



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

CRIMINAL APPEAL NO.455 OF 2019

Sunil Sitaram Jadhav,
Age : 48 years, Occ. Nil,
r/o. Tambapura,
Behind Mahadeo Temple,
Jalgaon

..Appellant

Vs.

1. The State of Maharashtra,
Through MIDC Police Station,
Jalgaon

2. XYZ

..Respondents

Mr.A.P.Yenegure, Advocate for appellant
Mr.S.D.Ghayal, Addl. Public Prosecutor for respondent no.1
Ms.Pooja K. Apache, Advocate for respondent no.2

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
RESERVED ON : SEPTEMBER 09, 2024
PRONOUNCED ON : OCTOBER 07, 2024**

JUDGMENT (Per R.G.AVACHAT, J.):-

The appellant was charged and tried for the offences punishable under Sections 376(2)(f), 323 and 506 of the Indian Penal Code in Sessions Case No.139 of 2014. The Court of Addl. Sessions Judge (Trial Court) has, on appreciation of the evidence in the said case, convicted and consequently, sentenced the appellant, as stated below:-

Section	Punishment
376(2)(f) of I.P.C.	To suffer life imprisonment, which shall mean imprisonment for the remainder of the accused's natural life and fine of Rs.10,000/-, in default, S.I. for 1 year
Section 323 of I.P.C.	To pay fine of Rs.1,000/-, in default, S.I. for one month
506(II) of I.P.C.	To suffer R.I. for one year

The appellant is, therefore, before us in this appeal.

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

PW 1 "J" (victim) is a 24 years old married daughter of the appellant. Her husband had deserted her four months prior to the incident dated 23.06.2014. The victim had, therefore, started residing at her parent's (appellant) house. The appellant was addicted to liquor. It was the case of the victim that the appellant would keep ill-eye on her. He would commit sexual intercourse with her against her wish and without her consent. It so happened that on 23.06.2014 by 05.00 p.m., the appellant driven his wife and children out of his house. He was drunk. He bolted the door of his house from inside. He undressed the victim and himself as well. The appellant then committed rape of his own daughter (victim). The

victim, therefore, gathered courage. She related the incident to her mother and a female social worker as well. All of them, thereafter, went to M.I.D.C. Police Station, Jalgaon. The victim lodged the FIR (Exh.10).

3. A crime was registered against the appellant. It appears that the neighbours arrested the appellant and gave him to the custody of the police same day. The victim was medically screened. It was realised that she was pregnant. Her pregnancy was of 6 weeks and 5 days. On medical advise, the victim underwent abortion (Medical Termination of Pregnancy – M.T.P.). The clothes of both appellant and victim were seized. A crime-scene panchnama was drawn. The appellant too was medically examined. Blood samples of both of them and the samples of product of conception were sent to the F.S.L., Kalina, Mumbai, for DNA analysis. The DNA report indicates both appellant and the victim to be the biological parents of the product of conception. The DNA report was received, pending trial. Statements of the persons acquainted with the facts and circumstances of the case were recorded. On completion of the investigation, charge sheet was filed against the appellant.

4. The trial court framed charge (Exh.3) for the sections mentioned above in the chart. The same is specifically mentioned

because the appellant was not charged with the offence punishable under Section 376(2)(n) of I.P.C. The victim, in her report, did not give the past incidents of rape committed by the appellant. Be that as it may. To bring home the charge, the prosecution examined eleven witnesses and produced in evidence certain documents. On appreciation of the same, the trial court convicted and consequently, sentenced the appellant, as stated above.

5. Heard learned counsel for the parties. Learned counsel for the appellant would submit that the victim was not of good character. Her husband had, therefore, deserted her. She was in relationship with one Manoj, residing in the nearby of the house of the appellant. Immediately after registration of the FIR, she married Manoj. The appellant was alcoholic. It was just impossible for him to commit rape of his own daughter. The appellant's wife gave evidence against her own daughter. She did not stand by the prosecution. He would further submit that the C.A. reports do not support the prosecution case. So far as the DNA reports are concerned, he would submit that the DNA protocol was not followed. There was no evidence to indicate in whose custody, the sample of product of conception was, until it was sent to the F.S.L., Kalina, Mumbai. The DNA examination was conducted after about 10

months of receipt of the sample at F.S.L., Kalina. There was no evidence to indicate in what condition, the said sample was preserved. The DNA report, therefore, loses its efficacy. According to him, it was, after all, opinion evidence. No much importance, therefore, could be given to it. He, therefore, urged for allowing the appeal.

