

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

CRIMINAL APPEAL NO.646 OF 2023

The State of Maharashtra,
Through Police Station, Maujpuri,
Taluka and District-Jalna.

...APPELLANT

VERSUS

Rameshwar S/o Sahebra Pitale,
Age-38 years, Occu:Agri.,
R/o-Mamdabad,
Taluka and District-Jalna.

...RESPONDENT

...
Mr. A.M. Phule. A.P.P. for Appellant – State.
...

WITH

CRIMINAL APPEAL NO.647 OF 2023

X. Y. Z.

...APPELLANT

VERSUS

- 1) The State of Maharashtra,
Through Police Station, Maujpuri,
Taluka and District-Jalna,
- 2) Rameshwar S/o Sahebra Pitale,
Age-40 years, Occu:Agri.,
R/o-Mamdabad,
Taluka and District-Jalna.

...RESPONDENTS

...
Ms. Shilpa L. Awchar Advocate for Appellant appointed
through Legal-Aid Committee.
Mr. A.M. Phule. A.P.P. for Respondent No.1 – State.
...

**CORAM: SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 26th JULY, 2023

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Both the Appeals are arising out of the same Judgment and order. Criminal Appeal No.646 of 2023 has been filed by the prosecution and Criminal Appeal No.647 of 2023 has been filed by the original informant – victim. Both the Appeals have been filed under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (for short “the Atrocities Act”) to challenge the acquittal of the respondent – accused by the learned Special Judge under the Atrocities Act / Additional Sessions Judge-2, Jalna in Special Case (Atro) No. 4 of 2015 on 22nd October 2018 acquitting him of the offences punishable under Sections 376, 506 of the Indian Penal Code and under Section 3(1)(xi)(xii) and 3(2)(v) of the Atrocities Act.

2. The prosecution story, in short, is that the prosecutrix – victim belongs to a scheduled tribe. She was aged 40 years at the time of the First Information Report (for short “the FIR”) and was residing with husband, two sons and five daughters. About a month prior to the incident her younger son was ill and therefore her husband had asked her to take the son to the hospital on the motorcycle of the accused. After the son was examined by the medical officer and gave him treatment, they returned on the motorcycle of the accused. However, on the next day her husband, around 6.00 p.m., came home in drunken condition and assaulted her by saying that she is having an affair with the accused. She had lodged report about the said incident with the police. Thereafter the husband went to Aurangabad for work. The prosecutrix has further stated that she was called by the Sarpanch of her village on 1st November 2014 for labour work. He told that he is in need of labour for plucking the cotton from his land and therefore, she should come. She started around 7.00 a.m on 2nd November 2014, however, she met accused on the road. Accused was on motorcycle. Accused asked her as to where she was going. She told about the name of the Sarpanch and the work for which she was going. Accused then went to his field and victim went to the field of the Sarpanch. Around 8.00

a.m. the accused came in the field from behind and started saying that if he catch holds her nobody is there to see, as her husband has anyway defamed him, he want to take revenge of the same and thereby he was manhandling the victim. Then he made her to lie on the ground and forcibly raped her. She sustained injuries to her hand as her bangles broken. Accused gave threat to her to kill and also that he would not let her daughter to live. Thereafter she came back to home. After waiting for some time in the house, prosecutrix went to the Government Hospital as she was suffering from dysentery since last 4 to 5 days prior to the FIR. When she disclosed the said incident to the persons in the Civil Hospital, they told her that she should go to the police station to lodge the report and therefore, she went to the police station and lodged the report on the same day.

3. After the investigation was over, charge-sheet was filed before the Special Judge under the Atrocities Act. Trial was conducted. Prosecution has examined in all five witnesses to bring home the guilt of the accused. After considering the evidence on record, the learned trial Judge acquitted the accused of all the offences. Hence both these Appeals.

4. Heard learned APP appearing for the State in Criminal Appeal No. 646 of 2023 and learned Advocate Ms. Awchar appearing for the appellant in Criminal Appeal No.647 of 2023, appointed through Legal Aid Committee. Perused the entire evidence which was before the learned trial Judge.

5. At the outset it is to be noted that PW-2 Manohar, who is the panch to the spot panchnama, has proved the spot panchnama, however he has been declared hostile on the point that the informant had made disclosure about the incident to him. He is the Sarpanch in whose land the prosecutrix had gone for plucking cotton. In the cross-examination, he has stated that there were 10 to 12 women labour who were plucking cotton in his field. He also admitted that while plucking cotton the bangles of the women get broke. PW-3 Vikrant Deshmukh, is the Assistant Police Commissioner who has carried out the investigation. PW-4 Machindra Survase was then working as API, who has taken down the FIR and handed over the investigation to SDPO. PW-5 Vishal Gaikwad was the then SDPO, Bhokardan, who has recorded the statement of PW-2 Manohar. Thus, it is to

be noted that the medical evidence has not been produced and proved by the prosecution to support the prosecution story.

6. Now, the only question is, whether the sole testimony of PW-1 can be believed or not. The law does not expect that in rape cases there should be direct evidence. There would be only few such cases where there would be some direct evidence. However, in present case definitely such possibility has been created in view of the fact that the alleged incident has taken place in the cotton field. Note can be taken that cotton crop will not be more than height of 3 to 4 feet and it is not then such height so that the woman or man cannot be visualized. Therefore, whether the sole testimony of the prosecutrix was to be believed or not, was the question. The lady was 40 years old, having five daughters and two sons. She has told about the past incident and what allegations were levelled by her husband against her. This shows that at some point of time she might be having a grudge against the accused also. But even if we consider that she has no such grudge and had taken that it was the dispute between her and her husband, then the question would be, as to whether at any point of time the prosecutrix had

tried to settle the dispute and make an attempt that the accused should not suffer due to the allegations made by her husband.

7. As regards the day of incident is concerned, the informant, in her examination-in-chief has narrated all those facts which she had told in the FIR. However, in the cross-examination she has admitted that certain other ladies were also working in the field. She says that she was raising hue and cry loudly and according to her the incident took place for about 1 to 1 ½ hours and then she says that no one came to help her. If the other ladies were working in the same field, it is hard to believe that they could not have come for her rescue. Her conduct after the incident is not inspiring confidence. She says that she went to Civil Hospital after waiting in her house for some time on the same day and then she says that she had told about the incident to the persons in the hospital but then according to her, she was asked to go to the police station to lodge the report. She has not stated that she told the incident to the medical officer, who examined her for her complaint regarding dysentery and that at that time the concerned medical officer refused to examine her as a rape victim. This cannot be the conduct of rape victim.

8. As aforesaid, testimony of the prosecutrix is not supported by the medical evidence. The prosecutrix has further admitted that prior to the incident and after the incident she had contacted the accused on mobile phone. She has also admitted that she had gone to the jail to meet the accused when he was in jail. These admissions given by her have been taken by the learned trial Judge as prosecutrix to be a consenting party and the conduct has been taken to be unnatural. The further scientific evidence has not been led by the prosecution. Therefore, we do not find any illegality, taking into consideration the well reasoned Judgment by the learned Special Judge. There is no merit in both the Appeals and the same deserve to be dismissed.

9. Both the Appeals stand dismissed, at the admission stage.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE