

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

**CRIMINAL APPEAL NO.914 OF 2019
WITH
CRIMINAL APPLICATION NO.1109 OF 2022**

Dilip s/o. Suresh Deokare,
Age : 23 years, Occ. Auto Driver,
r/o. Sawali, Tq. Biloli, Dist. Nanded

..Appellant

Vs.

State of Maharashtra,
Through Police Station, Biloli,
Tq. Biloli, Dist. Nanded

..Respondent

Mr.Ganesh A. Gade, Advocate for appellant
Mr.G.O.Wattamwar, APP for respondent

**CORAM : R.G. AVACHAT, J.
DATE : APRIL 21, 2022**

JUDGMENT :-

The challenge in this appeal is to the judgment of conviction and order of sentence dated 06.08.2019 passed by learned Sessions Judge, Biloli, in Sessions Case No.2 of 2014. The appellant herein has been convicted for the offence punishable under Section 376 of Indian Penal Code and therefore, sentenced to suffer rigorous imprisonment for ten years and to pay a fine of Rs.2,000/-. In default of payment of fine, he has been directed to undergo rigorous imprisonment for fifteen days.

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

PW 4 – S (victim) was resident of village Sawali, Tq. Biloli. The appellant was also resident of the very village. It so happened that the victim had been to Laxmi Gudi temple to bring firewood. It was 4.00 p.m. of 19.03.2019. When she was collecting firewood, the appellant came from behind and pressed her mouth. He lifted her and took in a nearby cotton field of one Abarao Sangnod. He made her lie on the ground and removed her saree. He then had sexual intercourse with her without her consent and against her will. He then ran away. The victim came home. She related the incident to her mother-in-law and the husband as well. She, thereafter, lodged FIR (Exh.40.) at Biloli Police Station.

3. Based on the FIR, crime vide C.R. No.23 of 2013 came to be registered. The victim was medically screened. The appellant was arrested. The scene of offence panchnama was drawn. The clothes on the person of both appellant and victim at the relevant time, were taken charge of under panchnama. The seized articles

were sent to the Forensic Science Laboratory. The C.A. reports were received. The statements of the persons acquainted with the facts and circumstances of the case were recorded. The appellant was proceeded against by filing the charge sheet.

4. Learned Addl. Sessions Judge framed the charge. The appellant pleaded not guilty. His evidence is of false implication.

5. Eight witnesses were examined and certain documents were produced in evidence to bring home the charge. On appreciation of the evidence, the trial Court convicted and sentenced the appellant, as stated above.

6. Learned counsel for the appellant would submit that the victim was little over 35 years of age at the relevant time. The appellant was 23 years of age. The medical examination report does not support the prosecution. The sole testimony of the victim was, in the facts and circumstances of the case, not sufficient to hold the appellant guilty of the offence. He, therefore, urged for allowing the appeal.

7. Learned APP would, on the other hand, submit that the conviction for the offence of rape can be sustained on the sole

testimony of the victim. Here, the medical evidence reinforces evidence of the victim. According to learned APP, no Indian woman would file a false complaint of offence of rape at the cost of her chastity. In support of his contentions, learned APP relied on the decisions in the cases of (i) **State of Uttar Pradesh Vs. Pappu @ Yunus and anr., AIR 2005 SC 1248** and (ii) **Phool Singh Vs. The State of Madhya Pradesh, AIR 2022 SC 222**, to ultimately urge for dismissal of the appeal.

8. Considered the submissions advanced. Perused the evidence relied on. Gone through the authorities pressed into service. Although the prosecution examined eight witnesses, the evidence relevant for deciding the appeal would be that of the victim, her husband and the Doctor, who had medically examined her.

9. Let us appreciate the evidence of the prosecution. PW 4 – S (Victim) testified that on the given day, she had been to Laxmi Gudi temple to fetch firewood. When she was engaged in collecting firewood, the appellant came from behind. He made her lie on the ground and removed her saree. He had then sexual intercourse with her against her will and without her consent. It is

further in her evidence that the appellant, thereafter, ran away. One Gani came. He helped her lift the firewood bundle. She, however, did not relate him the incident. It is further in her evidence that she came home and informed her mother-in-law and the husband as well about the incident. She, thereafter, lodged the FIR (Exh.40).

