

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

CRIMINAL APPEAL NO.878 OF 2022

X Y Z

...APPELLANT

VERSUS

- 1) The State of Maharashtra,
Through Police Station Officer,
Police Station, Charthana,
Tq-Jintur, Dist-Parbhani,
- 2) Gajanan S/o Pandurang Rathod,
Age-38 years, Occu:Labour,
R/o-Pungla Tanda, Tq-Jintur,
Dist-Parbhani

...RESPONDENTS

...
Mr. M.P. Tripathi Advocate for Appellant.
Ms. V.S. Choudhari, A.P.P. for Respondent No.1 – State.
...

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

DATE : 21st SEPTEMBER, 2023

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

1. Present Appeal has been filed by the original informant under Section 372 (Proviso) of the Code of Criminal Procedure to challenge the acquittal of respondent No.2 by the learned

Additional Sessions Judge, Parbhani on 22nd July 2022 from the offence punishable under Section 376(2)(f) of the Indian Penal Code in Sessions Trial No.91 of 2016.

2. Heard learned Advocate Mr. Tripathi appearing for the appellant and learned APP Ms. Choudhari appearing for respondent No.1 – State.

3. The prosecution had come with the case that the prosecutrix had lodged the First Information Report (for short "FIR") on 4th November 2015 in respect of an alleged incident that had taken place at 10.30 p.m. onwards on 14th October 2015. Informant – prosecutrix contended that her marriage was solemnized about 10 to 12 years prior to the incident and she has two sons and a daughter from her husband. She used to stay jointly with her husband, children, elder brothers-in-law, mother-in-law and father-in-law. On the day of incident, around 9.00 a.m. she along with her mother-in-law and sisters-in-law had gone to their field for cutting Soybean and they had returned to home around 6.00 p.m. Husband of the prosecutrix also came to the house around that time. Prosecutrix had prepared food for herself, her husband and children. Thereafter around 7.00 p.m. her husband again went to the field and returned around 10.00

p.m. At that time the informant was in her room. Her husband again went outside and returned with accused – respondent No.2. Accused is the brother of husband of sister-in-law of the prosecutrix. Accused had then given key of his motorcycle to the husband of the prosecutrix and asked him to convince sister of the accused as the quarrel was going on. Therefore, husband of the prosecutrix went to the house of sister of the accused and then the prosecutrix says that around 10.30 to 10.45 p.m. she was alone in the house. Accused thereafter went near the prosecutrix and solicited sexual favour by saying that he has deliberately sent her husband outside the house. Though the prosecutrix resisted, the accused had forcible sexual intercourse with her. After some time her husband came and when prosecutrix made hue and cry, at that time accused started running from there but her husband had given two to three slaps to accused, still accused managed to run away. The prosecutrix narrated the entire incident to the husband. Her mental condition was not good and therefore, she did not lodge report earlier.

4. After the FIR was lodged, offence vide Crime No.97 of 2015 was registered. The prosecutrix was sent for medical examination. Panchnama of the spot was carried out. Accused came to be arrested. The samples were sent for chemical

analysis. The statements of the witnesses were recorded. After the investigation was over, charge-sheet was filed.

5. After committal of the case, charge was framed. The prosecution examined in all four witnesses to bring home the guilt of the accused. After considering their evidence as well as the documents on record, the learned trial Judge has acquitted the accused. Hence present Appeal by the original informant.

6. Learned Advocate appearing for the appellant has vehemently submitted that the learned trial Judge has not appreciated the evidence properly. The prosecutrix had supported her FIR and her evidence was important because she was the victim and was alone at the time of the incident. Unfortunately, the husband of the informant has turned hostile. But on that count, it cannot be said that the FIR was false or her testimony is untrustworthy. The medical evidence has been wrongly interpreted and therefore, the matter needs re-appreciation of the evidence by admitting the Appeal.

7. At the outset, it is to be noted that the law point is very clear in such type of cases. The sole testimony of the prosecutrix who has been subjected to rape, is certainly believable, however,

it should inspire confidence. The prosecutrix in this case was already married and one factor has to be borne in mind that the incident has taken place on 14th October 2015 and the prosecutrix has lodged the report after twenty one days i.e. on 4th November 2015. Therefore, her medical examination was delayed by twenty one days. Naturally, it had the adverse effect on the clothes also in respect of both of them i.e. prosecutrix as well as accused because those were washed. Therefore, there was less likelihood of any scientific evidence to support the testimony of the prosecutrix. Unfortunately, the husband of the prosecutrix has not supported the prosecution and therefore, whether to believe only the testimony of the informant, was a question.

8. The examination-in-chief of the informant PW-1 is nothing but the replica of the FIR, however, in her cross-examination many factors have come on record as well as she has given vital admissions. She has admitted that there are in all eleven persons in her house. The alleged incident is stated to have taken place at night time i.e. after 10.30 p.m. onwards, then the prosecutrix and in turn the prosecution ought to have explained where the other members of the family had gone at that time. We could get only the account of husband because as per the

prosecution story, the accused had sent him to the house of his sister. When there were more than nine persons in the house at the relevant time, it is hard to believe that nobody would have come to rescue the prosecutrix when she says that she had raised hue and cry.

9. The delay in lodging the FIR has not been explained by the prosecutrix. The prosecutrix has stated that after the incident for about three days she was residing with her husband and thereafter the husband had sent her to the house of her parents. She has not stated that after she had gone to the place of her parents, she had disclosed the incident to her parents. She is not blaming her parents for not supporting her in lodging the FIR. When there is no cogent evidence coming forward explaining the delay, then the FIR as well as the testimony of the prosecutrix will have to be considered with caution.

10. The relationship between the husband of the prosecutrix and the accused is also required to be considered and it was the initial story of the prosecution that after the husband of the prosecutrix returned and she had disclosed about the alleged incident, the husband had slapped the accused. Even at that time where the other family members were, has not been

disclosed by the prosecutrix. If there would have been so many persons in the house itself, how the accused could have managed to run away from the said place, is also a mystery. It has come in the cross-examination of the prosecutrix that prior to the incident the prosecutrix and her husband had gone for the work of sugarcane cutting and accused was the labour contractor. It is denied by the prosecutrix that she had taken advance amount from the accused in 2014 for the purpose of cutting sugarcane but she could not do the work. But that appears to be the probable story behind the FIR.

11. In the nutshell, the testimony of the prosecutrix was untrustworthy and therefore, the acquittal of the accused was justifiable and legal. We do not find that there is any merit in the present Appeal and it deserves to be dismissed at the threshold.

12. The Appeal stands dismissed.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE