

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

CRIMINAL APPEAL NO. 291 OF 2018

Sanjay Hakkani Jadhav (Manphade)

Age: 32 years, Occu.: Nil,

R/o Kopra, Tq. Ahmedpur,

Dist. Latur

..APPELLANT

VERSUS

State of Maharashtra

Through Inspector Police Station Kingaon,

Tq. Ahmedpur, Dist. Latur

..RESPONDENT

....

Mr. P.P. More, Advocate for appellant (appointed as amicus curiae)

Mr. A.A. Jagatkar, A.P.P. for respondent - State

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**CORAM : R.G. AVACHAT, J.
RESERVED ON : 21st MARCH, 2023
PRONOUNCED ON : 31st MARCH, 2023**

JUDGMENT :

1. This is an appeal against conviction. Vide judgment and order dated 27th January, 2017 passed by Additional Sessions Judge, Ahmedpur in Sessions Case No. 39 of 2014, the appellant has been convicted and sentenced to suffer certain terms of imprisonment, which are directed to run concurrently, as detailed follows :-

Section	Sentence	Fine (Rs.)	In default of fine
307	R.I. for 10 years	10,000/-	R.I. for one year
376(2) r/w 511	R.I. for 5 years	10,000/-	R.I. for one year
452	R.I. for 3 years	3,000/-	R.I. for six months
354-A(1)(i)	R.I. for 2 years	3,000/-	R.I. for three months

506	R.I. for 2 years	3,000/-	R.I. for two months
342	R.I. for 6 months	1,000/-	R.I. for three months

2. The facts giving rise to the present appeal are as follows :-

The First Information Report ('F.I.R.') (Exh.23) has been lodged by the victim herself on 09th September, 2014. It is her case that she resides alongwith her parents. She has one brother. He resides at Latur. He is painter by profession. She (victim) is disabled in her both lower limbs. She is unable to stand up on her own. Vikas (P.W.4) is the son of her brother. He would reside alongwith the victim and her parents.

3. It is further her case that on 09th September, 2014 her parents had gone to Latur to meet her brother and give him food-grains. Vikas came from school by 04:00 p.m. He was watching television in the inside room of the house. It was about 04:30 p.m. The appellant suddenly came her house. He latched the entrance door of the house from inside. He realised that Vikas was coming from the other room of the house. The appellant, therefore, latched the door of the room from outside wherein Vikas was. The appellant thereafter lifted the victim and placed her on a bed. Since the victim had put up resistance, he tied her hands and legs. It is also her case that a cloth ball was placed in her mouth so as to prevent her from raising alarm. He then committed rape of her. Vikas was asking them to open the door. After the act was over, he untied the hands and legs of the victim. The appellant then sprinkled kerosene on her head. He ignited a match stick and threw it on her

person. Hairs of the victim thereby burnt. The appellant then ran away. Vikas got opened the door of his room. He raised cries. Thereupon, Lalita and Kalubai (P.W.5), residing in the neighborhood, came to the victims house. They extinguished the fire. On return of parents of the victim, she related the incident. Thereafter the victim was taken to the concerned police station. She lodged the report (Exh.23) there at. Based on the said report, F.I.R. bearing C.R. No. 69 of 2014 came to be registered for the offences punishable under Sections 307, 376(2) r/w 511, 452, 354-A(1)(i), 506 and 342 of the Indian Penal Code ('I.P.C.'). It was investigated. Scene of offence panchanama was drawn. The appellant came to be arrested. Both, the appellant and the victim were medically screened. Clothes on the person of both of them were seized. The seized articles were sent to Regional Forensic Science Laboratory, Aurangabad for analysis and report. Certain things were taken charge of from the scene of offence during spot panchanama. Statements of the persons acquainted with the facts and circumstances of the case were recorded. On completion of investigation, charge-sheet was filed.

