

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

CRIMINAL APPEAL NO.473 OF 2022

XYZ

VERSUS

GORAKH MOHAN SHELKE AND ANOTHER

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Mr. S. T. Shelke, Advocate for appellant

Mrs. V. S. Choudhary, APP for respondent No.2 - State

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**CORAM : SMT. VIBHA KANKANWADI AND
Y. G. KHOBRADE, JJ.**

DATE : 03.03.2023.

PER COURT :-

The present appeal has been filed by the victim - prosecutrix under Section 372 of the Code of Criminal Procedure to challenge acquittal of the respondent No.1 – original accused in Sessions Case No.358/2015 by learned Additional Sessions Judge, Ahmednagar on 13.05.2022 for the offence punishable under Sections 376 and 506 of the Indian Penal Code.

2. Heard Mr. S. T. Shelke, learned Advocate appearing for the appellant as well as the learned APP for the respondent No.2 – State, at the stage of admission and with the able of assistance of both of them, we have gone through the evidence which was before the learned trial Court.

3. The learned Advocate for the appellant has submitted that the learned Additional Sessions Judge has not appreciated the evidence properly and refused to believe the sole testimony of PW-3 i.e. the present appellant.

The Medical Officer PW-4 Dr. Annasaheb Ghawate has in fact opined after thorough physical examination of the prosecutrix that the possibility of sexual intercourse and assault cannot be ruled out. However, final report was kept reserved till Forensic Science Laboratory (FSL) report. As the FSL report was not produced, the Additional Sessions Judge has acquitted the accused. The decision requires reappreciation of evidence and the sole testimony of the prosecutrix ought to have been believed. She has specifically stated that around 9.30 to 10.00 p.m. on 30.04.2015 when she was alone in the house and sleeping in the gallery i.e. Padvi, the accused who had evil eye on her had ravished her. She has also explained that due to night time she could not immediately lodge a report, but she went to police station at 7.00 p.m. on the next day and lodged the report Exh.26. Thus the lodgement of the FIR was also immediate. The defence raised by the accused about false implication ought not to

have been considered by the learned trial Judge. He, therefore, prayed for admission of the appeal.

4. Most of the part of the FIR is already reflected in the aforesaid para and therefore, we do not want to reproduce the same. The prosecutrix is a married lady having two children, but deserted by husband. On particular day, her children had gone to the house of her cousin brother and therefore she was alone at night time. She has stated that the accused had evil eye on her and he used to harass her by insisting that she should keep relations with him. Important point to be noted is that in her cross examination she has admitted that she had given a complaint against the accused in 2013, but it appears that the Investigating Officer had not collected the copy of that complaint and taking into consideration the tenor in which that question was asked, that complaint was not in respect of alleged evil eye of the accused on her. If that would have been the said situation, then she would have been definitely told it in her F.I.R. as well as examination in chief. It has not been produced on record by the prosecution as to what action was taken against the accused on the basis of the said complaint. Therefore, the fact now stated in the F.I.R. and the examination in chief that the accused had evil eye on her and used to

insist that she should have illicit relations with the accused cannot be connected to the alleged incident dated 30.04.2015.

5. The question that was before the trial Court as to whether the sole testimony of the prosecutrix can be said to be believable and conviction can be based on such sole testimony. In order to assess the same, the trial Court has considered her entire evidence wherein it has come on record that the informant had filed a suit against her own father in respect of money dispute and in pursuance to the said dispute her father had given her 1 and 1/2 *Acres* of land at Bhavi Nimgaon, which her father had received under the Ceiling Act. Because of the said fact, her relations with her brother were not cordial and then she states that her brother Narayan had sold 1/2 *Acres* of land to the accused in 2013. Of course, it was not asked as to what was the Gut number of the said land, but certainly that 1/2 *Acres* land should be different from 1 and 1/2 *Acres* land which was given by the father to the informant. Then the prosecutrix also admits that as she was assaulted by her brother Narayan, she had received injury near her left eye. Then she has denied that after she got the knowledge about the said sale transaction between her brother and the accused, she had even quarreled with the accused. But, then it

was suggested to her with this background that she had lodged complaint against the accused in 2013 and she had given threat to accused that she should return the said 1/2 *Acres* of land, otherwise he would be involved in case under Section 376 of Indian Penal Code. She has claimed ignorance that the accused has then sold the said 1/2 *Acres* of land to a third person. Taking into consideration these aspects, the learned trial Judge has held that there was reason to implicate the accused. The appellant in this appeal has not produced any other document to refute the said confusion, so that this Court can take a different view than that has been taken by the learned trial Judge.

6. Another fact that has been considered by the learned trial Judge that later on that the clothes of the prosecutrix as well as clothes of the accused person were seized under panchanama Exh.43 and the C.A. report was negative. No doubt that could not have been the sole ground to negativate the testimony of the prosecutrix, but it was the additional piece of evidence. When there was material in the cross examination to show that the prosecutrix had reason to implicate and therefore her sole testimony cannot be believed, we do not find that the trial Judge erred in acquitting the accused.

7. There is no merit in the present appeal. It deserves to be dismissed at the threshold. Accordingly, the Appeal is dismissed.

[Y. G. KHOBRAGADE, J.]

[SMT. VIBHA KANKANWADI, J.]

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