



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL APPEAL NO. 886 OF 2022

APPELLANT : Balya @ Rahul Sahebrao Lokhande,
Aged about – 35 Years, Occupation :
Labour, R/o., Adegaon, Tq. Morshi,
District – Amravati.
(Presently at Central Prison,
Amravati).

//VERSUS//

RESPONDENT : The State of Maharashtra, through
P.S.O., P.S. Shirkhed, Tq. Morshi,
Dist. Amravati.

Mr. A.S. Band, Advocate appointed to represent the Appellant.
Mr. P.P. Pendke, APP for the Respondent/State.

CORAM : G. A. SANAP, J.
DATED : 20th DECEMBER, 2024.

JUDGMENT

. In this appeal, challenge is to the judgment and order dated 06.04.2022, passed by the learned Additional Sessions Judge, Amravati, whereby the learned Judge convicted the appellant for the offences punishable under Sections 376(1) and 452 of the Indian Penal Code, 1860 (for short, “IPC”), and

sentenced him to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.10,000/- and in default to suffer simple imprisonment for 6 months for the offence punishable under Section 376(1) of the IPC, and rigorous imprisonment for 1 year and to pay a fine of Rs.1,000/- and in default to suffer simple imprisonment for 1 month for the offence punishable under Section 452 of the IPC.

02] Background Facts:

The informant (hereinafter referred to as the 'prosecutrix') at the time of the incident was 35 years of age. The incident in question occurred on 25th March, 2017, in the evening. The prosecution case, which can be culled out from the report and other materials, is that at about 7:30 p.m., the prosecutrix was sitting in the courtyard of her house. The appellant barged in her house and embraced her. The appellant pushed her down and committed sexual intercourse with her. The prosecutrix kicked the appellant. She went inside her house. She made a phone call to one Pundlik Bansod and called him to her house urgently. At that time, the appellant entered her house and snatched her mobile phone and threw it away. The appellant threatened to kill her. The

appellant again pushed her down and committed sexual intercourse with her. PW-2 Pundlik Bansod came to her house. Pundlik saw that the appellant was lying on the prosecutrix. He admonished the appellant. The appellant fled away from the spot. Pundlik consoled the prosecutrix and went to his grocery shop. In the night, again he came to the house of the prosecutrix and consoled and supported her. On 26th March, 2017, the prosecutrix, accompanied by Pundlik, went to Shirkhed Police Station and lodged the report at 6:00 a.m.

03] On the basis of this report, a crime bearing No.105/2017 was registered. The prosecutrix was referred for medical examination to Sub-District Hospital, Morshi. She narrated the history of assault to the Medical Officer. No injury was found on her person in the medical examination. The Investigating Officer arrested the appellant. In the medical examination of the appellant, no injury was found. The Investigating Officer recorded the statements of the prosecutrix, PW-2 Pundlik and other 3-4 witnesses. The statement of the prosecutrix was recorded under Section 164 of the Code of Criminal Procedure, 1973 (for short, "Cr.PC.") before the learned Magistrate. The Investigating Officer, after completion of the investigation, filed the charge-sheet. The

learned Judge framed the charge against the appellant. The appellant pleaded not guilty. His defence is of total denial and false implication to settle the personal score. The appellant was the employee of Khasbage, the landlord of the prosecutrix. The prosecutrix had a dispute with the landlord in respect of her tenanted premises. The prosecution, in order to bring home the guilt of the appellant, examined four witnesses. The learned Judge, on consideration of the evidence, held the appellant guilty and sentenced him as above. The appellant has come before this Court against this judgment and order.

04] I have heard Mr. A.S. Band, learned advocate appointed to represent the appellant and Mr. P.P. Pendke, learned APP for the respondent/State. Perused the record and proceedings.

05] Learned advocate for the appellant submitted that the evidence of the prosecutrix is not believable, and as such, the learned Judge should not have based the conviction of the appellant on such evidence. There was an inordinate delay in lodging the report. The incident occurred in the evening. The police station is hardly at 10 to 15 kms. away from the village of the prosecutrix. The report was lodged on the next day. The

prosecutrix was on inimical terms with Khasbage, who was her landlord. The appellant was doing service with Khasbage. The false report was lodged to pressurize Khasbage. The evidence of the prosecutrix is not consistent. There are major improvements in her evidence. It is submitted that the evidence of PW-2 is also shaky and doubtful. He was not related to the prosecutrix, and therefore the case of the prosecutrix that she called him for help is not believable. There are houses around the house of the prosecutrix, and therefore such an act committed by the appellant would not have gone unnoticed. The incident narrated by the victim, considering the location of the spot, is not at all possible. Learned advocate submitted that the evidence of the Medical Officer does not corroborate the testimony of the prosecutrix. The doctor did not notice any injury on the person as well as to the genitals of the prosecutrix. It is submitted that the CA report also does not corroborate the case of prosecution. It is submitted that the prosecutrix cooked up a false story against the appellant. Learned advocate submitted that the learned Judge has failed to properly appreciate the evidence and as such has come to a wrong conclusion.

