

Shankar @ Shekhar Devrao Mundhe,
Aged 24 years,
R/o Village Rajanda,
Tahsil Barshitakli,
District Akola (In Jail).
..... **Appellant.**

The State of Maharashtra,
Through Police Station Officer,
Police Station Barshitakli,
District Akola. Respondent.

Shri V.M.Moon, Counsel for the Appellant.
Shri S.M.Ghodeswar, Additional Public Prosecutor for the
Respondent/State.

ORAL JUDGMENT (Per : V.M.Deshpande, J.)

.....2/-

Code.

For his conviction under Section 376-D of the Indian Penal Code, he was directed to suffer rigorous imprisonment for a term of 20 years and to pay fine Rs.26000/- and in default of payment of the fine amount was directed to suffer simple imprisonment for a term of 1 year.

For his conviction under Section 392 read with Section 34 of the Indian Penal Code, he was directed to suffer rigorous imprisonment for a term of 5 years and to pay fine Rs.5000/- and in default of payment of the fine amount was directed to suffer simple imprisonment for a term of 6 months.

For his conviction under Section 447 read with Section 34 of the Indian Penal Code, he was directed to suffer rigorous imprisonment for a term of 3 months and to pay fine Rs.1000/- and in default of payment of the fine amount was directed to suffer simple imprisonment for a term of 15 days.

Learned Judge directed that all sentences shall run concurrently.

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2. Learned Additional Sessions Judge, Akola framed charge against the appellant charging him that on 28.2.2016, at 11:30 p.m., in agricultural field at Sindkhed, he along with absconded accused Ashish @ Dubya in furtherance of their common intention committed forcible sexual intercourse with prosecutrix by pointing a knife on the neck of her husband Govind and thereby they committed offence punishable under Section 376-D read with Section 34 of the Indian Penal Code.

He was also charged along with the absconded accused that they committed robbery of spray pump, torch, and a mobile, which were properties in possession of Govind, between sunset and sunrise and thereby they committed offence punishable under Section 392 read with Section 34 of the Indian Penal Code.

Third charge against the appellant was that he along with the absconded accused committed agricultural trespass by entering into field, in possession of the prosecutrix, with an intent to commit the offence and thus they committed offence punishable under Section 447 read with Section 34 of the Indian Penal Code.

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3. The appellant denied the charge and claimed for his trial. During trial, to bring home the guilt of the appellant, the prosecution examined in all 7 witnesses and also relied on various documents duly proved during course of trial.

4. The appellant was arrested on 15.3.2016. Co-accused Ashish @ Dubya could not be arrested and, therefore, after completion of investigation, final report was filed against the appellant and chargesheet under Section 299 of the Code of Criminal Procedure was filed against the the co-accused. While pronouncing the judgment of the conviction against the appellant, learned Judge ordered that case against the absconded co-accused be kept pending in a dormant file along with original deposition of witnesses and standing Non-Bailable Warrant be issued against him, till arrest and production before the Court for trial in view of provisions of Section 299 of the Code of Criminal Procedure. Learned Judge also ordered to preserve seized muddemal property for the said purpose.

5. Since the appellant was aggrieved by his conviction and sentence, he approached to this Court by filing the appeal.

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6. We have heard learned counsel Shri V.M.Moon for the appellant and learned Additional Public Prosecutor Shri S.M.Ghodeswar for the respondent/State. With their able assistance, we have gone through record and proceedings, notes of evidence, and proved documents.

7. Learned counsel for the appellant contended that the appellant is falsely implicated in the crime. To buttress the point, he submitted that scientific evidence, i.e. DNA Report, is not showing finger of guilt towards the appellant. He submitted that semen sample of the prosecutrix's husband was not collected. He submitted that, therefore, the appeal be allowed.

8. *Per contra*, learned Additional Public Prosecutor for the State submitted that testimonies of the prosecutrix and her husband are trustworthy and those inspire confidence inasmuch as according to him, their versions are supported by injuries found on their persons by doctor at the time of their examination. He, therefore, submitted that the appeal has no merit and it be dismissed.

