

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

CRIMINAL APPEAL NO. 210 OF 2018

Ravindra Sudhakar Mangulkar
Age: 30 years, Occu.: Autodriver,
R/o Kasar Galli, Mudkhed, Tq. Mudkhed,
Dist. Nanded

..APPELLANT

VERSUS

State of Maharashtra and Another

..RESPONDENTS

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Mr. S.J. Salunke, Advocate for appellant
Mr. A.M. Phule, A.P.P. for respondent no.1 – State
Mr. D.Y. Nandedkar, Advocate for respondent no.2

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**CORAM : R.G. AVACHAT AND
R.M. JOSHI, JJ.**

**RESERVED ON : 15th NOVEMBER, 2022
PRONOUNCED ON : 29th NOVEMBER, 2022**

JUDGMENT (PER : R.G. AVACHAT, J.) :

1. This is an appeal from conviction. The appellant has been convicted by the Court of Additional Sessions Judge, Bhokar by it's judgment and order dated 28th February, 2018 passed in Special Atrocity Case No. 3 of 2016. The details of conviction and consequential sentences imposed are as under :-

Sr.No.	Section	Sentence
1	376 of I.P.C.	R.I. for ten years and fine of Rs.5,000/-, in default S.I. for six months
2	3(2)(v) of S.C. & S.T. Act	Life imprisonment and fine of Rs.10,000/-, in default S.I. for eight months

3	3(1)(w)(i) of S.C. & S.T. Act	R.I. for two years and fine of Rs.2,000/-, in default S.I. for two months
4	324 of I.P.C.	R.I. for one year and fine of Rs.1,000/-, in default S.I. for one month
5	506 of I.P.C.	R.I. for one year and fine of Rs.1,000/-, in default S.I. for one month

2. The facts giving rise to the present appeal are as follows :-

P.W.1 – X (prosecutrix) was resident of Nanewadi (name changed) in one of the talukas of Nanded district. It is her case that her husband expired one year before the incident dated 03rd July, 2016. She would, therefore, reside at her parental house. Her parents and brother were agriculturists. The prosecutrix would do tailoring work. On the given day i.e. on 03rd July, 2016, the parents and brother of the prosecutrix were away in the field. Her five years old son – Karan was with her. It was about 01:30 p.m. The appellant came her house. He asked her to allow him to have sexual intercourse with her. The prosecutrix got enraged. She abused him and asked to leave her house. The appellant overpowered her. He made her lie on the cot and then committed sexual intercourse. It is further her case that to compel her to submit to his lust, the appellant assaulted her with a tailoring scissor. On hearing shouts, her neighbor – Anita (P.W.3) (name changed) came. The appellant then left. While leaving the house, the appellant gave his name and asked her to do whatever she wanted to do against him.

3. It is further case of the prosecutrix that on return of her parents in the evening, she related them the incident. On the following day she lodged the First Information Report ('F.I.R.') (Exh.27). A Crime vide C.R. No. 132 of 2016, therefore, came to be registered for the offences punishable under Sections 376, 323 and 506 of the Indian Penal Code ('I.P.C.') and under Section 3(2)(5) of the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('S.C. & S.T. Act'). Provisions of the S.C. & S.T. Act came to be invoked since the prosecutrix claimed to have belonged to *Andh Adivasi* Community (tribe). The prosecutrix came to be medically examined. Clothes on her person at the relevant time came to be seized. Scene of offence panchanama (Exh.36) was drawn. Statements of the persons acquainted with the facts and circumstances of the case were recorded. The appellant was arrested. Blood samples of both, the appellant and the prosecutrix were obtained and forwarded to Regional Forensic Science Laboratory, Nanded for analysis and report. On completion of investigation, the appellant came to be proceeded against by filing the charge-sheet.

4. The trial Court, on appreciation of evidence in the case, convicted the appellant and consequently sentenced him to various punishments as stated hereinabove. Hence, the present appeal.

5. Learned counsel for the appellant would submit that provisions of the S.C. & S.T. Act have been wrongly invoked. According to him, it is not

the case of prosecution that the appellant committed offence because the prosecutrix belonged to the Scheduled Tribe. He would further submit that there was long standing acquaintance between the appellant and the prosecutrix. Both of them have stayed in live-in-relationship for some months. There is delay in lodging of F.I.R. The medical examination report (Exh.43) does not support the prosecution. On the date of offence of rape, the appellant allegedly committed, the punishment provided for the said offence was for a term which shall not be less than seven years but which may extend to life imprisonment and fine as well. According to learned counsel, the appellant is blessed with a child of not more than five years. He has a wife to maintain. He was just twenty-seven years of age when the offence was committed. Sentence for imprisonment for life imposed against him is grossly disproportionate. The appellant is in jail for little over four and half years. Learned counsel ultimately urged for reducing the sentence to a minimum term prescribed for the offence punishable under Section 376 of the I.P.C.