6. Learned APP and learned counsel for the victim would, on the other hand, submit that there were no words to condemn the acts committed by the appellant. His daughter (victim) did not have any reason to implicate him falsely. Our attention was drawn to certain suggestions given to the victim's mother in her cross-examination. According to learned APP, the DNA analysis did not go wrong. The evidence of the victim coupled with the DNA report, undoubtedly, brought home the charge. Both learned APP and learned counsel for the victim, therefore, urged for dismissal of the appeal.

7. Considered the submissions advanced. Perused the evidence on record and the judgment impugned herein as well.

8. PW 1 - "J" (victim) testified that she had married with one Sanjay Brahmarkar about 3-4 years before the alleged incident. Her

husband had deserted her. He dropped her at her parents' house. She would work as maid-servant at the places of 3-4 persons to earn her living. According to her, her mother too would go out for work. She (victim) would return home by 02.00 p.m. Their home was in the nature of one-room with tin-sheet roof. It was further in her evidence that the appellant was addicted to alcohol. He had evil-eye towards her. Whenever her mother used to be not at home, the appellant would try to molest her. She had shared said fact to her mother. She (mother) did not oppose the appellant. The reasons therefor was that the appellant used to assault her. It was further in her evidence that the appellant would commit rape of her whenever her mother used to be out of her home. When she used to oppose the sexual advances by the appellant, he would assault with sickle. The other family members would also leave the house when the appellant used to commit rape on her. According to her, her brother, mother and sister had witnessed such incidents. She went on to state that the appellant had committed sexual intercourse with her 4-5 times. Last such incident took place by 05.00 p.m. After turning the family members out of the room/home, the appellant latched the room from inside. He first undressed the victim and then undressed himself as well. He then made her lay on the floor. It was further in her evidence that the appellant inserted his private part

into her private part. She did her best to assault the appellant. He (appellant) escaped from the room. She related the entire incident to her neighbour (PW 10 - Minakshi). She along with her mother, brother and the said neighbour went to the police station. She lodged the report (FIR - Exh.10).

9. It was further in the evidence of PW 1 - "J" (victim) that at the time of last such incident, the appellant had slapped her. She, therefore, could not oppose him. The appellant impregnated her. She underwent M.T.P. in the Civil Hospital, at Jalgaon. She handed over her clothes to the police. The Medical Officer obtained certain samples during her medical screening. According to her, the police then kept her in Ashadeep Mahila Sudhar Gruha. She referred to her FIR (Exh.10). It was further in her evidence that she married Manoj on her own. She was now blessed with a child. Her mother, brother and sister did not keep cordial relations with her.

10. The victim was subjected to searching cross-examination. It has been brought on record that there were number of houses in her neighbourhood. She denied that she would leave home in the morning and return in the evening only. According to her, she would return home by 02.00 p.m. It was further suggested to her that she

was psychologically not keeping well. She denied the same. She denied that she missed her periods before her husband dropped her at her parents house. She denied that when her mother informed her father (appellant) about the same, he assaulted her. She denied to have had illicit relationship with one person – Manoj. According to her, her first husband was not keeping physical relationship with her. She was confronted with her FIR (Exh.10) to bring on record the same to have been silent to state therein that the appellant undressed himself and her as well. She denied that the report was lodged at the behest of female social workers (PW 4 – Mangala and PW 10 – Minakshi).

11. PW 2 – Dhanraj is a witness to the panchnama (Exh.12) relating to seizure of the victim's clothes namely, saree, blouse and nicker. PW 3 – Suresh is witness to the panchnama (Exh.14) relating to seizure of clothes delivered by the appellant to the police on 24.06.2014 itself.

12. PW 4 – Mangala was member of Mahila Dakshata Samiti, Jalgaon. It was in her evidence that on 23.06.2014, she received a phone call from another member of the committee, informing her about a father to have committed rape of his own daughter. She,

therefore, went to the house of the victim. She herself and other members inquired with the victim. The victim disclosed them the entire incident (as referred in the victim's examination-in-chief). It was further in her evidence that they, therefore, accompanied the victim and her mother to the police station. The victim lodged the FIR (Exh.10).

