

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPEAL NO. 1425 OF 2023

Sanjay Vishnu Mirgule

Age: 41 Years, Occ- Unemployed

R/o. Pakhadi Sakharkhombe, Tal. Rajapur,

District – Ratnagiri

Currently at – Ratnagiri Special Prison

District - Ratnagiri

.... Appellant

Versus

1. The State of Maharashtra

At the instance of Coastal Police Station

Nate, District – Ratnagiri

On APP, AS Bombay High Court

2. X. Y. Z.

Age – 68, Occu.- Household,

R/o. Mirgule Pakhadi, Sakharkombhe,

Tal. Rajapur, District - Ratnagiri

Deleted As per

Court Order

Dated

21.06.2024

.... Respondents

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Mr Rahul P. Kasbekar, Appointed Advocate for the Appellant.

Ms. Sangeeta Shinde, APP, for Respondent No.1.

Mr. Nandu Thorat a/w Mr. Vinod Satpute i/b Mr. Manish Gaikwad,
for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 18th OCTOBER, 2024.

ORAL JUDGMENT. :

1. This appeal is directed against the judgment and order
passed by Learned Additional Sessions Judge, Ratnagiri in Sessions

Case No.21 of 2022, whereby the Appellant has been convicted for the offence punishable under Section 376 of the Indian Penal Code, 1860 (for short “IPC”).

2. It is prosecution’s case that on 12th June, 2020, the victim i.e Respondent No.2 lodged complaint with Coastal Police Station, Nate, District, Ratnagiri against the Appellant alleging that Appellant made forcible entry in Oti (a middle room of house where she was sleeping) and committed sexual assaults on her at midnight around 12:30 a.m. and in the morning around 5:00 a.m.. Unfortunately, the Appellant is son of the victim.

3. It is contention of learned counsel for the Appellant that the Appellant has been falsely implicated in this case. Prosecution failed to prove charges levelled against the Appellant. The alleged incident happened in house of the victim where other family members were present and the house was situated in dense locality. The victim has deposed that when the Appellant sexually assaulted her for first time, she had shouted but no one came and at the second time, her daughter-in-law and others came after hearing her shouts.

3.1 Learned counsel further submitted that evidence has been produced on record to show that the Appellant is suffering from

Schizophrenia and he is mentally ill. PW-16/Dr. Snehal Todkar who has examined and treated the Appellant has stated that the Appellant's mental condition is not sound. She further stated that considering mental condition of the Appellant, if he get fits, he may do any act including murder or rape, but this fact has not been considered by the learned Sessions Judge.

3.2 Learned counsel further submitted that victim (PW-1) in her cross-examination has admitted that everyone in her house was fed up due to behavior of the Appellant, and it was everyone's anxiety that after the death of PW-1 how he will survive. Hence, it was decided by all the family members to send him in jail but this admission is not considered by the learned Sessions Judge.

3.3 Learned counsel further submitted that considering these admissions, it proves that false complaint was lodged against the Appellant to send him in jail as he would get proper treatment but this evidence has not been considered by the learned Sessions Court and has passed impugned judgment and order, which is erroneous. Hence, requested to allow the appeal. He relied on *Rajendra S/o. Adakuji Choudhary Vs. The State of Maharashtra*¹, and *Prakash Nayi Alias Sen Vs. State of Goa*².

¹ 2022 1 Bom CR(Cri) 1;

² (2023)5 SCC 673; (2023) 2 SCC (Cri) 553; 2023 SCC OnLine SC 93

4. It is contention of learned APP along with learned counsel for Respondent No.2 that the Appellant has sexually assaulted his mother twice. Immediately complaint was lodged against the Appellant and he was arrested. The medical evidence supports the case of prosecution.

4.1 Learned APP further submitted that police has seized the bed sheet on which victim was sleeping and her saree which was worn at the time of incident. Human semen stains were found on the saree, which proves involvement of the Appellant in the crime.

4.2 Learned APP further submitted that there is no reason for the victim to involve her own son in such type of heinous crime. Though, the Appellant has taken defense of his mental instability but, it has come on record that after the incident the Appellant had threatened the witnesses that if they disclosed the said act to anyone, he will kill them. It shows that at the time of incident the Appellant was in fit mental condition, only to escape from the clutches of law, he has taken defense of mental illness, it is an afterthought. Learned APP further submitted that PW-2 to PW-4 supports the evidence of PW-1/victim, who saw the Appellant in the room of the victim. Moreover, the Appellant first time sexually assaulted the victim at 12:30 a.m. in midnight and thereafter, at 5:00 a.m, he again sexually

assaulted the PW-1, which proves his mental condition was sound. The learned Sessions Court has passed well reasoned order on the basis of evidence produced before him, no interference is required in it and requested to dismiss the appeal.

5. Learned counsel for Respondent No.2 adopted the submissions of learned APP.

6. I have heard all learned counsel. Perused impugned judgment and order and evidence produced on record. To prove its case, prosecution has examined 16 witnesses. PW-1 is the victim. She has stated that on 11th June, 2020, when she was asleep in Oti (middle room) of house, the Appellant who slept in Padavi (front room of house) came to her by back side door and switched off the lights. He was naked, he tore her saree and sexually assaulted her. At that time, she told the Appellant that she is his mother, what he is doing is not good, but he did not listen. She shouted for help but no one came. The Appellant went from the said room. She further stated that again at 5:00 a.m, the Appellant came from the back door and sexually assaulted her. This witness shouted for help but no one came. At around 6:00 a.m, her daughter-in-law Deepali, Minal and her son came there, this witness narrated the incident to them. Deepali (PW4) asked the Appellant who was present in the said room, why he did

such act?, the Appellant abused her and started assaulting her with stone and ran away. Thereafter, the Appellant was arrested. This witness lodged complaint against him. The report is at Exhibit-19. Her statement under Section 164 of the Cr.P.C. is at Exhibit-20.

7. In cross examination, she admitted that in Mirgulewadi, houses are situated adjacent to each other and her house is surrounded by other houses, she admitted that even low level noise can easily be heard at night time. She further admitted that the Appellant is unmarried and his conduct and behaviour is not like normal man. He was under treatment and medicines were being given to him for his mental abnormality. In case of non-administration of medicine, he used to behave in very rude manner and used to abuse and quarrel with others. She further admitted that the residents of Mirgulewadi were aware about the mental state of the Appellant, therefore, they were not making any complaint about him. She denied the suggestions that the Appellant was not normal therefore her other two sons were not ready to take him to Mumbai. She further admitted that it was difficult for the Appellant to take care of himself. Therefore, this witness instead of residing at Mumbai with her two sons, was residing at Mirgulewadi with the Appellant. She admitted that her son told that, it would be difficult for the Appellant to

maintain and take care of himself, after the occurrence of death of this witness, therefore, he had advised that the Appellant should be sent to jail to be maintained and cared for. She further admitted that after having decided about the aforesaid suggestions, report was lodged against the Appellant. She denied the suggestion that no such incident happened and the Appellant had not sexually assaulted her.

8. PW-2 (personal details of this witness has been kept in a sealed envelope) deposed that on 12th June, 2022 at about 5:00 a.m., her cousin Reshma told this witness that she had heard the noise from the house of victim. She did not pay heed to it, as such types of noise used to be heard usually. At 6:00 a.m., this witness noticed that Minal Mirgule and Deepali Mirgule were running towards house of the victim, they called this witness. This witness joined them, they tried to enter in the house of victim from its front door, however, the same was bolted from inside, then they entered in the said house from back door. After entering in the house, they saw that the victim was lying on the bed and was weeping and murmuring and the Appellant was wearing shirt. This witness and other two witnesses asked the victim, what happened. Victim told them that at 12:30 a.m. and 5:00 a.m., the Appellant forcibly sexually assaulted her. This witness and other two witnesses asked the Appellant about the incident. At that time, the

Appellant rushed towards them to assault them. He then threatened to kill this witness and other two witnesses, if they disclosed the incident to anybody, he abused all of them in filthy language and fled from the spot. Thereafter, he was caught by people and handed over to the police. In cross examination, this witness stated that her house situated opposite to the house of the victim. There is silence after 7:00 p.m. to 7:00 a.m. in the said village and if any one shouts, it may be heard by others.