6. Learned A.P.P. would, on the other hand, submit that the offence is serious one. The appellant assaulted the prosecutrix with a scissor. Considering the nature of offence, the appellant does not deserve leniency. Learned counsel for the prosecutrix would submit that the appellant had threatened the prosecutrix during pendency of trial. Learned counsel took us

through the evidence in the case to ultimately submit it to be a case warranting no interference.

7. Considered the submissions advanced. Perused the evidence relied on. The appellant, in short, urged for his acquittal of the offences punishable under the S.C. & S.T. Act and for reduction into quantum of sentence imposed for the offences punishable under the I.P.C.

8. So far as regards conviction of sentence for the offences punishable under Sections 3(2)(v) and 3(1)(w)(i) of the S.C. & S.T. Act are concerned, it is to be stated that there is nothing in the evidence to infer the appellant to have committed these offences merely because the prosecutrix belongs to the Scheduled Tribe. The Division Bench of this Court in case of ***State of Maharashtra Vs. Dnyaneshwar Pandurang Bhokare, 2006 All MR(Cri.) 404***, has observed thus :-

“7. The charge in respect of offences punishable under the various Clauses of Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was indeed uncalled for. Merely because the victim belongs to Scheduled Caste or the accused is upper caste Hindu, it does not follow that the offence punishable under Section 3 of the SC & ST (Prevention of Atrocities) Act, 1989 would be made out. It is not the allegation of the prosecution that the accused committed the offences because the victim belonged to the Scheduled Caste. It was simply a case of two young persons committing an

indiscretion. Therefore, the learned Special Judge rightly held that the charges in respect of offences punishable under Sections 3(1)(xi), 3(1)(xii) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 were not proved.”

9. Although the prosecutrix belongs to the Scheduled Tribe, it is not her case that the appellant committed the offence merely because she belongs to the Scheduled Tribe. In our view, therefore, the conviction and consequential sentences imposed against the appellant for the offences punishable under Sections 3(2)(v) and 3(1)(w)(i) of the S.C. & S.T. Act require to be recalled.

10. So far as regards offences punishable under the I.P.C. are concerned, it is necessary to advert to the evidence in the case.

11. It is in the evidence of the prosecutrix that her husband passed away a year before the alleged incident dated 03rd July, 2016. Her son – Karan was five years old at the material time. Due to untimely death of her husband, she had to return back to her parental house. Her parents and brother were agriculturists. One Manika of Nanewadi (name changed) was of her acquaintance. She was dealing in *ganja* (contraband). Persons from outside of the village would visit her house for purchase and consumption of

ganja. About 4-5 days before 03rd July, 2016, the prosecutrix was present in the courtyard of her house. Her parents were away in the field. The appellant came to her and threatened of committing rape of her on one or other day. She had related the said fact to her parents.

12. It is further in her evidence that by 01:30 p.m. on 03rd July, 2016, she was at her house. Parents and brother were away in the field. She was engaged in tailoring work. The appellant came her house. He asked her to allow him to have sexual intercourse with her. She abused him and asked to leave her house. The appellant dragged her and made her sleep on the cot. When she resisted, the appellant took a tailoring scissor and assaulted her therewith. The appellant then committed sexual intercourse against her wish and without her consent. On hearing shouts, her neighbour – Anita (P.W.3) (name changed) came. She dragged the appellant out of house of the prosecutrix. The appellant, while leaving the house, gave his name, “Ravindra Sudhakar Mandulkar, resident of Mudkhed” and asked her to take action against him as she deems fit. It is further in her evidence that her parents returned by 06:30 p.m. She related them the incident. Her mother made her take bath. She washed all the clothes on her person. As it was somewhat late in the evening, she approached the police station on the following day and lodged the F.I.R. (Exh.27). It is further in her evidence that she was medically screened at Civil Hospital, Nanded. She gave the

medical officer history of the incident. It is further in her evidence that she belongs to *Andh Adivasi* community. Her caste certificate is at Exhibit 32.

13. The prosecutrix was subjected to a searching cross-examination. She denied to have had any acquaintance with the appellant. She admitted to have completed a tailoring course at Mudkhed. She used to shuttle between Mudkhed and her village. It is further in her evidence that for little over one month she had stayed in the premises taken on rent at Krushna Nagar, Mudkhed. She, however claimed ignorance about name of the landlord. She then admitted to have had stayed at Mudkhed from January to April in the year 2016. She, however denied to have had come in contact with the appellant at Mudkhed. It is further in her evidence that after the appellant had his lust satisfied, both of them put on their clothes. In the second breathe, she stated that the appellant put on his clothes when her neighbour came her house and took him out. She denied to have lived with the appellant in marriage-like relationship. It is further in her evidence that the appellant had come to her house. Her parents asked him to bring his parents along to settle the dispute. It was suggested to the prosecutrix that the appellant had consensual sexual intercourse with her many a time before the one in question. On the given day she did not have mood. She, therefore, resisted the appellant to have sex with her. She also denied to had stayed with the appellant at Aurangabad.

