

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

CRIMINAL APPEAL NO.514 OF 2017

Pravin Prakash Patil	Appellant
Versus	
The State of Maharashtra and another	 Respondents

Mr. Aniket Nikam, Advocate a/w. Piyush Toshnival and Vivek Arote, for the Appellant.

Mr. Yogesh Y. Dabke, APP for the Respondent No.1-State.

Mr. Tushar Kochale, Advocate (appointed) for Respondent No.2.

CORAM :SARANG V. KOTWAL, J.

DATE : 12th SEPTEMBER, 2022

ORAL JUDGMENT :

1. The appellant has challenged the judgment and order dated 15.4.2017 passed by the Additional Sessions Judge, Mangaon, District-Raigad in Sessions Case No.5/2012. The appellant was convicted and sentenced as under :

- i. He was convicted for commission of offence punishable under Section 376 of Indian Penal Code and was sentenced to suffer RI for ten years and to pay fine of Rs.10,000/- and in default to suffer SI for six months;

- ii. He was convicted for commission of offence punishable under Section 392 of IPC and was sentenced to suffer RI for two years and to pay fine of Rs.1,000/- and in default to suffer SI for one month;
- iii. He was further convicted for commission of offence punishable under Section 506 of IPC and was sentenced to suffer RI for three months and to pay fine of Rs.500/- and in default to suffer SI for fifteen days;
- iv. The substantive sentences were directed to run concurrently.

The appellant was granted set off under Section 428 of Cr.PC.. Out of the fine amount, if it was recovered, Rs.10,000/- were directed to be paid to the victim under Section 357(1) of Cr.PC.

2. The prosecution case is that, the incident occurred on 12.11.2010. The victim was a married lady with a small child. On that day, at about 1.00 p.m. she had gone to the river bank for washing clothes. She was alone at the spot. One motorcycle rider, who according to the prosecution case was the appellant, came

there. He approached her and asked about clean water. He drank water from the upper stream shown by her and then made an indecent proposal to her. The victim realized his intentions. She started running away. The appellant chased her. He forcefully pulled her towards a nearby agricultural field and committed rape on her. He removed her ornaments under threat and then he went away. On this basis, she lodged her FIR vide C.R. No.22/2010 at Mhasla police station. The investigation was carried out. Statements of the witnesses were recorded. Clothes of the victim were seized. The appellant was arrested on 29.9.2011. The test identification parade was held on 14.10.2011. Blood samples and semen samples were collected and sent for DNA profiling. The DNA of the appellant matched with the stains on clothes of the victim. After completion of the investigation, charge-sheet was filed and the case was committed to the Court of Sessions.

3. The prosecution examined nine witnesses including the victim, the panchas, the investigating officer, medical officers etc.. The DNA report was produced on record at Exhibit-42. Learned Judge then recorded the statement of the appellant under

Section 313 of Cr.PC. He denied the allegations and his defence was of false implication. After hearing the parties and considering the material, learned Judge convicted and sentenced the appellant as mentioned earlier.

4. Heard Shri Aniket Nikam, learned counsel for the appellant, Shri Yogesh Dabke, learned APP for respondent No.1-State and Shri Tushar Kochale, learned appointed counsel for respondent No.2.

5. PW-1 was the victim herself. She has deposed about the incident. She was staying at that village with her mother, daughter and son. Her husband was in service in Mumbai. The river was at a distance of 1 Km from her parental house. On 12.11.2010, at 1.00 p.m., she had gone to the river for washing clothes. After some time, she was left alone as her companions went home. One unknown motorcycle rider came near her. He parked his motorcycle near a hut. There was a bridge near that area. He asked the victim whether the water from the river was clear enough for drinking. She directed him towards the water stream where there was clear water. He went there, drank water

and came back towards her. He made indecent proposal asking sexual favours. The victim understood his intentions. She started shouting. However, that person overpowered her, took her towards the agricultural field and then committed rape on her. Then he cleaned himself using her petticoat. He then removed her ornaments and left the spot. She could not see the registration number of the motorcycle. She went towards her house. She was crying and shouting. When she reached some houses on the way, the villagers asked as to why she was crying. She narrated the incident to them. She was taken to her house. She gave description of the person who had committed rape. The police were informed. Her FIR was lodged at Mhasla police station. It is produced on record at Exhibit-19. She identified the appellant in the Court as the person who had committed rape on her. She produced the clothes which were on her person at the time of incident. She produced those clothes before the police. Those were seized. She was called to Tahsildar's office on 14.10.2011. At that time, she identified the appellant from amongst the dummies.

In her cross-examination, she stated that during investigation, the police were searching for the accused but she denied the suggestion that the police had shown her two to three suspects. According to her, the police had shown only one suspect to her. They had prepared a sketch of the culprit. The distance between the hut and the place where she was washing clothes was about 200 ft. She did not sustain any injury on her back at the time of incident. During scuffle no injury was caused to the accused. She tried to resist but because of his power she could not push him back. After ten months from the date of incident, the police arrested the accused. She denied the suggestion that the police showed the accused to her. She deposed that the Tahsildar's office and Mhasla police station are situated in the same area. On 14.10.2011, initially she went to Mhasla police station. Sub-jail Mhasla was within the area of Tahsildar office. She denied the suggestion that after the arrest of the appellant, the police had shown her the appellant on the same day or that he was shown to her before 14.10.2011.

The FIR at Exhibit-19 corroborates her deposition.

6. PW-2 Jaising Betkar was a person who met the victim when she was returning home. He has deposed that, at about 2.00 p.m., he heard her shouts. People enquired with her. There were others with him. The victim was crying. There were 50 to 60 persons who gathered there. The victim narrated the incident to them. Thereafter he himself and 2-3 others went on their motorcycles in search of the accused. One Sameer Bankar informed the police. The police came to the village and made further enquiry.

7. PW-3 Sameer Bankar was a pancha for panchnamas of the spot, seizure of motorcycle and seizure of gold ingot. The spot panchnama is produced on record at Exhibit-27. He deposed that the spot was shown by the victim. One ear-ring was found at that spot. The paddy crop at the spot was already harvested. The panchnama itself shows that there was wet soil at the spot, which was seen pressed at that particular spot. Besides that there were no other signs. An ear-ring was found near a part of paddy crop. It was seized. The panchnama was conducted between 5.00 p.m. to 6.30 p.m.

The other panchnama is of seizure of motorcycle, that panchnama is produced on record at Exhibit-28. The motorcycle was produced by the appellant. At the time of panchanama, it was parked in the police station. Investigation showed that it stood in his earlier name. His name was changed subsequently by following due procedure but the motorcycle stood in his earlier name.

PW-3 was also a pancha for panchnama of seizure of gold ingot. It was produced by PW-9 Anil Bhojne which was weighing 19.750 grams. It is the case of the prosecution that the appellant's friends had sold the gold ornaments to PW-9 Anil Bhojne who was a goldsmith. He had melted those ornaments and had made that gold ingot.

8. PW-9 Anil Bhojne has deposed that in April, 2011 Nilesh Sitap and Nitesh Shigwan had come to his shop. Nitesh was his brother-in-law and Nilesh was Nitesh's friend. They told him that the gold ornaments were of the appellant who was friend of Nilesh Sitap. PW-9 then purchased those ornaments and prepared gold ingot. He has paid Rs.37,000/- for that.

His evidence is based on the information given by Nilesh and Nitesh. It is hearsay and, therefore, it cannot be used against the appellant. This evidence cannot be used as an incriminating piece of evidence against the appellant.

9. PW-4 Vinod Joshi was a pancha when clothes of the victim were seized. The clothes were her saree, her undergarments and petticoat. Those clothes were produced on 12.11.2010 at 7.15 p.m. The panchnama is produced on record at Exhibit-33.

10. PW-5 Dr. Madhukar Dhavle had examined the victim on 12.11.2010 at about 8.30 p.m.. The medical certificate is produced on record at Exhibit-35. There were no visible injuries on her person. There were no injuries on the private parts. He had collected different swabs and blood of the victim.

In the cross-examination, he stated that in case of the victim, who was a married lady and having a child there were less possibility of injuries on her private parts. He further deposed that after examining the victim, he did not find evidence of sexual assault. He further stated that for collecting samples for DNA test,

separate kit was necessary. He himself did not collect any sample of the victim for DNA analysis through any special kit.