9. PW-3 and PW-4 (Their personal details are kept in sealed envelope) have stated the same facts as stated by PW-2. The PW-4 is daughter-in-law of the victim.

10. The Appellant has come with two fold defense. It is contention of learned counsel for the Appellant that the Appellant is mentally ill, he was burden on his family, hence, he has been falsely implicated in this case. Learned counsel further submitted that if it is assumed that he had committed alleged act, it was committed due to mental illness and he was not aware about the consequences of the act. The victim and other witnesses have stated that the Appellant was on medication, it supports the defense of the Appellant. The act of the Appellant falls under Section 84 of the Indian Penal Code. Firstly, I deal with evidence which came on record regarding sexual assault.

The PW-1/Victim has stated about sexual assault on her by the Appellant. The evidence of this witness is supported by PW-2, PW-3 and PW-4 stating that after hearing the shout, they went to the house of victim and they saw that the victim was lying on the bed and was weeping and murmuring at the same time. The Appellant who was present in the room was wearing a shirt. When they inquired with the victim, she told these witnesses that the Appellant had sexually assaulted her. These witnesses denied the suggestion that they are deposing falsely. The prosecution has examined PW-5/Ankita Karle, the panch on spot panchanama. In her presence, the Police has prepared spot panchanama, it is at Exhibit-29. From the spot of incident, police has seized one saree of yellowish colour having green colour stripes, one blueish colour blouse, one white colour bed sheet having few stains and one torn piece of saree having design of flowers and leaves (Articles A to D).

10.1. PW-12/Mr. Prasad Pakhare is photographer, who clicked photographs of incident spot. PW-15/Siddesh Gosai is panch to arrest panchanama of the Appellant at Exhibit-66 and seizure of clothes panchanama of the Appellant. PW-7/Supriya Takkar carried the sealed muddemal to Forensic Laboratory, Khedshi, Ratnagiri. PW-8 Dr. Vaneeta at Exhibit-41 has stated that on 12th June 2020, she has

examined victim and she has prepared the report, which is at Exhibit-42. This report shows about sexual assault on the PW-1. PW-9/Mamta Namaye had carried letter of Investigation Officer at (Exhibit-44) to Medical Officer, Rajapur and collected sample of the Appellant and handed over to the concerned Officer.

10.2. PW-11/Geetanjali More, Assistant Chemical Analyser at Forensic Laboratory, Ratnagiri has stated that she had received seized articles in the crime. She found stain of human semen on piece of saree (Article – D). The report is at Exhibit-53. From the evidence of this witness and PW-1, PW-2 to PW-4, it proves that the Appellant had sexually assaulted the victim. The stain of human semen found on piece of saree of victim supports her evidence. The PW-2 to PW-4 had seen the Appellant in room of victim, it shows presence of the Appellant on the spot of incident. He was wearing shirt when these witnesses entered in room of victim. Now question remains about false involvement of the Appellant. In my view, allegations of sexual assault are made against the Appellant by his own mother. It would not possible for any mother to make such type of allegations against her own son. The statements given by victim before police and before learned Magistrate under Section 164 of Cr.P.C. and deposition before learned Sessions Court are consistent. There is no loophole in

it. The PW-2 to PW-4 had seen torn saree of the victim. The FSL report shows presence of stain of human semen on it. No material came on record to disbelieve the evidence of victim. Considering the evidence on record, it proves that the Appellant had sexually assaulted the victim.

10.3 It is contention of learned counsel for the Appellant that due to ill-mental condition of the Appellant, he has been sent behind bar. It is admitted by the victim in the cross-examination that due to behaviour of the Appellant everyone in village including family members were fed up with him and it was decided to send him behind bar for proper treatment. In my view, the victim has raised the Appellant for 29 years. At the time of incident, she was 65 year old. It gathers from the evidence of the victim that after the incident, she consulted with family members about lodging the complaint against the Appellant, then her son told her that it will be difficult for the Appellant to survive without victim. Accordingly, he gave his suggestion to send him in jail. It does not mean that to send the Appellant to jail false case has been filed against him. Had it been the case, he would have been sent to jail earlier in any false case.

