

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

CRIMINAL APPEAL NO. 799 OF 2022

XYZ

... **Appellant**

VERSUS

1. The State of Maharashtra
Through the Police Inspector of
MIDC Police Station, Jalgaon
2. Kishor Satwaji Joshi (Shastri) ... **Respondents**
Age-52 years, r/o Shikshak Colony,
Pachora Road, Jamner Dist. Jalgaon

Mr. Hrishikesh V. Tungar, Advocate for the appellant,
Mr. R. D. Sanap, APP for respondent-State
Mr. Rajendra Deshmukh, Senior Advocate a/w Mr. Govind A. Kulkarni,
i/by Mr. D. R. Deshmukh, Advocate for respondent No.2

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

DATE : 21.3.2023

JUDGMENT (Per Y. G. Khobragade, J.):

1. By present appeal under section 372 of Criminal Procedure Code, the appellant/victim assailed the judgment and order dated 7th September, 2022, passed by the learned Additional Sessions Judge (Fast Track Special Court), Jalgaon in Sessions Case No. 125 of 2020 thereby acquitting the accused/respondent no.2 for the offences punishable under sections 376(2)(n), 201, 323 and 506 of the Indian Penal Code.

2. The brief facts leading to the prosecution case are that, the prosecutrix had lodged First Information Report with MIDC Police Station on 11.03.2020, Jalgaon against the accused alleging that, she is social worker by profession and her husband is working in Panchayat Samiti, Beed. There were frequent clashes between her and her husband and she learnt from Taluka President of Karni Sena that accused arranges puja for reducing family trouble. Therefore, in the month of December, 2018, she met the accused at Jalgaon and at that time, the accused told her that the year 2018 is not good for her, but her life would flourish from 1st of January, 2019. Accused had called her for performing puja in Hotel Atithi, Aurangabad on 1st January, 2019. Therefore, she visited said hotel, on that day, around 6.00 p.m., and met accused. Thereafter, the accused performed puja at about 9.00 p.m., for two hours. After the puja was over, accused had offered her coffee, but after drinking coffee, she felt drowsy. She got awakened around 3.00 a.m. and then, realized there were no proper clothes on her person and she felt inflaming. Therefore, she asked the accused what wrong has been done by him with her. She told the accused that she would go outside and apprise the people but the accused immediately showed her objectionable video clip recorded by him. After watching the video clip, she started shouting but the accused threatened her to make said video clip viral, if she would disclose anything about the incident to anybody. Thereafter the accused kept her with him for three days in said Hotel and repeatedly committed rape on her. Thereafter, she went to Beed on 4th January, 2019; but after 15 days, the accused again contacted her on phone. He directed her to leave her matrimonial house and occupy another premise failing which, to show obscene video clip to her husband. Therefore, due to said threat, she took a house in

Kalikanagar, Beed and the accused compelled her to stay with him in a rented house under the threat of showing video clip and committing murder of her sons. Thereafter, the accused took her to City Hotel Dadar (Mumbai), Rahul Hotel, Karolbag Delhi, Hotel Iffotel, Vijay Nagar Indore, Hotel at Bhilwada Rajasthan and repeatedly raped her. The appellant victim further alleged that, when she started residing with the accused in his house at Jalgaon since 28.12.2019, the accused has repeatedly committed rape on her. Accused got annoyed due to conversation between her and the accused's adopted daughter on 09.03.2020. Accused had assaulted her and thrown her out of his house. On the basis of said report, Crime No. 175 of 2020 was registered with MIDC Police Station, Jalgaon against the accused for the offences punishable under sections 376(2)(n), 201, 323 and 506 of IPC.

3. Investigating officer PW-6 has drawn spot panchanama and referred the victim for medical examination and seized clothes of victim under the seizure panchanama. The victim was produced before the learned Judicial Magistrate, First Class for recording her statement under section 164 of Cr.P.C. The supplementary statement of the victim and statements of other witnesses are recorded. During the course of investigation, the investigating officer visited various places where the accused had allegedly committed sexual intercourse with the victim and drawn panchanamas. Since respondent no.2/accused was enlarged on anticipatory bail, his blood sample was collected through medical officer and blood samples and all seized articles were sent for chemical examination. On completion of investigation, charge sheet came to be filed against respondent no.2/ accused for the offences punishable under sections 376(2)(n), 201, 323 and 506 of IPC.

4. In order to bring home the guilt of accused, the prosecution examined PW-1 Ravira Shrirang Ghule (Talathi) at Exh.27- panch witness for spot panchanama Exh.28; PW-2 Sharad Daulat Patil Exh. 29- to prove spot panchanama Exh. 30 and seizure of passports, Articles A1 to A4., clothes of victim Article B, C D i.e. green colour T-shirt, brownish colour night pant and undergarment Exh.31; PW-3 victim to prove report Exh. 33; PW-4 Dr. Chaitanya Gopal Patil Exh.35 on medical examination of accused and certificate Exh. 36 issued by him; PW-5 Nilesh Shashikant Dnyane, Manager of Hotel Atithi to prove Exh. 42 in respect of stay of accused and victim in Hotel Atithi; PW-6 Sandip Ashok Hajare Investigating Officer at Exh. 45. During the course of trial, accused has admitted medical report Exh.43 in respect of examination of prosecutrix.

5. Necessary statement of the accused under section 313 of the Cr.P.C. has been recorded. Defence of the accused was that he has not committed rape on the victim and he has been falsely implicated in the crime.

6. Learned trial court passed the impugned judgment and order on 07.09.2022 and thereby acquitted the accused for the offences punishable under sections 376(2)(n), 201, 323 and 506 of IPC.

7. Learned Advocate Shri Hrishikesh Tungar appearing for the appellant victim canvassed that, PW-3 victim has specifically deposed that the accused threatened her and pressurized to reside with him under threat of making viral the objectionable videos of the victim to the public. The evidence of prosecutrix has not been shaken by the respondent accused.

8. Learned counsel for the appellant further canvassed that, the learned trial court wrongly concluded that the prosecutrix enjoyed the moment of life with accused on her own accord and there were no compulsion or force used by the accused against the victim, though the prosecutrix PW-3 deposed in her evidence about giving of threats to make her objectionable videos, viral. Therefore, the impugned judgment order is perverse, illegal and bad in law and prayed to quash and set aside the same by re-appreciating the evidence.

9. We have gone through the record. It can be seen that the prosecutrix is a major and married lady. The evidence of PW-3/appellant shows that, the victim herself went to Jalgaon and met the accused in the month of December, 2018. Subsequently, the victim had voluntarily came to Hotel Atithi, Aurangabad at about 6.00 p.m., on 01.01.2019. PW -3 says that the purpose of said visit was to perform puja for resolving her differences with her husband. She had come to know that accused performs such puja. She has stated that the accused had performed puja for two hours and then she was provided coffee by the accused and after taking coffee, she felt inflaming or giddiness. When she woke up around 3.00 a.m., she noticed that her clothes were not in order and the accused has recorded her objectionable video. She has stated that, under the threat of making objectionable video viral, the accused had committed forcible sexual intercourse with her. The said story given by her does not inspire confidence. The first and the foremost thing is as to why she alone went to the Hotel, that too in Aurangabad. Accused was from Jalgaon and she was staying with her family in Beed. Secondly, how such puja could have been performed in Hotel? If the purpose was to bring peace, then it cannot be in a Hotel.

Then she says that she was kept by accused for three days in that hotel. She has not given her routine in hotel. It is impossible that she would not have come in contact with any staff member of the hotel also. Why her family members did not search for her? We could not get answers to these questions in her testimony and therefore, her testimony is not inspiring confidence. Further, the evidence of prosecutrix itself suggests that she had accompanied the accused at various place i.e. City Hotel Dadar (Mumbai, Rahul Hotel, Karolbag Delhi, Hotel Iffotel, Vijay Nagar Indore, Hotel at Bhilwada Rajasthan. Not only this, but the victim started residing with the accused in rented house in Beed and subsequently, at the house of accused at Ayodhyanagar, Jalgaon. Therefore, conduct of the appellant/victim itself shows that she was the consenting party while moving from one place to another and enjoying sexual and luxurious life in various Hotels with the accused. The evidence of the appellant victim does not suggest that she had ever resisted or obstructed the accused for sexual relations. Indeed if the appellant/victim could not been a consenting party to such physical relations with the accused at different places, in that circumstance, the appellant would have lodged a complaint on 2nd January 2019 immediately soon after the accused developed physical relation with her in Hotel Atithi, Aurangabad but since then i.e. 01.01.2019 till 11.03.2020, the appellant/victim remained silent and no grievance was raised.

10. It further appears that the prosecutrix herself proved WhatsApp chats on mobile between her and the accused which apparently appears that the appellant herself was sending messages to the accused such as "I miss you, I love you" and there were exchange of

love messages between her and the accused. Therefore, evidence and cross examination of the prosecutrix would show that, the appellant had enjoyed moment of her life including sexual life with the accused at her will and evidence of prosecution does not appear that the accused used any force or compulsion against the appellant/victim for the sexual relation for a considerable period. However, the relations between victim and the accused appears to have been strained because of adopted girl of the accused, therefore, the appellant/victim lodged the report.

11. Further, the evidence of prosecutrix would suggest that, the appellant was political optimistic and in the year 2018-19, she was following a political party and took active part in various meetings and the victim was in contact of the accused. The victim was having full maturity of understanding about maintaining sexual relation between her and the accused. The medical examination report of the victim and accused does not prove any sign of sexual assault. Not only this, but the evidence of the prosecutrix does not suggest that, the accused destroyed evidence or he had caused any hurt or criminally intimidated the victim. Therefore, the learned trial court passed the impugned judgment and order on 07.09.2022, and after considering the available evidence on record, acquitted the accused, which does not appear to be perverse, illegal. There is no need to re-appreciate the evidence.

12. In view of the above discussion the present appeal is dismissed.

(Y. G. KHOBRADE, J.)

(SMT. VIBHA KANKANWADI, J.)