10. She was subjected to searching cross-examination. In response to the questions put to her during cross-examination, it has come on record that the place of incident was in the close-by of her home. If a call was given from the place of incident, the same could have been heard by one of the inmates. She, however, volunteered to state that nobody was at home. It was about 04:00 p.m. It is further in her evidence that she did not make hue and cry after the incident, as she was afraid. Her bangles were broken. She, however, did not suffer injury to her wrist. She had abrasion on her back. She had pain in abdomen. She had suffered some abrasion on her person. The incident might have lasted for half an hour. It is further in her evidence that she had related the incident to the village Sarpanch. The efforts of settlement of the matter were made at village level. Since the matter was not settled, she lodged the FIR. It is further in her evidence that some amount was

demanded from the appellant for settlement of the matter. He failed to pay.

11. PW 6 – Gani testified that he was near-by the temple. It was 4:30 p.m. He was grazing his she-goats. He saw the victim in the field. On her request, he assisted her in lifting the bundle of firewood. He did not hear anything about the incident. It is further in his evidence that he did not see the victim to have been frightened. He did not notice the clothes on her person to have been torn. He did not see anyone running away from the field.

12. PW 5 – Babu, husband of the victim, testified that the victim had related him the appellant to have raped her in the field. He, therefore, accompanied her to lodge the FIR. During his cross-examination, he testified that the victim had told the police that the appellant had taken the victim's wedding ring and Rs.500/-. The police had asked her to bring purchase receipt. Thereafter, he again had been to the police station in the auto-rickshaw of one Shadulmiya. He denied that there was a meeting in the village to settle the matter in which he made demand of money.

13. PW 7 – Dr. Surbhi testified to have had examined the victim on 20.03.2013. She found no external injuries on the person or genital of the victim. She had reserved her opinion pending the C.A. report related to blood, pubic hair and vaginal swab. On having seen the C.A. reports (Exhs.32, 33 and 34) before the Court, she opined that there might have ejaculation in vagina of the victim. PW 1 – Sk. Janimiyan, PW 2 – Shadulmiya and PW 3 – Pradeep were panch witnesses to the scene of offence panchnama (Exh.12), seizure of clothes of the appellant and the victim as well, respectively. Their evidence does not further the prosecution case.

14. There can be no two views over what has been submitted by learned APP relying on the aforementioned two authorities. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape, is not an accomplice. The conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence.

15. Each case has its peculiar facts and circumstances. The evidence in the case in hand would indicate that there might have been relationship between the appellant and the victim. The appellant was 23 years of age, while the victim

was 37 years old. The alleged incident took place in the broad day light by 4:30 p.m. The place of incident was in the nearby of the house of the victim. It does not stand to reason that the appellant comes from behind, covers her mouth, lifts her and takes to a near-by field. In spite of there having been opportunity to raise alarm or put resistance, she did not do anything of that sort. Soon after the alleged incident, PW 6 - Gani came to the victim. He was in the nearby of the scene of offence. He did not see anybody running away. The victim did not relate him the incident. He did not see the victim either frightened or confused. When the victim shares the incident with the village Sarpanch, what difficulty she had to narrate the same to PW 6 - Gani, who had assisted her in lifting the firewood, is not known. To top it, the husband of the victim testified that she had informed the police that the appellant had taken her wedding ring and Rs.500/- as well. This piece of evidence indicates close acquaintance between the appellant and the victim. She had also testified that money was demanded from the appellant for settlement of the matter. Her

husband, however, did not support her this contention. As such, both of them are not witnesses of truth.

16. The medical evidence does not reinforce the prosecution case. No external injury was noticed on the person of the victim and on her genital as well. The Doctor did not give her opinion soon after the medical examination of the victim. The opinion was reserved pending receipt of C.A. reports. The vaginal swab and blood samples were taken. It is informed that no semen sample of the appellant was obtained. The C.A. report (Exh.32) simply indicates that there were stains of blood and semen stains on the saree and nicker of the victim. Nothing of that sort was detected on the clothes of the appellant. The victim was a married woman. As such, it is a case wherein entire evidence of the prosecution does not inspire confidence to agree with the impugned judgment of conviction and resultant order of sentence.

17. The appellant has been behind the bars for little over three and half years. Based on such evidence in the case,

the trial Court ought not to have convicted the appellant. Since this Court is not at one with the findings recorded by the trial Court, the appeal has to be allowed.

18. Hence, the following order:-

- (i) The appeal is allowed.
- (ii) The impugned judgment and order dated 06.08.2019 passed by learned Sessions Judge, Biloli, in Sessions Case No.2 of 2014, is set aside. The appellant is acquitted of the offence punishable under Section 376 of Indian Penal Code.
- (iii) The appellant be released forthwith, if not required in any other case.
- (iv) Fine amount deposited by the appellant, if any, be refunded to him.
- (v) In view of disposal of the appeal, Criminal Application No.1109 of 2022 stands disposed of.

[R.G. AVACHAT, J.]

KBP