

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

CRIMINAL APPEAL NO. 950 OF 2019

Amit Yashwant Jadhav

..Appellant.

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. Nikhil D. Patil, for Appellant.

Mr. S. R. Agarkar, APP for State/Respondent No.1.

CORAM : SARANG V. KOTWAL, J.

DATE : 16th DECEMBER 2022

JUDGMENT :

1. The Appellant has challenged the Judgment and order dated 08/05/2019 passed by learned Additional Sessions Judge, Ratnagiri, in Sessions Case No.16 of 2017. The Appellant was convicted and sentenced for the following offences:

i) The Appellant was convicted for commission of offence punishable under section 376 of the I.P.C. and was sentenced to suffer R.I. for 7 years and to pay a fine of Rs.20000/- and in default of payment of fine to suffer R.I. for four months.

ii) The Appellant was convicted for commission of

offence punishable under section 366 of the I.P.C. and was sentenced to suffer R.I. for 1 year and to pay a fine of Rs.5000/- and in default of payment of fine to suffer S.I. for one month.

iii) The Appellant was convicted for commission of offence punishable under section 323 of the I.P.C. and was sentenced to suffer S.I. for 2 months.

iv) The Appellant was convicted for commission of offence punishable under section 506 of the I.P.C. and was sentenced to suffer S.I. for 2 months.

v) All the substantive sentences were directed to run concurrently.

vi) Out of the fine amount, Rs.25000/- was directed to be paid to the prosecutrix as compensation.

2. Heard Shri.Nikhil Patil, learned counsel for the Appellant and Shri. Agarkar, learned APP for the State

3. The prosecution case is that the Appellant approached the prosecutrix on the pretext that he wanted to repay the amount which he had taken from her husband. The prosecutrix was staying in a village and her husband was staying at Bangalore in connection with his job. On 07/06/2017, the Appellant called the prosecutrix

to a nearby bus stop to give back the money which he had taken from her husband. In stead of paying the money, he forced her to sit on his two wheeler. He took her to a secluded spot and committed rape on her. The prosecutrix returned home and told this fact to her mother in law. At her instance, she called her husband on the next morning. Her husband, in turn, advised her to call his cousin and go to the police station. She went to Jaigad police station and lodged her F.I.R. vide C.R.No.26 of 2017 on 09/06/2017.

4. The Appellant was arrested. The spot panchanama was conducted. It is the prosecution case that, broken pieces of bangles and torn piece of pocket of a shirt were found at the spot. At the instance of the Appellant his clothes were seized from his house. His shirt was without pocket. The articles were sent for C.A. examination. The statements of the witnesses were recorded. The Appellant, as well as, the victim were sent for medical examination. The C.A. reports show that the victim's *saree* and piece of the shirt's pocket found at the spot were having the same characteristic of the earth found at the spot. Another C.A. report

showed that, the fabric of the shirt seized from the Appellant's house and the piece of pocket found at the spot were of the same nature. The investigation was carried out and the charge-sheet was filed. The case was committed to the Court of sessions.

5. During trial, the prosecution examined eight witnesses including the victim, her husband's cousin, panchas, Medical officers, carrier of the articles and the investigating officer. Defence of the Appellant was of total denial. Learned trial Judge believed evidence of the prosecution and based on his conclusion, convicted and sentenced the Appellant, as mentioned earlier.

6. The prosecution case is based on the evidence of the victim herself. She is examined as PW-2. She has deposed as under:-

She was staying with her mother in law, two children and her husband. However, her husband, at the relevant time was working at Bangalore. She was resident of village in District Ratnagiri. There was another bigger village near her village. She used to go to that bigger village to do household work. On

06/06/2017, at 6.00p.m. the Appellant met her on the bus stop. He asked her about her husband. She told him that her husband was in Banglore. The Appellant asked for mobile phone number of her husband. He further told her that, he owed Rs.5000/- to her husband. PW-2 did not give her husband's mobile phone number, but the Appellant then took her mobile phone forcibly and dialed his phone number from her handset. He returned the phone. She went away. On the next day, at about 8.30a.m. she received a phone call from the Appellant. PW-2 did not receive it. At about 6.00p.m. she was returning home. She was present at the bus stop. She received a phone call from the Appellant. He told her that, he was bringing Rs.5000/- to her house. He again told her that he was not coming to her house. He asked PW-2 to come at a particular bus stop. That bus stop was near her house. She went home. At 8.00 to 8.30p.m. she again received a phone call from the Appellant. He told her that, he was coming to that bus stop with money. PW-2 asked him to come to her house, but he refused. She then went to that bus stop. The Appellant was present there with his Activa two wheeler. PW-2 asked for the money, but he did