4. The case came to be committed to the Court of Additional Sessions Judge, Ahmedpur for trial in accordance with law. The trial Court framed the charge (Exh.10). The appellant pleaded not guilty. His defence was of false implication. According to him, the informant and her mother were in habit of filing false complaints with a view to earn money.

5. To establish the charge, prosecution has examined eleven witnesses and produced in evidence certain documents. On appreciation of the evidence before it, the trial Court convicted and sentenced the appellant as stated above.

6. Learned counsel for the appellant took this Court through the evidence of the victim, her mother and medical examination report of the victim and the related C.A. reports to ultimately submit the prosecution to have failed to bring home the charge beyond reasonable doubt. He, therefore, urged for allowing the appeal.

7. Learned A.P.P. would, on the other hand, submit that the victim was physically challenged. The medical examination of the appellant indicates there were injuries on her person. It was for the appellant to explain how did he suffer injuries. The appellant used to come to the neighborhood of the victim. Identity card of the appellant was seized from the house of the victim. Learned A.P.P. relied on C.A. report (Exh.72) to suggest semen was detected on article no.2 therein. Learned A.P.P. reiterated the reasons given by the trial Court for convicting the appellant. He ultimately urged for dismissal of the appeal.

8. Considered the submissions advanced. Perused the evidence relied on. Let us appreciate the same. P.W.3 is the victim. It is in her evidence that

she knew the appellant. She has one brother, painter by profession. In 2014 her brother was at Latur. The parents had been to Latur to give her brother food-grains. It was 09th September, 2014. Her nephew (brother's son) Vikas (P.W.4) and herself were at house. He was watching T.V. in the adjoining room. The appellant came her house by 04:30 p.m. He latched entrance door of the house from inside. Then he closed the door of the room wherein Vikas was. He also latched the said door. The appellant then lifted the victim and placed on a wooden cot. The appellant then undressed her. He also removed the clothes on his person. He tied her hands and legs with a rope. As she attempted to raise alarm, the appellant put a gag in her mouth. The appellant then raped her. He then poured some kerosene on her head and ignited with the match stick. The appellant tried to kill her with a view to cause disappearance of evidence of rape. It is further in her evidence that she put up resistance. Her bangles got broken in the process. She further testified that her hair were burned. She suffered head injury. The appellant then left her house. Lalita and Kalubai (P.W.5) then came her house. Both of them extinguished the fire. Her parents returned by 06:00 p.m. They took her to Primary Health Center, Kingaon. She was then rushed to Civil Hospital, Latur. She then came to Kingaon Police Station and lodged the F.I.R. there.

9. The victim was subjected to searching cross-examination. It is in her evidence that she was knowing the appellant as he used to come to the

house of her neighbour. The victim was specific to state the appellant to have never been to her residence earlier. According to her, the appellant was doing the work of smuggling the sandalwood. She knew the fact that he is married and having two children. She denied to have been friendly with the appellant. She admitted that one Tukaram Dattu was her cousin. In March/April 2014 she had made a complaint against Tukaram Dattu to police. She alleged Tukaram tried to outrage her modesty. Said case was compromised.

10. Shantabai (P.W.1) is the mother of the victim. It is in her evidence that on 09th September, 2014 she had been to Latur alongwith her husband to give their son food-grains. On their return, the victim narrated her the incident. She, therefore, accompanied the victim and her husband to the police station to lodge the report. In her cross-examination, P.W.1 admitted that the victim had lodged a police report against Tukaram Dattu of outraging her modesty. She also admitted that the victim had also lodged similar complaint against a son of Latabai, alleging him to have outraged her modesty. She has also admitted that a sum of Rs.2,25,000/- was paid to the victim by the State Government on account of being a victim of this offence. She claimed ignorance about having not given evidence in favour of the prosecution against Tukaram and, therefore, he came to be acquitted. She also claimed ignorance about the another criminal case instituted at the instance of victim, to have been compromised.

