

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 738 OF 2021

Manoj @ Mahesh Janakrai Jani	..Appellant
Versus	
The State of Maharashtra & Anr.	..Respondents

Ms. Ankita Bamboli i/b. Neha Patil for Appellant.
Smt. M. R. Tidke, APP for State/Respondent No.1.
Ms. Devyani Kulkarni (Appointed Advocate) for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.
DATE : 2 MARCH 2023 &
3 MARCH 2023

ORAL JUDGMENT:

1. The Appellant has challenged the Judgment and order dated 16/08/2019, passed by learned Additional Sessions Judge, Borivli Division, Dindoshi, Goregaon, Mumbai, in Sessions Case No.230 of 2015. The Appellant was convicted for commission of offence punishable U/s.376 of the I.P.C. and was sentenced to suffer R.I. for ten years and to pay a fine of Rs.30000/- and in default of payment of fine to suffer R.I. for two years. The appellant was acquitted from the charges of commission of offence

punishable U/s.328 and 385 of the I.P.C.

The appellant was granted set off U/s.428 of the Cr.p.c. Out of the fine amount, Rs.25000/- was directed to be paid to the prosecutrix by way of compensation U/s.357 of the Cr.p.c.

2. The prosecution case is that, the appellant and his wife were running a marriage bureau. He also used to earn by reading horoscopes, for that, he had created a separate cabin for himself in the same shop where the business of the marriage bureau was conducted. The prosecutrix was employed as a telephone operator in the year 2006. The appellant told her that, he could solve her family problems by performing a pooja. He gave her some substance to drink and under the pretext of performing pooja, committed rape on her. Subsequently, he threatened her that he would disclose their relation to others and thus, putting her under pressure continued with their physical relations. The prosecutrix got married in the year 2013. The appellant continued to harass her by visiting places near her house. The prosecutrix's husband sent her back to her parent's house and told her to return only

after settling this issue. The prosecutrix then lodged the F.I.R. vide C.R.No.238 of 2015 at Kasturba Marg police station, on 12/07/2015. The appellant was arrested on the same day. The investigation was carried out. The spot panchanama of the premises was conducted. According to the prosecution case, some obscene photographs and some objectionable material was recovered from the appellant's cabin. The statements of the witnesses were recorded. The articles were sent for the chemical analysis. The appellant, as well as, the prosecutrix were sent for medical examination. At the conclusion of the investigation, the charge-sheet was filed. The case was committed to the Court of Sessions.

3. Heard Ms. Ankita Bamboli, learned counsel for the Appellant, Smt. Tidke, learned APP for the State/Respondent No.1 and Ms. Devyani Kulkarni, learned appointed advocate for the Respondent No.2.

4. During trial, the prosecution examined ten witnesses including the prosecutrix, her sister, another victim, the landlord of

the appellant's shop, the panchas, the prosecutrix's brother in law, the Medical Officer and the Investigating officers.

5. The appellant examined his wife as his defence witness. His case was that, he and his staff used to go for picnics. Mostly, the prosecutrix and he himself used to go for picnics alone. She was forcing him to go for picnics. She had threatened him that, otherwise, she would tell everything to his wife. They had gone to Junagarh and Mahabaleshwar. She used to willingly accompany the appellant. He did not know anything about the other witnesses.

Thus, the defence of the appellant was that it was a consensual relationship.

6. Learned Trial Judge considered the evidence and heard arguments of both the sides. He concluded that, because of the lapse of time the offence U/s.328 of the I.P.C. could not be proved. He also acquitted the appellant from the charge of commission of offence punishable U/s.385 of the I.P.C. However, he relied on the evidence of the victim, her sister and her co-employee for

concluding that the appellant had committed rape on PW-1. He, therefore, convicted and sentenced the appellant, as mentioned earlier.