13. During the cross-examination of PW 4 - Mangala, it was brought on record that she got acquainted with the victim only from the date of lodging of the report. She admitted to have been acquainted with another social worker - Meenakshi, who was member of the very committee. The appellant was residing in the neighbourhood of Meenakshi. She, however, denied that there used to be frequent quarrels between the appellant and Meenakshi and therefore, a false report was lodged at her instance.

14. PW 5 - Tulshiram is the witness to the crime scene panchnama (Exh.26) i.e. the room, wherein the appellant along with his family members including the victim would reside. Nothing incriminating was noticed. We, therefore, do not refer to his evidence in further details. PW 10 - Meenakshi's evidence disclosed that the victim and her sister had met her 2-3 days before the

incident and informed that the appellant would assault them and even commit rape of the victim. It is not known, when it was learnt by Meenakshi 2-3 days before the incident, what kind of social work she did. Admittedly, she was immediate neighbour of the appellant. Be that as it may. Her evidence in the examination-in-chief is consistent with the evidence of PW 4 – Mangala. In her cross-examination, nothing could be elicited helpful for the appellant. It was suggested to her that the appellant would harass under influence of liquor and therefore, to take revenge, a false complaint was lodged at the instance of the victim.

15. PW 7 – “R” is mother of the victim. She did not stand by the prosecution. She denied the appellant to have ever committed sexual intercourse with the victim. It is, however, in her examination-in-chief itself that the appellant used to assault her daughter. The appellant would consume liquor sometimes and would assault the other family members as well. She was confronted with her police statement to bring on record the contradictions, i.e. what she had stated in her police statement was consistent with the case of the victim. Anyway, PW 7 – “R” did not support the prosecution case.

16. PW 6 – Dr. Sandip medically screened the victim. The victim's medical screening report is at Exh.32. His evidence indicates that the victim herself gave history about her father committing rape on her by 05.00 p.m. on the very day. He examined her by 11.00 p.m. On her examination, he found her to have been pregnant. He, therefore, advised her obstetric sonography. The victim was, therefore, admitted to the hospital. Sonography was done on 24.06.2014. She was found to be pregnant of 6 weeks and 5 days. He took samples of vaginal swab, pubic hair, nails and blood of the victim. He handed over the same to the lady constable accompanying the victim. It was further in his evidence that he did not notice any external or internal injury. At the victim's private part, there was old tear of hymen. No fresh injury was noticed. He, accordingly, issued the medico-legal certificate (Exh.32). According to him, the victim being daughter of the appellant, could not have resisted the sexual assault and therefore, there would not have been any injury on her person. It is further in the evidence of PW 6 – Dr. Sandip that the victim underwent M.T.P. on 29.06.2014. According to him, sample of product of conception was sent for DNA analysis. He also examined the appellant same day, on which the victim was examined. He obtained blood sample of the appellant. He found the appellant under influence of alcohol. The appellant could not excrete

semen. The sample thereof, therefore, could not be taken. The second attempt in that regard also failed.

17. In the cross-examination, PW 6 – Dr. Sandip admitted to have not recorded history in the M.L.C. He clarified himself to state that the history given by the victim was recorded in the hospital admission papers. All the medical papers have been placed on record. We noticed the history given by the victim. On medical examination of the victim, PW 6 – Dr. Sandip reserved his opinion, pending receipt of F.S.L. report. The C.A. reports do not support the prosecution case, since, admittedly, no semen sample of the appellant was taken.

18. PW 8 – Chandrakant is the Police Constable, who carried the samples of blood, product of conception and DNA to F.S.L., Kalina, on 29.06.2014 itself. PW 9 – Vijaysing, Police Constable, carried the other samples to the F.S.L., Nashik, on 01.07.2014. True, the DNA report (Exh.64) indicates that the appellant and the victim are biological parents of the product of conception.

19. Before appreciating the evidence relating to DNA, we must have a look at the guidelines for collection, storage and transportation of the crime-scene DNA samples. Those have been placed on record by learned counsel for the appellant. Item No.10 therein speaks of maintaining the chain of custody. It describes what chain of custody means. Same reads as under:-

10. Maintaining the chain of custody:

- Chain of custody is a process used to maintain and document the chronological history of the evidence.
- A 'chain of custody' document should be maintained which should include name or initials of the individual collecting the evidence, each person or entity subsequently having custody of it, dated the items were collected or transferred, agency and case number, victim's or suspect's name and the brief description of the item.

Those were the guidelines issued by The Central Forensic Science Laboratory, Chandigarh.