11. Vikas (P.W.4) gave his evidence consistent with what has been deposed to by the victim in her examination-in-chief. During his cross-examination he testified that whatever he deposed to in his examination-in-chief was on the say of his grand-mother (P.W.1). It is in his evidence that having seen the appellant in the house, he confined himself in the latrine and came out only after the appellant left the house.

12. Kalubai (P.W.5) did not stand by the prosecution. Her evidence however suggest that on the given day she had visited the house of the victim. She saw the victim to have suffered burns. Vikas (P.W.4) brought water and extinguish the fire.

13. Dr. Santosh (P.W.6) is a medical officer. It is in his evidence that he examined the victim on 10th September. He also examined the appellant on the next day i.e. on 11th September. He noticed four injuries on the person of the appellant. He gave injury certificate (Exh.55).

14. Dr. Prerna (P.W.8) is another medical officer, who examined the victim. It is in her evidence that on medical examination of the victim, she obtained vaginal swab, pubic hair, scalp hair, blood and her nails for examination and report. She referred to C.A. report (Exh.60). The victim's medical examination report is at Exh.61.

15. The question is whether based on aforesaid evidence, the charge has been proved. Evidence of Shantabai (P.W.1), mother of the victim indicate that she had acquaintance with the appellant and his family. All of them used to go for labour work together. Whereas the victim in her evidence testified that although she had acquaintance with the appellant, he (appellant) came her house for the first time on the fateful day. The same does not stand to reason. The appellant might have visited the residence of the victim many a times before the offence in question took place. Both, the victim and her mother have unequivocally admitted that the victim before the incident in question had lodged the complaint against one Tukaram alleging to have outraged her (victim) modesty. Similarly, she had lodged report against a son of Latabai alleging to have outraged her modesty. There is evidence to indicate that both the cases ended in acquittal on account of compromise. There is also evidence to indicate the victim to have been paid a sum of Rs.2,25,000/- on account of her being the victim of the present crime. The victim was medically screened immediately after lodging of the F.I.R. Dr. Prerna, Medical officer (P.W.7), who examined the victim, had reserved her opinion pending receipt of the C.A. reports. C.A. report (Exh.60) indicates that no semen was detected on vaginal swab and pubic hair of the victim. However, two stains of human semen were detected on underwear of the victim. The group of the said semen could not be detected as the result was inconclusive. As such, the medical examination of the

victim and the C.A. reports do not suggest her to have been a victim of sexual assault/rape.

16. Vikas (P.W.4) testified that he gave evidence before the Court as he was directed by his grand-mother (P.W.1) to give such evidence. Admittedly, the victim had made complaints against two other persons alleging to have had outraged her modesty. The appellant has, therefore, every reason to contend that the victim and her mother were in habit of making such complaints with a view to earn money. It is reiterated that there is evidence to indicate that both the prosecutions instituted against those two persons were compromised. It is further reiterated that the victim received a sum of Rs.2,25,000/- on account of being a victim of the present crime.

17. True, some hair of the victim were found to have been burnt. Had the appellant poured kerosene on her person and set her on fire, she would have suffered extensive burns. Be that as it may. The uncorroborated testimony of the victim coupled with the facts that the victim had lodged similar complaints against two others in the past lead this Court to observe the prosecution to have failed to establish the charge beyond reasonable doubt. Based on such evidence, the trial Court ought not to have convicted the appellant. The appellant is in jail for over seven years and eight months.

18. In the result, appeal succeeds. Order dated 27th January, 2017 convicting the appellant for the offences punishable under Sections 307, 376(2) r/w 511, 452, 354-A(1)(i), 506 and 342 of the I.P.C. is hereby set aside. The appellant stands acquitted of the offences punishable under Sections 307, 376(2) r/w 511, 452, 354-A(1)(i), 506 and 342 of the I.P.C. He be set at liberty, if not required in any other case. Fine amount, if paid, be refunded to him immediately.

19. Before parting with, this Court acknowledges pro-bono services given by Mr. P.P. More, learned counsel.

(R.G. AVACHAT, J.)

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