7. The victim was examined as PW-1. She has deposed thus:

In March 2006, she went to the office of the appellant pursuant to an advertisement seeking applications for the job of a telephone operator. She went to the appellant's office for the interview. She was selected and she started working in the appellant and his wife's marriage bureau. There were four other girls working in that office. There was a partition in the office. On the other side, the appellant used to read horoscopes. He was in the business of fortune telling. For about one year after her joining, everything was alright. One day, the appellant called her inside his cabin and asked her about her family issues. He told her that, he could perform a pooja and he could remove the evil eye. After two days, he asked the other staff members to go home early. PW-1 and the appellant were alone in the office. He performed some pooja

for about 25 minutes. After that, she went home. He told her that, she would have to perform the pooja after every 15 days. On the next occasion, he took a lemon in his hand and touched her on her shoulder, on the forehead, chest and stomach. Though, she did not like it, again after 15 days the appellant performed the pooja. This time, he gave her some '*vibhuti*'. She was made to consume it. Her head became heavy. He told her that, this was an effect of the pooja. It is her case that, then she became unconscious and after some time she regained consciousness. He told her that the pooja was over. She found that her body had become heavy. She felt that, there was something wrong with her body. The appellant told her that, there was nothing to worry. It is her case that, she had thought that something wrong had happened with her. Then she went home. She observed her body. She found some white discharge and she thought that something had happened with her body.

It is her case that, she thought that the appellant had physical relations with her. Every time he used to make her sit for the pooja and make her consume '*vibhuti*' and '*prasad*'. She used to

become unconscious for about 20 minutes and she thought that the appellant used to establish physical relations with her. He used to convince her that, it was the impact of the pooja. This happened repeatedly. Some times, he used to take her to his house and used to perform some pooja. It is her case that, she felt that he had established sexual relations with her. She thought that, something wrong had happened with her and, therefore, she resisted him. She told him that, she did not want to perform the pooja. It is her case that, he shot a naked photograph of her (PW-1) and started blackmailing. He threatened that, he would show that photograph to her family members. He used to have physical relations with her by blackmailing her. Whenever there was nobody in his house, he used to take her to his house and used to establish physical relations with her.

This particular portion of showing the photograph to her is not mentioned in her F.I.R. and it is brought out by way of an omission in the cross-examination. It is duly proved by the investigating officer who had recorded the F.I.R.

8. It is further deposed by her that, she was under the impression that the appellant used to perform the pooja and used to establish physical relations with other girls who used to come to his office. Her sister's divorce case was going on in the year 2009. The appellant came to know about this fact. He contacted her sister and did the same thing with her sister. Her sister informed PW-1 about it. In the year 2013, PW-1 got married. She started residing with her husband, her mother in law and her brother in law. Even after the marriage, she continued with her job for about one and a half year. After that, her husband told her to leave the job, but she was not willing to leave her job. There was a quarrel between them. It is her case that the appellant told her that, if she left the job, he would tell about the incident to her husband. In February 2015, she left the job. The appellant started harassing her by visiting the places near her house. On one occasion, PW-1's brother in law had called the appellant and had told him not to come anywhere near their house and to leave PW-1 alone. The appellant had told PW-1's brother in law that, earlier PW-1 was his wife. The appellant also used to call PW-1 on her phone. He had

thrown one letter in their house. PW-1 had kept that letter with herself. The appellant had sent one letter through one of the employees who was working with him. She informed PW-1 that the appellant was her husband. That lady fought with PW-1's mother in law. PW-1 was then sent to her parent's house. PW-1 and her mother tried to convince the appellant not to visit their house and to leave her alone. But there was no change and hence, she filed her F.I.R. against the appellant. The F.I.R. is produced on record at Exhibit 16. Her statement was recorded U/s.164 of the Cr.p.c. on 16/07/2015. The letter that was given by the appellant to PW-1 was in Gujarati. PW-1 translated it into Hindi. It is produced on record at Exhibit 18.