20. Blood Sample Authentication Form indicates that it should bear photograph of the person whose blood sample has been submitted for DNA profiling. The form indicates that the blood has to be obtained in presence of three panch witnesses. The form shall contain their names with their signatures along with date and time.

21. In the case of **Prakash Nishad (supra)** it has been observed thus:-

61. We may observe that the Maharashtra Police Manual, when speaking of the integrity of scientific evidence in Appendix XXIV states-

“The integrity of exhibits and control samples must be safeguarded from the moment of seizure upto the completion of examination in the laboratory. This is best done by immediately packing, sealing and labeling and to prove the continuity of the integrity of the samples, the messenger or bearer will have to testify in Court that what he had received was sealed and delivered in the same condition in the laboratory. The laboratory must certify that they have compared the seals and found them to be correct. Articles should always be kept apart from one another after packing them separately and contact be scrupulously avoided in transport also.”

62. In the present case, the delay in sending the samples is unexplained and therefore, the possibility of contamination and the concomitant prospect of diminishment in value cannot be reasonably ruled out. On the need for expedition in ensuring that samples when collected are sent to the concerned laboratory as soon as possible, we may refer to “Guidelines for collection, storage and transportation of Crime Scene DNA samples For Investigating Officers- Central Forensic Science Laboratory Directorate Of Forensic Sciences Services Ministry Of Home Affairs, Govt. of India” which in particular reference to blood and semen, irrespective of its form, i.e. liquid or dry (crust/stain or spatter) records the sample so taken “Must be submitted in the laboratory without any delay.”

63. The document also lays emphasis on the ‘chain of custody’ being maintained. Chain of custody implies that right from the time of taking of the sample, to the time its role in the investigation and processes subsequent, is complete, each person handling said piece of evidence must duly be acknowledged in the documentation, so as to ensure that the integrity is uncompromised. It is recommended that a document be duly maintained cataloging the custody. A chain of custody document in other words is a document, “which should include name or initials of the individual collecting the evidence, each person or entity subsequently having custody of it, dated the items were collected or transferred, agency and case number, victim’s or suspect’s name and the brief description of the item.”

64. Indisputably, these “without any delay” and “chain of custody” aspects which are indispensable to the vitality of such evidence, were not complied with. In such a situation, this court cannot hold the DNA Report Ext.85 to be so dependable as to send someone to the gallows on this basis. We have carefully perused FSL as well as DNA report forming part of the record. A snapshot of the said reports, in a tabulated format is presented as under :

	
	
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66.	
67.	Referring to the above case , a three-Judge bench in Manoj v. State of M.P. , 2023 SCC Online SC 201 through S. Ravindra Bhat J., observed:

158. This Court, therefore, has relied on DNA reports, in the past, where the guilt of an accused was sought to be established. Notably, the reliance was to corroborate. This Court highlighted the need to ensure quality in the testing and eliminate the possibility of contamination of evidence; it also held that being an opinion, the probative value of such evidence has to vary from case to case.”

In the very judgment it has been observed in paragraph 82 as under:-

82. This court, recently, in [Maghavendra Pratap Singh @ Pankaj Singh v. State of Chattisgarh](#), 2023 SCC OnLine SC 486 had emphasised the role and responsibilities of the investigating authorities by referring to various judgments of this Court. Such principles, which are essential to successful investigations, were not adhered to. Needless to state, such responsibilities would be all the more heightened in cases of crimes involving severe punishments such as imprisonment for life or the sentence of death. Considering the nature of the case, the police ought to have, even more than usual, taken steps, precautions, and decisions to safeguard the fact-finding and investigation exercise.

22. The prosecution did not examine the Doctor who conducted M.T.P. and who preserved the product of conception. The police officer to whom it was handed over to ultimately hand it over to PW 8 – Chandrakant to carry it to Kalina, was not examined. PW 8 – Chandrakant did not testify to have received the sample of product of conception from the medical officer. We, therefore, do not propose to rely on the DNA reports.

23. We have another reason not to rely on the DNA report. The appellant in his examination under Section 313 of Cr.P.C. had expressed his desire to examine a witness in his defence. He placed on record his written statement under Section 313 of Cr.P.C. Same too is on record. In paragraph 13 thereof, he had requested the Court to allow him to cross-examine Shri.H.S.Lade, Assistant Director, Forensic Science Laboratory, State of Maharashtra (Home Department), Vidya Nagari, Kalina, Santacruz (E), Mumbai. It appears that learned trial Judge did not read the written statement placed on record by the appellant in its entirety. She only put remark that “*on verification, the accused could not state the contents but stated that he wanted to examine doctor in defence*”. In our view, she has ignored the appellant’s request in paragraph 13.

