

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

CRIMINAL APPEAL NO.483 OF 2022

X.Y.Z.

... Appellant
(Orig. Informant/Victim)

Versus

1. The State of Maharashtra,
Through Police Inspector,
Shillegaon Police Station,
Tq. Gangapur, Dist. Aurangabad.
2. Saddam S/o. Anees Patel,
Age : 28 Years, Occu. : Agri.,
R/o. Sanaw, Tq. Gangapur,
Dist. Aurangabad
3. Mujeeb S/o Abdul Shaikh,
Age : 36 Years, Occu. : Agri.,
R/o. Sanaw, Tq. Gangapur,
Dist. Aurangabad.

... Respondents
(Resp. No.1 is prosecution and
Resp. Nos.2 & 3 are Orig.Accused
Nos.2 and 3)

...

Mr. Shaikh Kayyum Najir, Advocate for Appellant.

Mr. A.M. Phule, APP for Respondent No.1 – State.

Mr. Chaitanya C. Deshpande, Advocate for Respondent Nos.2 and 3.

...

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

DATE : 31st JANUARY 2023.

JUDGMENT (PER ABHAY S. WAGHWASE, J.) :

1. Appellant / victim is challenging the Judgment and order passed by the

Additional Sessions Judge-1, Vaijapur, Dist.Aurangabad on 28-04-2022 in Sessions Case No.45 of 2021 by which accused Nos.2 was acquitted for offence under Sections 376 and 506 read with 34 of Indian Penal Code (IPC) and accused No.3 was acquitted for the offence under Sections 354, 354D and 506 read with 34 of IPC.

2. On going through the record, it seems that victim of sexual offence set law into motion by approaching Police on 17-08-2020 informing that she resides with her husband, father in law, mother in law and children. That her husband goes for labour work. That she used to go in their own field for agricultural work. According to her, on 29-07-2020 at 12:00 hours, when she was working in the field, at that time, accused No.1 Saddam Ayub Pathan entered the field and by issuing threats, he raped her and further threatened that if she discloses it to anyone, she would be done to death. She states that because of said threat, she did not disclose to anyone about the occurrence. However, on 30-07-2020 also accused No.1 Saddam Ayub Pathan accompanied by accused No.2 Saddam Anees Patel came in the field. This time Saddam Anees Patel committed rape on her. They both threatened her that if she discloses it to anyone, she would be dealt with death. It is submitted that on 03-08-2020, while she was alone in the field, accused No.3 Mujeeb Abdul Shaikh came to her field and he molested her and threatened that he would do the same what Saddam has done with her. Thereafter, out of fear, she stopped

going to the field and therefore, was questioned by her father-in-law and husband and at that time, she disclosed the deeds of accused with her and thereafter, they all approached Shellegaon Police Station, Rural Aurangabad, wherein they lodged report and on the strength of which Crime No.0232 of 2020 came to be registered for offence punishable under aforesaid Sections.

3. Investigating machinery carried out investigation, visited spot, drew panchnama, recorded evidence of five witnesses and caused seizure of clothes of accused. Victim was referred for medical examination, its report is gathered and made part of investigation papers. After gathering sufficient evidence against accused, accused persons came to be charge-sheeted. Case came to be committed to the learned Additional Sessions Judge-1, Vijapur, Dist.Aurangabad, who allowed the parties to adduce evidence and after appreciating the same, by judgment and order dated 28-04-2022, recorded guilt of accused No.1 Saddam Ayub Pathan for commission of offence under Sections 376 and 506 of IPC. However, Accused No.2 Saddam Anees Patel stood acquitted from the charge under Section 376 and 506 read with 34 of IPC, whereas accused No.3 Mujeeb Abdul Shaikh was acquitted from offence under Section 354, 345D and 506 read with 34 of IPC.

4. Challenging the above judgment and order of acquittal of accused Nos.2 and 3, victim has come up with the present Appeal before this Court. In

support of the appeal, learned Advocate for appellant would raise following grounds :

- (i) That there is non-appreciation of evidence on record, more particularly, against respondent Nos.2 and 3.
- (ii) That sole testimony of victim itself was sufficient to even bring home the charges against respondent Nos.2 and 3.
- (iii) The deeds at the hands of accused Nos.2 and 3 were narrated by victim in the witness box in the Court and therefore, they too ought to have been held guilty as like accused No.1.
- (iv) That the learned trial Court has failed to consider that only because of threats at the hands of accused, she did not gather courage to inform her husband or family members. She had never consented or submitted herself willingly. Accused Nos.1 and 2 have issued threats to kill her and she has succumbed to the same, however, the learned trial Court has not considered this aspect.
- (v) That settled legal provision, while appreciating case wherein there is sexual assault, has not been borne in mind by learned trial Judge while appreciating the evidence and passing the judgment and order and hence, prayed for convicting accused nos.2 and 3 also.

5. We have heard both the sides carefully and we have examined record before us. Appellant / victim is hereby challenging the same judgment passed

by the learned Additional Sessions Judge-1, Vijapur. It is emerging that PW2 victim was married to PW3 husband and she was residing with her husband, mother-in-law and father-in-law. Her version shows that, she alone used to go to her field. It is seen from her evidence that her husband was unable to do agricultural work and he used to go to render labour work and used to leave house in the morning and return in the evening. Father-in-law is incapacitated to do any agricultural work and therefore, she was required to go for agricultural work in their own field.