14. P.W.3 – Anita (name changed) was admittedly the neighbour of the prosecutrix. She did not stand by the prosecution. In response to the question put to her during cross-examination by the learned A.P.P., she stated that the appellant, while leaving the house of the prosecutrix, gave his full name. While he left the house, the prosecutrix was crying. She has suffered injuries with the scissor. *Saree* and blouse of the prosecutrix were torned. She denied the prosecutrix to have told her to have been raped by the appellant. During cross-examination conducted by learned counsel for the appellant, she testified to have had not seen any person coming out of the house of the prosecutrix. She claimed ignorance of name and address of that person. She had accompanied the prosecutrix to the Court on the day her evidence was recorded. She belongs to the community to which the prosecutrix belongs. The evidence of P.W.3 suggests that she tried to run with hare and hunt with hounds.

15. Then we have evidence of P.W.4 – Dr. Mohan Gushinge. He medically screened the prosecutrix on 04th July, 2016. The prosecutrix gave him history of rape by 01:30 p.m. the previous day. He noticed following injuries on her person :-

“(I) Abrasion on right side of chest, 1 x 0.5 cm, margin regular, red in colour, no swelling, simple in nature.

“(II) Laceration present on right middle finger of size 1.5 cm x 0.5cm tissue deep, margin irregular, red in colour, swelling present, simple in nature.

(III) *Two linear abrasion present on left forearm of size 4x0.2 cm, 3x0.5 cm, margin regular, red in colour, no swelling, simple in nature.*

(IV) *Laceration present on left knee joint on lateral surface of size 1x1cm, skin deep, irregular margin, red in colour, simple in nature.*

(V) *Abrasion on left leg, 4x1 cm, regular margin, red in colour, simple in nature.”*

It is further in his evidence that after local examination of genitals, it is found that contusion present on vagina of size 0.3 x 0.2 cm, reddish in colour, oval shape and multiple old hymeneal irregular tear at 3-7-9-11 O-clock position and presence of defence of struggling injuries on hand and legs were found. Four samples i.e. (1) blood, (2) vaginal swab, (3) nails and (4) pubic hairs were sent for chemical analysis. In his opinion, evidence of sexual intercourse or assault cannot be ruled out. However, final opinion was kept pending till receipt of forensic science laboratory report. The medical officer observed the prosecutrix to have been habitual to sexual intercourse. The medical examination report is at Exhibit 43.

16. Regional Forensic Science Laboratory reports (Exhs.56, 57 and 58) do not support the prosecution. Neither the blood nor semen was detected on the articles submitted for analysis and report.

17. The appellant examined two witnesses in his defence. Both of them were the landlords, in whose premises the appellant and the prosecutrix

were stated to have stayed together. D.W.2 – Dattarao was the resident of Mudkhed. It is in his evidence that he knew both, the prosecutrix and the appellant. Both of them had stayed together as tenant in his premises. It was brought on record during his cross-examination that his house was situated at Krushna Nagar. The prosecutrix admitted in her cross-examination to have had stayed in a premises at Krushna Nagar, although she denied in her evidence to have stayed alongwith the appellant. Close reading of evidence of D.W.2 – Dattarao indicates that his evidence in examination-in-chief has not been taken exception to during his cross-examination.

18. The prosecutrix in her examination-in-chief itself denied any acquaintance with the appellant. According to her, the appellant while leaving her residence gave his name. The same indicates the prosecutrix was economical with truth. Evidence of D.W.2 – Dattarao goes a long way to infer the appellant and the prosecutrix to have had lived together in his premises on rent for 3-4 months. The evidence of prosecutrix would further suggests that the appellant was at her residence for about half an hour when the offence took place. On completion of the alleged act, both of them put their clothes on. When the appellant had been to her parents, they asked him to come along with his parents to settle the matter. The F.I.R. has been lodged twenty-seven hours after the incident. The C.A. reports do not support the prosecution case. The appellant has a wife to maintain and a

small child to bring up. He was just twenty-seven years of age at the material time. All these facts lead us to reduce the quantum of sentence in respect of offence punishable under Section 376 of the I.P.C. from ten years to seven years.

19. In the result, appeal partly succeeds. Hence, the following order :-

ORDER

- (I) Criminal appeal is partly allowed.
- (II) Impugned order dated 28th February, 2018 to the extent convicting the appellant for the offences punishable under Sections 3(2)(v) and 3(1)(w)(i) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is hereby set aside.
- (III) Appellant is acquitted of the said offences.
- (IV) Fine amount, if any, in respect of those offences be paid back to him.
- (V) Sentence of imprisonment for the offence punishable under Section 376 of the Indian Penal Code is reduced from ten years to seven years.
- (VI) Rest of the terms of the impugned order of conviction and consequential sentence to stand unaltered.

(R.M. JOSHI, J.)

(R.G. AVACHAT, J.)

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