24. The fact, however, remains that the victim, who is daughter of the appellant, testified on oath the appellant to have committed coitus with her. She testified that the appellant inserted his private part into her private part. There was nothing to indicate that she had any reason to falsely depose against her own father. True, the appellant was alcoholic. Her mother stood by his side. The mother blamed her daughter (victim). It is also true that the victim, immediately after lodging of the FIR, married one Manoj, with whom she had intimacy. Learned counsel for the appellant suggested PW 7 – “R”, mother of the victim, in her cross-examination, that the victim used to keep physical relationship with the appellant on her own and she used to see the same. This suggestion goes a long way to conclude that the appellant admitted to have sexual intercourse with his own daughter. The same indicates that the appellant want to bring the case of consent under Section 90 of Indian Penal Code. In view of Section 105 of the Evidence Act, when a person is accused of any offence, the burden to proving existence of circumstances bringing the case within any of the general exceptions in the Indian Penal Code or within any special exception or proviso contained in any other part of such Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances. In the case in hand, the appellant did not lead any

evidence to indicate it to be a consensual relationship. True, nothing is impossible in this world !

25. The fact, however, remains that the victim, on the very day, along with her mother and a social worker, approached the police station and lodged report. Since no semen sample could be obtained, the C.A. reports do not support the prosecution case. Needless to mention that conviction can be based on the sole testimony of victim, if same inspires confidence. Here, nothing has been brought on record to indicate the victim to have any reason to falsely implicate her own father in such a serious offence.

26. So far as regards the appellant's other contention that he had asked the victim to resume cohabitation but she avoided, was never suggested in her cross-examination. His case that his daughter was deserted by her husband as she was not of good character, went unproved. It is true that the appellant can make out defence based on preponderance of probabilities. We have already observed to have found the testimony of the victim to be reliable. We, therefore, find the trial court to have rightly convicted the appellant for the offence punishable under Section 376(2)(f) of Indian Penal Code and other sections as well. It is reiterated that the appellant was not charged with offence punishable under Section 376(2)(n) of I.P.C. The

victim in her evidence was not specific about the past incidents of sexual intercourse. The DNA report is not being relied on for the reasons stated above.

27. The appellant is behind the bars for little over 10 years and 3 months. The offence punishable under Section 376(2)(f) of Indian Penal Code is punishable with minimum imprisonment of 10 years but which may extend to the imprisonment for life, which shall mean imprisonment for the remainder of the accused's natural life with fine. In the case in hand, there are wife and other children of the appellant. The wife wants her husband (appellant) with her. He has already undergone imprisonment for more than ten years, i.e. minimum prescribed. In default of payment of fine for the respective offences for which he has been convicted, he was directed to undergo S.I. for one year and one month. It appears that the appellant did not pay the fine amount. We propose to reduce the imprisonment in default of payment of fine for a period of one month on each count instead of one year.

28. In view of the above, the appeal partly succeeds. Hence, the following order:-

- (i) The appeal is partly allowed.
- (ii) The conviction imposed against the appellant vide impugned order dated 26.10.2016, passed by learned Addl. Sessions Judge, Jalgaon, in Sessions Case No.139 of 2014, for the offence punishable under Section 376(2)(f) of Indian Penal Code, is maintained. His sentence for the said offence, i.e. life imprisonment, which shall mean imprisonment for the remainder of the appellant's natural life, is hereby set aside. Instead, he is sentenced to suffer R.I. for 10 years and to pay fine of Rs.500/- (Rs. Five Hundred), in default, to suffer S.I. for one month.
- (iii) The conviction and sentence imposed against the appellant vide the impugned order dated 26.10.2016, for the offence under Section 323 of Indian Penal Code, is maintained.
- (iv) The conviction imposed against the appellant for the offence punishable under Section 506(II) of Indian Penal Code is also maintained. However, the sentence of imprisonment is reduced to three months, instead of one year.
- (v) Needless to mention, the substantive sentences to run concurrently.

(vi) Fee of learned counsel appointed to represent the victim is quantified at Rs.10,000/- (Rupees Ten Thousand).

[NEERAJ P. DHOTE, J.]
KBP

[R.G. AVACHAT, J.]