In the cross-examination, PW-1 deposed that, within 10 days of joining her job, she came to know that the appellant was married to his wife who is examined as his defence witness. She had given Rs.20000/- to the appellant in installment for performing the pooja. The appellant wanted to perform the pooja at PW-1's house, but her family members were not ready for the same. But she herself had convinced her family members. She has

deposed that, he performed the pooja in March and April 2007. She accepted that when the appellant gave her '*vibhuti*' with water, she was conscious. She further deposed that, the appellant performed the pooja with her on more than 30 occasions for four years. She further deposed that, she was working with the appellant in his office for seven years. In the year 2007, her age was 28 to 29 years. She further admitted that, in the year 2008, when the appellant gave her '*vibhuti*' and '*prasad*' she came to know that the appellant had done something wrong with her. In the year 2008, when the appellant gave her '*vibhuti*', she felt that the appellant had established physical relations with her. Till that time, the pooja was already performed 10 to 15 times. There was no improvement in her personal life because of the pooja. She admitted that, she did not get herself examined medically, but she was sure that the appellant had established physical relations with her. She did not tell this fact to the appellant's wife. The next pooja was performed after two months after the first sexual intercourse. After that, the pooja was performed in March - April 2008. At that time also, she had become unconscious and she felt that the

appellant had committed sexual intercourse. She worked with the appellant from 2006 to 2014. Even after she got married in 2013, she continued with the job for one and a half year. She further admitted that, she wanted to leave the job. But the appellant convinced her not to do so. After that, he started blackmailing her. She further admitted that, she did not tell her sister what the appellant had done. She further deposed that, from 2010 to 2014 the appellant had stopped performing pooja with her, but used to have physical relations with her. During that time, she used to come to his office, used to meet his wife and other staff members. During that time, she did not disclose this fact to anybody including the wife of the appellant, the staff of the appellant or to her own parents. She further admitted that, in May-June 2015, her husband told her to solve that issue and then come home. She further deposed that, even after marriage, the appellant blackmailed her and had sexual intercourse with her. After 15 days of lodging of the F.I.R., she again started residing with her husband. At the time of her deposition, she was residing with her husband. She admitted that, the letter which the appellant had

given her, mentioned that there was love relationship between them and he had expressed his grievance that PW-1 was refusing to meet him. She admitted that the appellant was suggesting that they could elope and get married. The cross-examination, brought out the omissions from her F.I.R. The most important omission was in respect of the obscene photograph of PW-1 which the appellant had allegedly shown to her for blackmailing. However, this important fact was not mentioned in her F.I.R and she could not explain as to why it was not so mentioned. She had not mentioned in the F.I.R. that her sister had told her that the appellant had committed similar act with her. She accepted that, from 2007 to 2015; till the time she left the job, she had not undergone any medical examination. She used to regularly go to the office. She used to meet the appellant and his family. She used to go on picnics with the staff. She used to go to the appellant's house for religious functions. Her statement was recorded U/s.164 of the Cr.p.c.. It is produced on record at Exhibit 17. As accepted by her, the letter at Exhibit 18 mentions that the appellant loved her and was pleading with her to meet him. There was no reference to any

photograph in that letter.

9. PW-2 was PW-1's sister. She deposed that, in the year 2009, she got divorced from her first husband. In December 2010, she got married for the second time. Even in that marriage, there was a dispute with her second husband and her husband had left her at her mother's place. She has deposed that, she got acquainted with the appellant in the year 2011 in Diwali as he had come to their house for performing a pooja. One year after that day, she had received a phone call from the appellant. He called her to his office and suggested that, he could perform a pooja to eliminate her problems. According to her, he gave her '*vibhuti*' and asked her to drink it with water. After consuming it, she became unconscious for about half an hour. After regaining consciousness, she went home. This was repeated on the second occasion. She felt that something wrong had happened and that the appellant had kept physical relations with her. Even after that, on 3 to 4 occasions, the appellant had called her and she felt that the appellant had established physical relations with her. She further deposed that, PW-1 had told her that it had happened with her, as

well. Therefore, they thought about it and PW-1 lodged an F.I.R. on 12/07/2015. PW-2's statement was recorded U/s.164 of the Cr.p.c. It is produced on record at Exhibit 20.

In the cross-examination, she stated that, she had visited the Appellant's marriage bureau for 3 to 4 times. PW-1 had never informed her that, she was performing the pooja through the appellant in respect of her marriage. But PW-1 had told her that, she was performing the pooja with the appellant to solve the family problems. She further admitted that, on the Diwali day in the year 2011, PW-1 had invited the appellant to their house. She admitted that, she had not mentioned in her police statement that the appellant had phoned her after about one year from Diwali of 2011. She further admitted that, PW-1's husband told her that, she should solve all the issues with the appellant and then come back to her matrimonial house. She also categorically admitted that, PW-1 had lodged a complaint against the appellant to save her married life. She also admitted that, she was deposing in the Court against the appellant to save the marriage of her sister i.e. PW-1.

10. PW-4 was another lady employee working with the appellant. She deposed that, she had worked with the appellant in his marriage bureau till 2015. On 15/07/2015, she was called to Kasturba Marg police station. By that time the appellant was already arrested in connection with the allegations made by PW-1. The police showed some photographs to PW-4 which they had seized from the appellant's office. She deposed that, those photographs were indecent photographs of PW-4 and her sister. She told the police that, those photographs were taken on the day when they had gone to the Appellant's office for a religious function. Since it was late in the night, she herself, her sister and the other employees had stayed in the appellant's office. The appellant had taken those photographs when they were sleeping in the office. She has deposed that, on one occasion they had gone to Vajreshwari. On a couple of occasions, the appellant gave her milk to drink. On drinking that milk, she felt giddy. Therefore, after that, she had refused to drink that milk. She was also shown other photographs in which she identified the appellant engaged in an indecent act with an unknown lady.

In the cross-examination, she deposed that, on that day, all the girl employees had slept in the appellant's office. They had locked the cabin from inside, but in the morning they found that the door was open. After looking at those photographs; on the next day, PW-4 lodged her own complaint. When the photographs were shown to her they were in an envelope. She did not recollect whether there was any seal on the envelope. She could not tell whether those photographs were sealed again or not.

11. PW-6 was the brother in law of PW-1. He has deposed that, after the marriage of PW-1 with this witness's brother, PW-1 was still working with the appellant. But since she was not getting enough salary and she did not have good prospects, she left the job in February 2015. After that, the appellant continuously started calling PW-1 on her phone asking her to rejoin the job. He also used to call on the landline. If anyone else picked up the landline, he used to cut the call. He used to come near their house to meet PW-1. PW-6 himself spoke with the appellant telephonically, but he did not pay any heed and continued visiting in the vicinity. Since the appellant was continuously harassing the family members of

PW-6, they asked PW-1 to go to her maternal house and solve the issue with the appellant and return only after taking the decision. After that, PW-1 lodged her F.I.R.

In the cross-examination, he admitted that, between 2013 to 2015, when PW-1 was married with PW-6's brother, till February 2015 she had never disclosed about any incident involving the appellant. PW-6 or his family members had never even lodged an N.C. complaint against the appellant. In around May 2015, they had asked PW-1 to go back to her maternal house and after about one or two months from lodging of the F.I.R., she came back to reside in her matrimonial house.

12. PW-3 Daudayal Agarwal was the landlord of the premises where the appellant was running his marriage bureau.

In the cross-examination, he admitted that the shop was situated in a crowded area surrounded by other shops.

13. PW-7 Dr. Rahul Sangolkar had medically examined PW-1. His medical examination did not reveal any abnormality. Everything was normal. But based on the history, his opinion was

that, the possibility of sexual assault could not be ruled out. According to the history given by PW-1, the last episode of sexual intercourse had taken place in December 2014 and the victim had left her job in February 2015.

In the cross-examination, he deposed that, there was no old or fresh injuries on the private part or other body parts of PW-1. He admitted that, he could not firmly comment whether it was a case of sexual assault. He had also examined PW-2 and his evidence regarding her medical examination was similar.

14. PW-5 Pramod Waigonkar was a pancha for the panchanama of the premises where the appellant was running his marriage bureau. The panchanama is produced on record at Exhibit 25. It was conducted on 12/07/2015. The office was in a shop. There was a partition in the office and on the other side of the partition, there was a cabin. There were 2 to 3 chairs and one bed inside that cabin. The bed was searched by the police. They found 18 C.Ds. having obscene photographs, a bottle of chloroform, 6 bottles of Honey, four condom packets, some

photographs of PW-1 and another photograph taken during her marriage. There were three other objectionable photographs of other ladies and a man. There were about 15 photographs. There were 22 ladies undergarments. All those articles were seized. After that, the panchanama of the appellant's house was also conducted.