not give her money. PW-2 started going back. It is her case that the Appellant came from behind and caught her both hands. He dragged her forcibly towards his vehicle and asked her to sit on it. Initially, she sat on the vehicle but immediately she got down from the vehicle. The Appellant threatened to kill her. Then she again sat on his two wheeler. She has further deposed that the Appellant was riding his two wheeler with his right hand and he had pressed her mouth with his left hand. He took her near a Banyan tree where he got down. He pushed her down and committed rape on her. He slapped her and told her not to shout. He offered Rs.1 lakh for not filing any case and then he went away. She went back and narrated the incident to her mother in law who, in turn, told her to call her husband. The phone call could not be connected. Even in the morning, he could not be contacted. Ultimately, at 11.00a.m. on the next day, PW-2 could contact her husband. PW-2 told her husband about the incident. He advised her to meet his cousin. She accordingly called her husband's cousin. He met her and then they went to Jaigad police station. She lodged her F.I.R. It is produced on record at Exhibit 36. She was sent for medical

examination. She showed the spot of incident. She identified the bangles which were seized from the spot of incident. She also identified the piece of shirt pocket which was seized from the spot. It was that of the Appellant.

In the cross-examination, she deposed that, the bigger village where she was working was at about half an hour walking distance from her village. There was only one road which went from that bigger village to her village. Many people used that same road. She deposed that even in the late night many people used that road. There were other families residing near her house. They were her relatives. She was given a suggestion that, she had asked for money from the appellant on 09/06/2017 and had threatened him to file a case against him. Some minor omissions were put from her F.I.R. in her deposition, which she had denied. The F.I.R. mentions that, the two wheeler was driven climbing the slope and then it was taken near the Banyan tree.

7. PW-1 was cousin of PW-2's husband. He received the call from the victim on 08/06/2017. She narrated about the incident.

He met her and then they went to the police station and lodged the F.I.R. He admitted that, the victim's family's financial condition was not good.

8. PW-4 Amol Kedari was a pancha for spot panchanama (Exhibit 42), panchanama for seizure of victim's clothes (Exhibit 44) and panchanama under which clothes of the Appellant were seized (Exhibit 49).

9. PW-3 Ayub Tadavi was a pancha for seizure of clothes of the Appellant. PW-3 accepted in his deposition that earlier he had acted as a pancha in a few other cases.

10. PW-5 Vinay Manval was the carrier who had carried muddemal articles to the F.S.L. at Kolhapur on 04/08/2017.

11. PW-6 Dr. Surendra Suryagandh had examined the Appellant on 09/06/2017. He was asked by the police to ascertain whether the Appellant was able to perform sexual intercourse. However, he did not examine the Appellant from this angle and, therefore, he was unable to answer that question. His evidence is not helpful to the prosecution case.

12. PW-7 Dr. Vikas Kumare deposed that, on 09/06/2017 he examined PW-2 and found abrasions over back side of neck, left hand, right wrist, forehead and over shin of right tibia. Their size was small. He deposed that, those injuries were possible by contacting rough surface and were possible in case of resistance during sexual assault. There were no injuries on her private parts. He deposed that, age of the injuries was within 3 days. However, in the cross-examination he admitted that, in his report, age of the injury was not mentioned. He also admitted that, there were no injuries on the back, breast and stomach of the victim. The medical report submitted by him on record mentions in Column No.22 that, his opinion about sexual intercourse was reserved. Thereafter there was no opinion on record.

13. PW-8 Indrajeet Katkar, P.I. was the investigating officer. He had registered the F.I.R. He had sent the victim and the Appellant for medical examination. He had conducted the spot panchanama, had arrested the appellant and had seized his clothes.

This, in short, is the evidence of the prosecution. Defence of the Appellant was of total denial.

14. Learned counsel for the Appellant submitted that, the entire narration of the incident is unbelievable. There is no corroborative medical evidence. He submitted that, PW-2 is not telling the truth and, therefore, it was not safe to rely on her evidence in this particular case. He submitted that, in a given case, statement of the prosecutrix is sufficient for conviction, but in this case, her deposition does not pass the test of reliability and, therefore, benefit of doubt must go to the appellant. He further submitted that, though, the Appellant has not taken a specific defence, but deposition of PW-2 shows that, there was absolutely no resistance on her part. Therefore, in either case, the prosecution has failed to prove its case beyond reasonable doubt. Learned counsel for the Appellant submitted that the shirt seized from the applicant's house did not show presence of the earth which was found at the spot. This is one more circumstance in favour of the Appellant.