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9. One Jagdish Manohar Tarapure (PW3), is having his agricultural land at Sindkhed. Initially, there, he sowed soyabean crop. Thereafter, he cultivated the farm of pomegranate. In his agricultural land, the work was given to Govind (PW2), the husband of the prosecutrix (PW1), and the prosecutrix and they used to stay in a small house constructed in the field only. A cellphone was also given to them by him for contact.

10. In the month of January 2016, Jagdish (PW3) noticed an unknown person in company of Vishnu Mundhe to whom he gave work of digging a bore well in his field. He also found that the said unknown person used to roam around the house constructed in the field in suspicious circumstances and was attempting to develop intimacy with the prosecutrix. Noticing the said, he enquired with Vishnu about identity of the said unknown person. Upon that, his identity was disclosed as Shankar @ Shekhar Devrao Mundhe, the appellant. Due to suspicious activities, Jagdish asked Vishnu to restrain the appellant from entering into his agricultural field.

11. On 29.2.2016, at about 7:30 a.m., when Jagdish

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(PW3) was reaching to his field, on road beside his field, he noticed Govind (PW2) and prosecutrix (PW1) standing along with their children and hence he stopped. That time, the said couple narrated incident to him that appellant along with an unknown person came in the agricultural field and has committed incident in question. Jagdish noticed injury on the throat of Govind. The couple asked Jagdish to take them to police station. While taking them to police station, he made a phone call to Dr.(Smt.)Asha Mirge, the Chairperson of Women Commission (PW5) and narrated the incident to her. She also came in police station.

12. On 29.2.2016, prosecutrix (PW1), lodged her report with Barshitakli Police Station, Akola. Her report is at Exhibit-19. Whereas, printed First Information Report is at Exhibit-20. The prosecutrix disclosed that at night, on 28.2.2016, after taking dinner with her husband and children, they were sleeping. Her husband was sleeping in veranda. At 11:30 p.m., there was a dog barking which caused her husband awoke. When her husband was proceeding to see happening, the appellant, along with an unknown person, who was dark (सावला) in colour, aged about 25

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years and somewhat fat, accosted her husband and the unknown person put a knife on the neck of her husband and snatched a cell phone from his possession and, thereafter, Shankar started making advances towards the prosecutrix and, therefore, out of fear she ran away towards the field. She was followed by Shankar and caught hold her and in presence of her husband he committed rape on her. That time, the unknown person had his knife on the neck of her husband, she could not resist Shankar due to fear that something untoward will happen to her husband. The report further states that after the rape from Shankar, he took out the knife from his accomplice and he started threatening Govind, the husband, and, thereafter, the unknown person committed rape on her in presence of her husband. It is also narrated that while leaving the place, after commission of the rape, they took along with them a motor pump of spray. It is stated in the report that since the cell phone was snatched away, they could not intimate the fact in the night itself to their employer. In the morning, when their employer came, along with him they came to police station.

13. When the prosecutrix and her husband reached to

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police station for lodging report in respect of the rape, the crime was registered. Police Sub Inspector Sanjay Gangacharan Korche (PW7), who at the relevant time was discharging his duties at Barshitakli Police Station, Akola, sent the prosecutrix to Barshitakli Rural Hospital for her medical examination along with Lady Police Constable Priyanka Gawande B.No.2201. He also sent her husband for his medical examination with a Police Constable B.No.1301. The said couple returned to the police station between 2:00 p.m. and 2:30 p.m., after their medical examinations. Thereafter, complaint of the prosecutrix was formally reduced into writing. After registration of the crime, investigation was formally handed over to Police Sub Inspector Sanjay Korche.