11. It is contention of learned counsel for the Appellant that the Appellant is mentally ill, his act falls under Section 84 of the I.P.C. It

appears from record, regarding mental illness of the Appellant, the learned Sessions Judge had called report from Dr. Snehal Todakar and she was examined as PW-6. She examined the Appellant in prison on 27th August, 2021, 9th October, 2021 and 6th November, 2021. She has stated that the Appellant was stable on both examinations. He was on mild sedative. Those were discontinued in October. She further stated that on 8th November, 2023, she examined the Appellant in Regional Mental Hospital on OPD basis. He had symptoms of insomnia and fearfulness on 22nd April, 2023. She examined him while he was hospitalized on that day at Regional Mental Hospital. He remained hospitalized from 22nd April, 2023 to 2nd May, 2023, she personally attended him. She issued a letter that the Appellant no more required to be hospitalized. The assessment report is at Exhibit-88.

12. She further stated that on 22nd April, 2023, she found symptoms such as insomnia, fearfulness, hearing of voices (hallucinations), suspiciousness and big talks. After antipsychotic injections and oral medication since 30th April, 2023, he became stable. He was stable thereafter, she explained the “schizo affective disorder” mentioned in her report at Exhibit-88 which means the symptoms like suspiciousness, hallucinations, aggression, grandiosity (big talks), persecution (suspiciousness against other prisoners). This

witness further stated that the Appellant was stable on antipsychotic medication till November, 2021. The above symptoms and said illness were completely curable by medication. She refrained from expressing any opinion whether in such type of mental condition, a person would commit rape on his mother. She stated, that he may or may not. In cross examination, this witness stated that a person with such symptoms, while without medication, may have quarrelsome nature, utter abuses, throw stones and fight with others. Even, while on medication, some mild symptoms may be noticeable. She also stated that during the period from 23rd August, 2022 and 21st March, 2023 Civil Hospital, Ratnagiri has provided antipsychotic medications to the Appellant. As it appears from the record maintained at Regional Mental Hospital, she admitted that a patient with such symptoms while he is symptomatic may not understand the consequences and may not understand that he is committing murder or even rape. The learned Sessions Judge had called medical illness and treatment notings from the Superintendent, Ratnagiri Prison. The other doctor had examined the Appellant prior to Dr. Todkar. The notings dated 26th November, 2020 mentions him as a case of Schizophrenia. On that day, the Appellant was conscious, oriented, co-operative, his speech was relevant, coherent, he had no delusion. The other notings

also show that he was stable. He had no psychiatric features but he complained of insomnia. These papers are at Exhibit-89. From the notings, it appears that the Appellant was stable from 26th November, 2020 to November, 2021. From the evidence of PW-6/Dr.Todkar it appears that the Appellant was stable for long period after taking medicine. It has come in the evidence of PW-1 that the Appellant was taking medicine. Now question remains whether at the time of incident, the Appellant was mentally fit or not. It has come in the evidence of PW-1 that the Appellant sexually assaulted the victim twice, he entered in her room from back side door, he switched off lights in that room. He was naked at the time of incident. He was aware about sleeping place of the victim, he knew no other member was present in the said house. He firstly sexually assaulted the victim at 12:30 a.m. again he came at morning 5:00 a.m. and repeated the act. When PW-2, PW-3 and PW-4 came at the incident spot, after hearing shout of PW-1, the Appellant threatened them. From the evidence on record, it proves that mental condition of the Appellant was sound at the time of incident and his act does not fall under Section 84 of the IPC.

13. I have gone through the case laws cited by learned counsel for the Appellant. The facts of cited case and case at hand are

different. As in the present case, it has been proved that at the time of incident the Appellant's mental condition was stable. I do not find infirmity in the impugned judgment and order.

14. In view of above, I pass following order.

ORDER

(1) Appeal is dismissed.

15. In view of disposal of appeal, interim applications if any, stands disposed of.

16. This Court appreciates the efforts taken by Shri Rahul Kasbekar, learned counsel for the Appellant, appointed through the Legal Aid Panel for his able assistance.

(SHIVKUMAR DIGE, J.)