In the cross-examination, he answered that the accused was not with them when the spot panchanamas of those two places were conducted. When they went to the shop, it was opened by the appellant's wife. The police and the panchas had not given their own personal search to the appellant's wife.

15. PW-9 Mustafa Patel was a pancha for the panchanama of the appellant's first office. The panchanama is produced on record at Exhibit 38. It was conducted on 13/07/2015. Nothing was seized during that panchanama.

16. PW-8 Bharat Ghone was the first investigating officer. On 12/07/2015, he arrested the appellant, visited the spot shown by PW-1 and prepared the spot panchanama showing seizure of those articles.

In the cross-examination, he admitted that, before taking search of that premises, he had neither taken personal search of the owner nor had given their personal search to the owner. The panchanama was typed on the laptop carried by them. But he had not mentioned in that panchanama (Exhibit 25) that he had carried the laptop.

17. PW-10 P. I. Subhash Jadhav was another investigating officer. He had registered C.R.No.238 of 2015 at Kasturba Marg police station. He has deposed about the arrest of the appellant, seizure of the articles from the spot by PW-8 API Bharat Ghone. He had recorded the statements of some of the witnesses. The samples collected through the medical examination of the appellant were sent to the Chemical Analyzer. He had sent PW-1 for recording of her statement U/s.164 of the Cr.p.c. He deposed about Exhibit 18 which was a translation of the letter written in Gujarati. The chloroform bottle found from the spot was sent for chemical analysis. At the conclusion of the investigation, he had filed the charge-sheet. The C.A. reports were received and they were produced on record at Exhibit 43 and 44.

In the cross-examination, he was specifically asked in what manner the photographs that were seized from the spot were shown to PW-4. According to him, when those photographs were shown to her, they had not opened the seal. They had covered them with a transparent paper. Those photographs were not sent to C.A. He further proved all the omissions from the F.I.R. in respect of PW-1's deposition and the omissions from the police statements of the other prosecution witnesses.

18. As mentioned earlier, the appellant had taken a defence that they had visited many places and that PW-1 had willingly accompanied him. The defence has examined the appellant's wife as the only defence witness. She was examined particularly to explain her signature on the spot panchanama when different articles were seized. She has deposed that, on 12/07/2015, she was called to the police station between 7.00p.m. to 8.00p.m. The police gave her a paper which was already typed and she was asked to sign on that paper. She had signed as told by the police. When she asked about that document, she was informed that, she needed to sign those documents if the appellant was to be released

from the custody. According to her, she had signed that document under pressure. She was shown Exhibit 25 i.e. the spot panchanama which bears her signature. She deposed that, it was the same document which she was made to sign, but she did not know the contents of that document.

In the cross-examination, learned S.P.P. asked questions about the appellant's first marriage. DW-1 married him when his first wife was alive. She denied the suggestion that the spot panchanama at Exhibit 25 was actually prepared at the spot and the articles were seized in her presence.

This, in short, was the evidence led by the both sides.

19. Learned counsel for the appellant submitted that the conduct of PW-1 and PW-2 does not inspire confidence. PW-1 was working with the appellant from the year 2006. The first incident allegedly had taken place in the year 2007 and for 8 years PW-1 had not made any grievance before any person including her husband's family or before any authority. If the incident was true, it was improbable that PW-1 would not have warned PW-2 about

the activities of the appellant. Even after the incidents which started in the year 2007, the appellant was invited to PW-1's house on the Diwali day in the year 2011. It was highly improbable. There are important omissions from her F.I.R. which she had deposed during her deposition. Even after reading her deposition, it is quite clear that, she was well aware of what was happening. There is no corroborative piece of evidence to support her claim that the appellant had blackmailed her and subsequently had forced her into keeping physical relations. The photograph which she had referred to in her deposition was not recovered. It is not produced on record. In any case, it is an omission as she had not referred to any such photograph in her F.I.R. Even during that period, PW-1 was regularly going to picnics and functions; which was unnatural. She did not tell anything to the appellant's wife. Even the letter at Exhibit 18 shows that, there was no extortion or force involved in their relationship. The statement recorded U/s.164 of the Cr.p.c. of PW-2 does not make serious allegation or even any allegation regarding sexual intercourse. The photographs which were allegedly recovered from the cabin of the appellant

were not sealed properly and there were no objectionable photographs of PW-1. So far as photographs of PW-4 are concerned; for that, a separate prosecution is still pending against the appellant and it is not the subject matter of this particular trial and this appeal.

20. Learned APP, as well as, learned counsel for the Respondent No.2 countered these submissions. According to them, considering the nature of allegations and the pressure put on PW-1, it was quite understandable that, she had not lodged her complaint prior to the year 2015. She was already married in the year 2013 and, therefore, she did not take any steps for lodging of the F.I.R. But that does not mean that the incident had not taken place. They submitted that the evidence of PW-2 and PW-4 is extremely relevant and has corroborative value to support PW-1's evidence. The articles found in the cabin of the appellant shows that he was indulging in such activities and, therefore, the allegations against him are true. They submitted that, though the Charge does not specifically mentions that PW-1 was pressurized into keeping physical relations because of blackmailing, the

evidence sufficiently suggests that she was blackmailed. The appellant was given sufficient opportunity in the statement recorded U/s.313 of the Cr.p.c. to explain the circumstances against him. They further submitted that the appellant had taken advantage of the situation and, therefore, the offence was complete.

21. I have considered these submissions. At the outset, it must be mentioned that the appellant was charged for commission of offences punishable under sections 328 and 385 of the I.P.C., however, he was acquitted from those charges. Learned Trial Judge had observed that, after a lapse of so many years, there was no proof that PW-1 was made to consume some substance which would attract the provision of Section 328 of the I.P.C. Similarly, he had observed that the offence U/s.385 of the I.P.C. is also not proved. There is no challenge to these findings and there is no appeal preferred against acquittal under these two heads. Even otherwise, there is no C.A. report regarding the bottle which was claimed to be a chloroform bottle found from the spot.

22. Therefore, the allegations and the prosecution case in respect of the offence U/s.376 of the I.P.C. needs to be considered. In this context, the most important evidence, obviously, is that of PW-1 and the Court will have to see whether her evidence inspires confidence and whether the sole testimony of PW-1 is sufficient to base the conviction against the appellant. Though, there is evidence of PW-2 and PW-4, as well, this case is not about the grievance of PW-4. Her evidence, at the highest, can be used by way of corroboration to PW-1's evidence. PW-2 on her own has not made any grievance or had not lodged any complaint. No charge is framed against the appellant for any act which was committed with PW-2, therefore, even her deposition at the highest can be used for corroboration of PW-1's evidence. Thus, the scrutiny of PW-1's evidence assumes more importance in this case.

23. PW-1 has deposed that, she had started working with the appellant from the year 2006. The first incident of performing the pooja after consuming '*vibhuti*' occurred in the year 2007. The pooja was repeated and after a couple of occasions she 'felt' that there was something wrong and she 'felt' that the appellant had

established physical relations with her. First of all, there was no firm proof of any such sexual intercourse. It was only her feeling. There were no other visible circumstances in the nature of injury or any other corroborative piece of evidence suggesting or showing that the appellant had established physical relations with her on those occasions after PW-1 had consumed that '*vibhuti*'. Even assuming that she was under a genuine belief that during performing the pooja the appellant had committed sexual intercourse without her knowledge; the important feature in this case is that, in spite of entertaining this belief, PW-1 still continued to cooperate and perform the pooja for not less than on 30 other occasions over a period of four years. First of all, this itself is highly improbable and if it was true, it clearly meant that she was a consenting party and she had no objection for such instances at all.

24. The other important feature in this case is that, PW-1 was very well aware that the appellant was a married man and in fact, his wife used to attend the office regularly. It was very easy for her to have informed the appellant's wife if the appellant was

indulging in such activities against her wish or against her consent. However, PW-1 had never made any grievance to the appellant's wife.

25. It is her case that, subsequently, after the instances of pooja were over, the appellant started blackmailing her by showing her some photograph. However, it is not her case in the F.I.R. that the appellant had shown her some photograph and had blackmailed her into establishing the relationship with him. This is an omission from the F.I.R. which is proved by the defence through the investigating officer's evidence. Moreover, the evidence shows that PW-1 was accompanying the appellant and other staff members to picnics and had in fact invited the appellant to her house for Diwali celebration in the year 2011. According to her, the appellant was committing this offence since 2007. If the appellant was subjecting her to such incidents, it was highly improbable that the appellant would be given respect and would be invited to PW-1's house.