11. PW-6 Dr. Mahesh Mehta is an important witness. On 3.10.2011, he examined the appellant. On examination it was observed that the appellant was not impotent. PW-6 then collected the blood and semen of the appellant. He sent sample of blood and semen of the appellant as per request of Mhasla police to Chemical Analyzer at Mumbai. Blood sample of the appellant was collected for DNA test and sample of semen was collected for comparison with stains on the clothes and undergarments of the victim. He deposed that as per the norms of C.A., he took sample of the blood and semen of the appellant. The police had procured necessary kit for collecting the sample of the accused for sending the same to C.A. He had filled the identification form of the appellant. The appellant's passport size photo was pasted on it. It was signed by him as well as by the appellant. The identification form is produced on record at Exhibit-40. Simultaneously he collected blood of the victim. Necessary kit was provided by Mhasla police for collecting sample for DNA test. He had filled the identification form of the victim as well. Her passport size photo

was pasted on it. That form is produced on record at Exhibit-41. It was signed by him and the victim. He has deposed that while collecting the sample of blood of the victim and the appellant for sending them for DNA analysis, he had followed the procedure regarding collection of sample, labeling and sealing. It was done in the presence of two independent witnesses. He identified the appellant before the Court whom he had examined and whose samples he had collected. During DNA test semen found on the petticoat of the victim matched with the male haplotypes present in the DNA profile obtained from the blood sample of the appellant. Same was the case with the male haplotypes obtained from the nicker of the victim. They also matched with the appellant's DNA profile obtained from blood sample. The DNA report is produced on record at Exhibit-42.

In the cross-examination he deposed that DNA special kit is required for taking sample of the blood. Those kits are available with Forensic Science Laboratory at Kalina. They were not available with the Primary Health Centre. On 3.10.2011, the police came to him for taking sample of blood and sample of semen of the appellant with DNA kits. In Exhibit-40, there were

some columns which were left empty. But he denied the suggestion that he did not collect blood sample of the appellant and that he did not fill those details.

12. PW-7 PI Prakash Birasdar was the investigating officer. He has deposed about the investigation carried out by him. He had arrested the appellant. He had sent the victim's clothes to C.A. for analysis. He had sent the appellant for medical examination and for collecting sample of his blood and semen. He had seized the gold ingot during investigation. He seized the motorcycle. He produced C.A. reports on record. He had requested the Executive Magistrate to conduct test identification parade. The motorcycle stood in the name of 'Pravin Ambekar' which was the appellant's earlier name. The name was changed as per the publication in the Gazette dated 10.4.2008 and since then appellant's name is 'Pravin Patil'.

In the cross-examination, he deposed that there were two more suspects in the case. He had received secrete information about involvement of the appellant in this case but statement of that secret informant was not recorded. He denied

the suggestion that the appellant was shown to him prior to the test identification parade. The medical officer handed over DNA kit of the blood samples of the accused and the victim along with sealed envelope.

13. PW-8 Ajay Gholave was the Naib Tahsildar, who had conducted the test identification parade on 14.10.2011. He deposed that on that day, he called two panchas. The parade was held between 12.00 p.m. to 12.30 p.m. He had called six dummies. They stood in one room. The victim identified the appellant. PW-8 then prepared memorandum panchnama. It is produced on record at Exhibit-56.

In the cross-examination, he stated that he had not seen the accused before identification parade. He had collected the dummies as per the average description of the appellant given by the police. Mhasla sub-jail was within the campus of Tahsildar Office. The appellant was kept in sub-jail, Mhasla before he was brought for identification parade. He could not tell whether the appellant was kept in Mhasla police station before he was produced for the parade. He did not remember whether he had

asked the victim whether she had seen the appellant prior to identification parade. Before conducting identification parade he had not studied the case and he had not collected the information from the police about the date of incident as well as date of arrest of the appellant.

This, in short, was the prosecution evidence.

14. Learned Judge believed the prosecution evidence. He also relied on the DNA report as well as the test identification parade and recorded his order of conviction and sentence.

15. Learned counsel for the appellant submitted that the prosecution case is false. Medical examination of the victim did not support the prosecution case of rape. There were no injuries on the person or even on the private parts of the victim. The place where the incident had taken place was a rough place due to harvesting of the paddy crop and yet no injuries were found on the back of the victim. The test identification parade was held in violation of the rules provided under the Criminal Manual. PW-8 has not ascertained about the facts of the case. There is no explanation about the age and other description of the dummies.