14. During investigation, firstly, Investigating Officer Sanjay Korche (PW7) reached to Sindkhed Woodland. The spot of the incident was shown by prosecutrix (PW1) which was agricultural field of Jagdish Tarapure (PW3). The Investigating Officer, in presence of panch witness Haridas Bhatkar (PW6), recorded spot panchnama. The said spot panchnama is at Exhibit-41. He also seized a petticoat and a saree of the prosecutrix, under

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seizure panchnama. The said seizure panchnama is at Exhibit-21. At the time of the seizure, it was found that there were semen stains on the petticoat. The Investigating Officer encircled said stains and, thereafter, he deposited seized articles in the police station.

15. On 8.3.2016, the appellant was arrested. The arrest panchnama is at Exhibit-51. Investigating Officer Sanjay Korche (PW7) seized a mobile phone handset and a sim card from the accused, in presence of panch witness Haridas Bhatkar (PW6), under seizure panchnama. The said seizure panchnama is at Exhibit-42. The accused was also sent to Barshitakli Rural Hospital for his medical examination and for his blood collection. The blood and other samples, collected by the Investigating Officer, were seized under seizure panchnama (Exhibit-44). During his custody remand, the appellant gave his disclosure statement in presence of panch witness Haridas Bhatkar. Admissible portion of his memorandum statement is at Exhibit-45 and he agreed to show place where he concealed the knife and the motor pump of spray. Accordingly, the police party, which was led by the accused,

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reached to place where articles were concealed. Those were seized under recovery panchnama (Exhibit-46). Similarly, clothes of the accused were also seized under seizure panchnama (Exhibit43). After completion of other usual investigation, the chargesheet was filed.

16. Principle for appreciation of evidence of prosecutrix is well settled in the case of Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat, reported at AIR 1983 SCC 753. The Honourable Apex Court, in paragraph Nos.7 and 9, has ruled as under:

“para No.7 : It is now time to tackle the pivotal issue as regards the need for insisting on corroboration to the testimony of the prosecutrix in sex-offences. This Court, in Rameshwar v. State of Rajasthan, (1952)3 SCR 377 at p.386: (AIR 1952 SC 54 at p.57), has declared that corroboration is not the sine qua non for a conviction in a rape case. The utterance of the Court in Rameshwar may be replayed, across the time-gap of three decades which have whistled past, in the inimitable voice of Vivian Bose, J. who spoke for the Court-

“The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a

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conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge,

The only rule of law is that this rule of prudence must be present to the mind of the Judge or the jury as the case may be and be understood and appreciated by him or them. There is no rule of practice that there must, in every case, be corroboration before a conviction can be allowed to stand."

para No.9 : In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion?"

Keeping the aforesaid principle in mind, now we are proceeding to examine the version of prosecutrix (PW1).

17. We have already seen that in oral report (Exhibit-19) itself prosecutrix (PW1) narrated that rape was committed on her by Shankar, the appellant, and his unknown accomplice in

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presence of her husband Govind (PW2) by putting a dagger on his neck. Therefore, the Court will also require to appreciate version of her husband.

18. Evidence of prosecutrix (PW1) is on line of facts disclosed by her in her oral report (Exhibit-19). During her evidence, she also stated on oath that when rape was committed on her, in scuffle she sustained injury below knee of left leg. Of course, the said particular version is not appearing in the First Information Report. However, only for that, the version of the prosecutrix does not become doubtful inasmuch as purpose for lodging of the First Information Report is set criminal law into motion. The First Information Report is not an encyclopedia of the prosecution case.

19. Substantive evidence of prosecutrix (PW1), that she suffered injury below knee of left leg, stands corroborated when she was examined by Dr.Prakash Panditrao Deshmukh (PW4). Evidence of the doctor shows that on 29.2.2016 when he examined the prosecutrix, he found *“one abrasion 1 cm x 1 cm lateral 1/3rd part of left leg.”* Her injury certificate is at Exhibit-28. In our view,

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though corroboration is not at all necessary, if version given by the prosecutrix is found to be trustworthy by the Court in this case, noticing injury as stated by her, further lends assurance to the Court.

20. During cross-examination of prosecutrix (PW1), it is brought on record that place where rape was committed was agricultural field where there was no stone. Therefore, no one could doubt version given by the prosecutrix that when the rape was committed on her, there was no injury on her back. In her cross-examination, it is brought on record that Shankar, the appellant, left her after he discharged his semen.