26. PW-2 has deposed that, she was subjected to similar

incidents by the appellant. However, her statement recorded U/s.164 of the Cr.p.c. does not make any reference to any sexual intercourse. Her only contention in that statement was that, after consuming the '*vibhuti*' she had become unconscious and when she regained consciousness, she felt that there was something wrong, but beyond that there are no allegations that the appellant had committed any sexual assault or that he had blackmailed PW-2 into establishing physical relations with him. She has deposed that, she got acquainted with the appellant in the year 2011. In that case, it was highly improbable that, PW-1 being her elder sister would allow PW-2 to go through all this.

27. As far as PW-4 is concerned, there are no allegations that the appellant had committed any sexual assault on her. Her connection with this case is that her indecent photographs were found in the cabin of the appellant, but for that, a separate prosecution is pending against the appellant. Those photographs were recovered on 12/07/2015 after the F.I.R. was lodged. The incidents with PW-1 had taken place from the year 2007 onwards. The finding of those photographs has no direct connection with

the allegations of rape committed in respect of PW-1. As submitted by learned counsel for the appellant, there is also a serious doubt about whether those photographs were properly sealed or not. As mentioned earlier, PW-4 in her cross-examination had answered that, she was not aware whether the photographs were in a sealed envelope or whether they were sealed after they were shown to her. She has deposed that the photographs were in an envelope. This is also contrary to the investigating officer's evidence. Thus, some serious doubt is raised regarding seizure of the articles from the appellant's cabin. In any case, those articles were seized much later from the alleged period of offence in this case. At the highest, the prosecution can show that PW-1's photographs of her wedding were still with the appellant. But it is not the prosecution case that the appellant had forced her to give those photographs. Significantly, there was no objectionable photograph of PW-1 in those articles.

28. PW-1 had got married in the year 2013 and she had left her job in the year 2015. Thus, after her marriage, she continued to attend the appellant's office for a long period. There are no

allegations that, during that period the appellant had blackmailed her. It is only after she had left the job, the appellant had started visiting her place and pleading with her to join the office.

29. Even the letter which is produced at Exhibit 18 does not refer to any objectionable photograph of PW-1 or does not make any reference to any blackmailing. It only indicates the relationship which the appellant wanted to have with PW-1. He had even suggested that, they could elope together. This letter is brought on record by the prosecution itself. PW-4 has also accepted that, they had gone on a picnic and that PW-1 had also accompanied them.

30. The evidence of PW-6 and PW-1 herself shows that PW-1 was given an ultimatum to solve the issue with the appellant and then only to return to her matrimonial house. Within a short time of lodging of F.I.R., she was taken back to reside in her matrimonial house. Therefore, there is substance in the submission made by learned counsel for the appellant that PW-1 had lodged this F.I.R. only to save her marriage. This is admitted even by PW-2

in her cross-examination. Therefore, there is a possibility that to save her marriage these false allegations of intercourse without her consent were made by PW-1. Learned counsel for the appellant has rightly submitted that there is an inordinate delay in making any grievance or lodging the F.I.R. Though, PW-1 had tried to give some explanation, it is hardly acceptable. As mentioned earlier, sufficient doubt is created about the prosecution case. In this view of the matter, the benefit of doubt must go to the appellant and he deserves to be acquitted.

31. Hence, the following order is passed.

O R D E R

- i) The Appeal is allowed.
- ii) The impugned Judgment and order dated 16/08/2019, passed by learned Additional Sessions Judge, Borivli Division, Dindoshi, Goregaon, Mumbai, in Sessions Case No.230 of 2015 is set aside.
- iii) The Appellant is acquitted from all the charges framed against him.

- iv) The Appellant be released forthwith if not required in any other case.
- v) The Appellant shall execute the bail bonds, to the satisfaction of the Trial Court, in consonance with Section 437-A of the Cr.p.c.
- vi) The Appeal is disposed of.

(SARANG V. KOTWAL, J.)