6. If we visit the FIR and her evidence at Exhibit 27, we find her informing that on 29-07-2020, at around 12:00 hours, when she was in her field, accused No.1 Saddam Ayub Pathan came there and committed rape on her in her cotton crop. She claims that he threatened her to kill and therefore, she did not disclose it to anyone. Visit was paid by accused No.1 Saddam Ayub Pathan and accused No.2 Saddam Anees Patel on very next day i.e. 30-07-2020 and this time Saddam Anees Pathan raped her and they both threatened her not to disclose it to anyone. She stated that on 30-08-2020, accused No.3 Mujeeb Abdul Shaikh came to her field and he molested her and further threatened her that he will do the same act as done by Saddam and therefore, out of fear, she did not only disclose it to her husband and her family members, but she also stopped going to the field. Her evidence shows that as a result of this, her father-in-law got suspicious and questioned her and on

repeatedly being asked to that extent, she disclosed that she was raped by accused Nos.1 and 2. It is only thereupon Police have approached and she has lodged report. Therefore, there is reason for whatever delay has been caused in lodging report.

PW2 Victim is subjected to cross-examination by defence and she is questioned as to whether her elder sister-in-law was also staying alone, whether there was water stream and how much was the distance between stream and her house. She is also asked whether on the way to the field, there was mosque and regularly people came to offer Namaj. She is then questioned about occupation of her father-in-law, husband and when her husband used to go out for work, regarding the date of occurrence. She is asked that what she was doing in the field i.e. on 29-07-2020 and 30-07-2020 and which crop was standing in the field and up to what height. She is also asked who were working in the fields around. She is asked whether accused were armed with any weapon. She is asked about what she told Doctor at the time of examination. She is asked whatever information given to the Doctor was properly noted or not and who were present when she was examined by Doctor and whether her husband and father-in-law gave information to the Doctor and she denied the same and rather she stated that it is she who has given statement. She has answered that on 29-07-2020, accused No.1 came in her field where cotton crop was standing but she did not resist. She denied that she herself removed her clothes. She is asked whether there was mud to

the person after the incident and she is asked about the nature of clothes on her person on the date of incident i.e. 29-07-2020 and 30-07-2020 and whether she has washed mud stains on both the dates. Then she is asked as to when she gave statement to Police and whether her signature or thumb impression was obtained. She answered that she is unable to read and write but she denied that she falsely deposed and narrated to the Police. She is asked what all events took place at the time of drawing spot panchanama. Family details are asked in remaining cross-examination. Above is the evidence of prosecutrix.

7. Needless to say that in offences of such nature, there cannot be eye witnesses. In such cases, it is only to be seen by the Court trying the case as to whether the testimony of the victim inspires confidence. It is trite law that sole testimony of witness, who has inspired confidence, can safely be relied to bring home the charge against accused persons. Applying the same principle here, if we carefully go through the evidence of victim, which is discussed in aforesaid paragraphs, it is seen that taking advantage of loneliness of victim in her field, her neighbour accused No.1 Saddam Ayub Pathan had forced himself on her initially on 29-07-2020 and had threatened her that he would kill her. He repeated the same act on the next date i.e. on 30-07-2020 while his friend accused no.2 Saddam Anees Patel accompanied him and on that day accused No.2 Saddam Anees Patel raped her. Both accused Nos.1 and 2 allegedly

threatened her. We can understand the plight of the victim. She is alone in the field and she has given explanation that her husband goes for labour work outside the village and her father-in-law is not able to do agricultural work and precisely taking benefit of her loneliness, accused No.1, her immediate neighbour, had indulged in the said act. However, regarding alleged occurrence of molestation at the hands of accused No.3, there is no trustworthy evidence. Admittedly, the spot where alleged incidents took place are at distinct places but distinct panchanamas, which ought to have been drawn, are not drawn by the investigating machinery. It is pertinent to note that victim has narrated about being ravished by accused No.2 on 30-07-2020, but she has not given the exact spot where said act was allegedly done by accused No.2. There are no details as to where accused No.1 was while accused no.2 had forcible sexual intercourse with her. Even Investigating Officer has admitted that spot panchanama regarding occurrence of 30-07-2020 had not been done. In cross-examination of the Investigating Officer, it has been brought by defence that between 11:00 a.m. to 02:00 p.m. mobile phone of accused No.2 was showing to be continuously busy and this is evident from CDR gathered and placed at Exhibit 50. Therefore, in the light of above material coming on record, act at the hands of accused No.2 seems to be doubtful.

As regards to allegations against accused No.3 are concerned, victim seems to have used words in witness box that accused No.3 came to her field

on 03-08-2020 and he teased her. She has not uttered words about accused No.3 touching or fondling her breast and thereby outraging her modesty. Resultantly, charge for commission of offence under Section 354 of IPC has not been proved. Even what was the nature of teasing has not been clearly stated. Thus, allegations against accused No.3 are devoid of evidence in that regard. Necessary ingredients for attracting charge under Section 354 are patently missing from the evidence of victim. All these offences were distinct especially alleged against accused No.3. There could not have been joint trial of accused persons. How he came to know about acts allegedly done by accused Nos.1 and 2 is not proved.

8. Husband of victim has also been examined. He is lending support to the testimony of his wife. These were the crucial witnesses and their testimonies inspired confidence regarding commission of offence at the hands of accused No.1. There is weak evidence regarding acts allegedly done by accused nos.2 and 3 for above discussed reasons. Therefore, in our considered opinion, there being weak and paucity of evidence against accused Nos.2 and 3, they cannot be held guilty. Learned trial Court seems to have precisely done the same and has rightly held that charge against accused Nos.2 and 3 is not proved beyond reasonable doubt. No fault can be found for acquittal as against accused Nos.2 and 3 from charges under Sections 376 and 506 read with 34 of IPC and under Sections 354, 354D and 506 read with 34 of IPC respectively. There

being no merits in the appeal at the instance of appellant / victim thereby questioning case of acquittal, we proceed to pass following order :

ORDER

- (i) Criminal Appeal No.483 of 2022 stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

SPT