There was a strong possibility of the appellant having been shown to the victim prior to test identification parade.

16. Shri Nikam further submitted that the manner in which the clothes of the victim were collected, seized and sent for C.A. examination does not inspire confidence. The clothes were seized on 12.11.2010 but the letter shows that it was received by the C.A. on 20.11.2010. No explanation is offered to show as to whether during that period the clothes were properly kept without tampering. He further submitted that the identification form was not properly filled, thus violating the procedural requirements for collection of sample. There is no evidence to show that DNA kits were procured through proper channel. There is no evidence as to who had procured those DNA kits and from where they were collected. In this case, since the DNA examination is conducted after more than about one year, no reliance can be placed on it.

17. On the other hand, learned APP as well as learned counsel for respondent No.2 submitted that there was no reason to disbelieve the evidence of the victim. She was a married lady

and the Medical Officer had explained that in her case there was a possibility that there could not be injury to her private parts. They further submitted that the victim has identified the appellant at the test identification parade as well as in the Court. They relied on the DNA report which showed that the DNA profile of the appellant matched with the semen stains found on the clothes of the victim. They further submitted that inspite of some gaps in the identification form filled by the medical officer, it does bear the signature and photograph of the appellant and, therefore, there cannot be any mistake about the identity of the person from whom the blood samples were collected.

18. I have considered these submissions. As far as the question whether the incident had really taken place or not is concerned, there is absolutely no reason for the victim to depose or state falsely about occurrence of such incident. The FIR was lodged against an unknown person and, therefore, she had no motive to implicate anyone falsely. The victim was shocked by the incident and went towards her house crying and shouting. The villagers made enquiries and she immediately narrated the incident to them. The police were informed immediately and the

FIR was also lodged within a short time i.e. at about 4.30 p.m. on 12.11.2010. There was no scope to invent a false story. One of her ear-ring was found at the spot shown by the victim herself. It also corroborates her case. Therefore, there is no reason to doubt the occurrence of the incident.

19. The spot panchnama shows that the soil was wet at the spot where the rape was committed and, therefore, absence of injuries on her back as canvassed by learned counsel for the appellant will not really help the defence. The medical officer had explained that, in her case there could not be injuries to her private parts. Therefore once it is held that the incident had occurred, her medical examination will not dislodge her clear deposition about occurrence of the incident. She had narrated the incident in her deposition in clear words. It is corroborated by her FIR, which was lodged immediately. Therefore, her evidence is quite cogent.

20. As far as identification of the appellant is concerned, Shri Nikam made submissions about violation of the procedure in conducting the test identification parade. There is nothing to

show that the appellant was shown by the police to the victim prior to holding of the test identification parade. There is no serious cross-examination about description of the dummies and there is nothing to show that the dummies did not match the description of the appellant. PW-8 in his deposition has stated that he had selected the dummies as per the description of the appellant provided by the police. Therefore, in that behalf no fault can be found with the Naib Tahsildar PW-8. He had selected minimum six dummies as per the requirement of the rules. From his evidence, it cannot be inferred that the test identification parade was held in violation of those rules. Besides the test identification parade the appellant was identified by the victim in the Court. The incident had taken place in broad day light. The appellant had spent sufficient time at the spot while committing the offence. The victim had sufficient opportunity to observe his features. She was unlikely to forget him though he was arrested after more than ten months from the date of incident. She was unlikely to forget him and she had identified him in the Court as well. Therefore, I do not find any substance in the submission that identification of the appellant is doubtful.

21. As far as recovery of motorcycle and that of the gold ingot is concerned, in my opinion, those two circumstances would not be incriminating against the appellant. The motorcycle was not identified by the victim. Gold ingot was produced by PW-9 Anil Bhojne. However, his knowledge about those ornaments was based on the information provided by Nilesh and Nitesh. That would be hearsay as far as he is concerned and, therefore, his deposition cannot be used against the appellant. Thus though there is no recovery which can be connected to the appellant, the offence of robbery was part of the same transaction involving the offence of rape as deposed by PW-1 the victim. Since I am accepting the version of the victim, the offence of robbery also stands proved against the appellant though recovery is not proved against him.