15. Learned APP, on the other hand, relied on the evidence of the victim-PW-2. He submitted that, if the victim was made to sit at the front then it was possible for the Appellant to drive his two wheeler by sitting on the back side and by holding her forcibly. He submitted that, C.A. reports show that the earth on the *saree* of the victim and on the piece of pocket found at the spot were having earth of same characteristic, therefore, it is proved that the Appellant and the victim were at the same spot. The broken pieces of bangle also indicate struggle. He further submitted that the victim has specifically deposed that, there was no consent and, therefore, burden shifted on the Appellant to prove that there was consent; but no such defence is taken by him.

16. I have considered these submissions. In this case, evidence of PW-2 victim is the most important piece of evidence. The Court has to satisfy itself about its reliability and its truthfulness. However, from her deposition, serious doubt is created about her story. Even in the first part of the story she has vaguely mentioned that the Appellant had snatched her mobile phone at the bus stop and had dialed his own number and had

returned her mobile. That very time her bus came and she came back to her village. At that point of time, she had not sought help from anybody else, she had not shouted for help, she had not informed the co-passengers about the strange behaviour of the Appellant. Though, the Appellant had told her that he had to return Rs.5000/- which was taken from her husband, she had not verified about it from her husband. She herself did not know about any such transaction.

17. On the next day morning when the Appellant had called her, she had not picked up his call. In the evening, he offered to repay the amount. She had asked him to come to her house. Initially, he had agreed to come to her house, but then refused to go there. Instead, he called her to the bus stop which was situated near her house. PW-2, at about 8.30p.m. went to that bus stop. From that point, the story becomes more unbelievable. It is difficult to believe that the victim could be caught by the Appellant and dragged to his vehicle, then vehicle was started and then she was forced to sit on the two wheeler. It is also difficult to accept her version that the Appellant had held her with one hand forcibly

and had driven the vehicle with his other hand. The F.I.R. shows that, there was a slope ahead and the vehicle had to climb that slope. Though, learned APP submitted that it is possible to take PW-2 on a two wheeler if the Appellant was sitting on the back side, no such evidence is given by the victim herself and even in that case it would still be difficult to believe the prosecution case.

18. All this while, PW-2 did not raise any shouts. She did not seek any help. It was very easy for her to have got down from the vehicle. It is difficult to believe that the Appellant could take her forcibly on his two wheeler by pressing her mouth by one hand and drive the vehicle with the other hand through that much distance. Her house was situated 250 meters from the bus stop from where she was forcibly taken on his two wheeler. This aspect is also not believable. She has accepted that there were other houses around her house. She could have easily sought help.

19. The victim has also admitted that the road where the incident had taken place and from where she was forcibly taken away; was used by the villagers regularly, even in the late hours of

the night. The prosecution has not brought any independent witness, at least to that part of incident where the victim was allegedly taken away forcibly from the bus stop.

20. Any way, the appellant was a stranger to her. He had refused to pay money even at the bus stop. If her deposition is accepted then she knew that the Appellant was not having good intentions. It would have been natural for her to seek help. But there are no indications of any such acts on her part. She had not sought any help. She had not stopped the Appellant from taking her on a two wheeler. All these factors do appear to be quite improbable. Therefore, since the prosecutrix's basic version raises serious doubt about the prosecution theory, then it becomes difficult to accept her further version that she was taken to a secluded spot and rape was committed on her.

21. All the other pieces of evidence are corroborative in nature, but since the main deposition of the prosecutrix itself is unbelievable, the corroborative pieces of evidence will not help the prosecution in proving the case against the Appellant beyond

reasonable doubt. The medical evidence also does not support the prosecution case. Though, there are some abrasions on her neck, wrist and shin, the Doctor has admitted that there were no abrasions on her back. Even the medical opinion was reserved at the time of her examination and thereafter no positive opinion was expressed about commission of sexual assault on the victim.

22. The incident had taken place on 07/06/2017 and the F.I.R. was lodged on 09/06/2017. The cousin of the husband of PW-2 was informed on 08/06/2017 itself. Thereafter some discussion took place and then this F.I.R. was lodged on 09/06/2017. In the context and background of this case, this does assume some importance. Considering all these aspects, serious doubt is created against the prosecution case. Therefore, the prosecution has not proved its case beyond reasonable doubt.

23. Hence, the following order:

ORDER

i) The Appeal is allowed.

ii) The Judgment and order dated 08/05/2019 passed by learned Additional Sessions Judge, Ratnagiri, in Sessions Case No.16 of 2017 is set aside.

iii) The Appellant is acquitted.

iv) The Appellant is in jail; he shall be released forthwith if he is not required in any other case.

v) The Appeal is disposed of.

(SARANG V. KOTWAL, J.)