

and even according to her, Tulsabai had disclosed that the victim has allegedly conceived pregnancy from Nitin Sable.

14 In the case of *Harijana Thirupala And Ors. Vs. Public Prosecutor, High Court* reported in AIR 2002 SC 2821, the Hon'ble Apex Court has held as follows:-

“11.....Further if two views are possible on the evidence produced in the case, one indicating to the guilt of the accused and the other to his innocence, the view favourable to the accused is to be accepted. In cases where the court entertains reasonable doubt regarding the guilt of the accused the benefit of such doubt should go in favour of the accused.

In other words, the impact of evidence in totality on the prosecution case or innocence of accused has to be kept in mind in coming the conclusion as to the guilt or otherwise of the accused. In reaching a conclusion about the guilt of the accused, the court has to appreciate, analyse and assess the evidence placed before it by the yardstick of probabilities, its intrinsic value and the animus of witnesses.....”.

14. The prosecution has not conducted the D.N.A report in order to verify the paternity of the child and therefore the learned Sessions Judge, has rightly observed that the evidence of the victim does not inspire the confidence of the Court and moreover, the complainant i.e. the mother of the victim had been declared hostile. The learned Sessions Court has assigned justifiable reasons for acquitting the accused. The judgment of the Sessions Court calls for no interference.

15. In view of the above discussions and observations, the appeal stands dismissed.

(N.R. BORKAR, J)

(SMT. SADHANA S. JADHAV, J)