22. The most important feature of this case is of DNA report. It is produced on record at Exhibit-42. There was some criticism about incomplete identification form filled by PW-6. However, if that identification form is seen, which is produced on record at Exhibit-40, it shows that the photograph of the appellant was pasted on it. It was signed by PW-6 as well as by the

appellant. Even declaration on the same form was signed by the appellant. The form was also further signed by two witnesses. Thus, the name of the appellant was clearly mentioned in the form itself. Though the column of date of sample collection was not filled, on that very date under the signatures of the same two witnesses samples of the victim were also collected and that identification form mentions the date as “3/Oct/2011”. The Medical Officer, PW-6 has deposed that the samples were collected on 3.10.2011. There is no serious challenge to this particular date in the cross-examination. Therefore, the defence cannot take advantage based on these submissions.

23. The DNA report, as mentioned earlier, is produced at Exhibit-42. It mentions that DNA extracted from the semen stains detected on the petticoat of the victim as well as underwear of the victim which are described as Exhibits-3 & 4 of F.S.L.M.L. Case No.DNA-772/2010, matched with the male haplotypes present in the DNA profile obtained from the blood sample of the appellant. This is a clinching evidence against the present appellant. This particular number i.e. ‘F.S.L.M.L. case No.DNA-772/10’ was already recorded in the CA report dated 24.6.2011. That is much

prior to arrest of the appellant. That CA report is produced on record at Exhibit-48. It mentions presence of semen in those two Exhibits-3 & 4 i.e. petticoat and undergarment of the victim. At that time itself analysis was made for DNA profile as is reflected by the said number "DNA-772/10". Therefore, there is no scope to argue that there was manipulation by the police in procuring the samples from the appellant and matching it with the DNA profile of the semen found on those two exhibits. The DNA report at Exhibit-42 also mentions this particular "DNA772/10" under the column "Genotype". Thus, there cannot be retrospective manipulation of these articles. The evidence in this respect is clinching and the prosecution has successfully proved the case against the appellant.

24. Shri Nikam, learned counsel for the appellant then submitted that leniency be shown to the appellant because just before his arrest he had got married. His wife is unnecessarily suffering. He was only 21 years of age at the time of incident. He was on bail during trial and he has not misused that liberty. There are no other allegations against him. He has not committed even a minor offence during this period and even otherwise at any time

as well. He submitted that the incident is old. It had taken place in the year 2010 and at that time the minimum sentence provided was for seven years. Considering these aspects, leniency can be shown to the appellant and his substantive sentence can be reduced to seven years.

25. Learned APP and learned counsel for respondent No.2 opposed these submissions on the ground that the offence was serious. However, they conceded that the minimum sentence provided at that time was for seven years and there are no allegations of any other offence against him during this period.

26. I have considered these submissions seriously. The appellant was on bail during trial and there are no allegations against him of misusing of that liberty. There are no other antecedents against the appellant. The incident had taken place in November, 2010. Almost twelve years have passed. Considering this background and his young age at the time of commission of offence, some leniency can be shown to him. At the same time, balance will have to be maintained so that the victim is sufficiently compensated. Her ornaments were robbed.

Therefore, I am inclined to reduce the substantive sentence but with enhancement of fine so that the victim gets some monetary benefit. That would serve the ends of justice. Hence, the following order.

:: O R D E R ::

- i. The appeal is partly allowed.
- ii. The appellant's conviction under Section 376 of IPC is maintained. But his sentence of rigorous imprisonment for ten years is reduced. He is now sentenced to suffer rigorous imprisonment for eight years. He is also sentenced to pay fine of Rs.60,000/- (Rupees Sixty Thousand Only) and in default of payment of fine amount he shall suffer further simple imprisonment for two years. Fine amount shall be deposited in the trial Court.
- iii. The appellant's conviction for commission of offences punishable under Sections 392 and 506 of IPC is maintained. The sentence imposed for commission of those offences are also maintained.
- iv. The substantive sentences of imprisonment shall run concurrently.

- v. The appellant is given set off under Section 428 of Cr.PC. for the period which he has undergone as an under-trial prisoner.
- vi. Out of the balance fine amount, if it is recovered from the appellant, additional Rs.50,000/- be paid to PW-1 the victim as compensation under Section 357 of Cr. P.C.
- vii. The appellant is permitted to pay the fine amount within a period of two months from today.
- viii. The appeal is disposed of accordingly.

(SARANG V. KOTWAL, J.)

Deshmane (PS)

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