21. The prosecution also examined Govind (PW2), the husband of prosecutrix (PW1). He fully corroborates the version of his wife about the rape committed on her by putting him under fear and putting a dagger on his neck causing injury to his neck. The said prosecution witness was also examined by Dr. Prakash Deshmukh (PW4). On his examination, he found injury in the nature of *lenier superficial clean cut 1 cm. in length, right lateral part of neck*. His injury certificate is at Exhibit-29. There is

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nothing in the cross-examination of the doctor that injury found on the neck of Govind could be self inflicted injury.

22. Even, prior to medical examination of Govind (PW2), injury on his neck was noticed by Dr.(Smt.) Asha Mirge (PW5), who is the Chairperson of Women Commission, who reached to Barshitakli Police Station after receiving a telephonic call from Jagdish (PW3) informing her that two persons have committed rape on wife of his servant who resides in his agricultural field. Her evidence shows that when she reached to police station, she noticed that Govind was having injury on his neck and, therefore, she requested police to send him also for his medical examination.

23. The couple was residing in agricultural field of Jagdish (PW3). The appellant was not having any concern whatsoever either with agricultural field of Jagdish or with the couple. Still, as per evidence of Jagdish, he noticed initially, the appellant was roaming unnecessarily near prosecutrix (PW1) and when his identity was disclosed to him by Vishnu Mundhe, he asked him not to enter into his agricultural field. There was no reason or occasion for the appellant to take entry in agricultural field of

Jagdish in the night hours along with absconded accused Ashish @ Dubya.

24. Evidences of prosecutrix (PW1) and Govind (PW2), the husband of the prosecutrix, are absolutely free from any improvements or contradictions. There is nothing available on record by which the Court can deduce any inference that the prosecutrix or her husband was having any motive to implicate the appellant falsely. We find testimonies of these two material prosecution witnesses trustworthy and safe to place reliance on their versions.

25. The submission of learned counsel for the appellant that DNA Report absolves the appellant appears to be correct. The DNA Report is at Exhibit-36. Dr.Prakash Deshmukh (PW4), admitted in his evidence that semen sample obtained from petticoat is of unknown male origin and failed to match with DNA profile obtained from blood stain of Shankar, the appellant. However, only because of that, the case of the prosecution or evidence of prosecutrix (PW1) does not come under clouds of suspicion for simple reason that the prosecutrix was raped by two

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persons one is the appellant and another is the absconded accused. This aspect, in our view, is very rightly considered by learned Judge in the judgment and order impugned in this appeal and we record our stamp of approval to the said reasoning supplemented by learned Judge.

26. Another submission of learned counsel for the appellant that semen was purposefully sprayed on underwear of the appellant, is required to be rejected. Exhibit-43 is seizure panchnama which is duly proved by independent panch witness Haridas Bhatkar (PW6). It shows that two blood samples were seized. The said panchnama does not show that his semen samples were seized. Even, Dr.Prakash Deshmukh (PW4), who examined the appellant, deposed from witness box that after medical examination of the appellant, he only collected blood sample and pubic hair. If that be so, at no point of time the semen of the appellant was available with Investigating Officer to spray the same on his underwear, as tried to be argued by learned counsel for the appellant. We, therefore, reject his submission.

27. Clothes of the appellant were sent to Chemical

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Analyzer under requisition Exhibit-56. Chemical Analyzer's Report is at Exhibit-59. It shows that on underwear of the appellant there were semen stains. The appellant could not offer any plausible explanation for the same.

28. The submission of learned counsel for the appellant that semen sample of husband of the prosecutrix was not collected, has no relevance after decision of this case.

29. On re-appreciating of the entire prosecution case, we are of view that learned Judge was right and he did not commit any error holding the appellant as guilty for offences for which he was charged. Consequently, we pass following order:

ORDER

The criminal appeal is **dismissed** and disposed of accordingly.

JUDGE

JUDGE