06] Learned APP submitted that the incident occurred in the

evening at about 7:00 to 7:30 p.m. The prosecutrix was residing alone. She had no support of any other person from the village. PW-2 Pundlik was running a grocery shop. The prosecutrix had made a phone call to him and informed him about the incident. He came to meet her, and after consoling her, went back to his shop. Learned APP submitted that, therefore, considering the state of the mind of the prosecutrix in the aftermath of this incident and considering the fact that she had no support, she could not go to the police station in the night. Learned APP submitted that, considering the stigmatic consequences emanating from reporting such an incident to the police, the woman would not lodge a false report. The lodging of the report in case of rape itself is a humiliation. Learned APP submitted that the evidence of the prosecutrix has been corroborated by the evidence of PW-2, who is the well-wisher of the prosecutrix from the village. He had no enmity with the appellant. PW-2 had no reason to falsely depose against the appellant. Learned APP submitted that the prosecutrix was 35 years of age at the time of the incident. The medical evidence shows that her hymen was torn. However, the doctor did not notice any fresh injury on her person. It is submitted that the absence of injury to the genitals in case of a woman of 35 years old would not be a circumstance in favour of the accused. The

evidence of the prosecutrix is cogent, consistent, and reliable. There is no reason to discard and disbelieve her evidence. In short, learned APP submitted that the well-reasoned judgment and order passed by the learned Judge does not warrant interference.

07] The conviction of the appellant is based on the sole testimony of the prosecutrix. The prosecution has sought corroboration to her evidence through the evidence of PW-2 Pundlik Bansod. In an offence of rape, the victim is on par with an injured witness. She cannot be on par with an accomplice. The conviction can be based on the uncorroborated testimony of the victim of the offence of rape. However, if the evidence adduced is the sole testimony of the prosecutrix, the Court has to be careful and circumspect. The evidence of the prosecutrix in such a case is required to be subjected to minute scrutiny. The evidence must be found to be credible and trustworthy. If the evidence of the prosecutrix is found to be of stellar quality, then the conviction can be based on the sole testimony of the prosecutrix. It is further pertinent to mention that the absence of the injury to the genitals of the prosecutrix, who is 35 years of age, would not be a circumstance against the prosecution. In this case, the doctor did not notice any fresh injury on the person of the prosecutrix.

However, it is seen from the report that her hymen was torn. It is also seen on perusal of the medical examination report that the doctor was to some extent casual in his approach while filling up the medical examination form.

08] The next important point that needs to be considered is with regard to the delay in lodging the report. The learned Judge did not accept the submissions advanced on behalf of the appellant on this count. The learned Judge has recorded the reasons. It is to be noted that the delay *per se* cannot be a ground to discard and disbelieve the cogent and concrete evidence of the prosecutrix in rape cases. It is to be noted that prompt lodging of the report is an assurance to the credibility of the report. The Hon'ble Apex Court in the case of ***State of Rajasthan Vs. Om Prakash [(2002) 5 SCC 745]*** has dealt with this point in great detail. The Hon'ble Apex Court has observed that delay in lodging the first information report quite often results in embellishment which is a creature of an afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation.

09] In the above backdrop, it is necessary to see whether there was indeed delay in lodging the report. While appreciating this point, the attending circumstances and the evidence deserve consideration. The prosecutrix was residing alone in a tenanted premises owned by Mr. Khasbage. The incident occurred on 25th March, 2017, at about 7:30 p.m. The prosecutrix has stated that when the appellant committed rape on her, she made a phone call to PW-2 and called him to her house. She has stated that, after the arrival of PW-2 Pundlik, the appellant fled from the spot. PW-2 Pundlik had visited the house of the prosecutrix on receipt of the phone call. PW-2 Pundlik has stated that at about 8:00 p.m., he had received the call from the prosecutrix. The prosecutrix called him to her house for two minutes. He went there. He has stated that he saw that the appellant was lying on the body of the prosecutrix. The appellant fled from the spot. It has come on record in the evidence of the prosecutrix that Shirkhed is at a distance of 15 kms. from Adegaon. She has also admitted that there is transport facility to go to Shirkhed. In my opinion, in such a case while appreciating the evidence of the victim of rape, the Court has to consider the facts and circumstances in totality. Other people are residing near the house of the prosecutrix. It is not the case of the appellant that, after hearing her shouts, the neighbours came to her

help. While appreciating the point of delay, other factors, like trauma suffered by the prosecutrix, sociological factors along with other evidence need to be taken into consideration. It is to be noted that, in case of rape, no self-respecting women would come forward in the Court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. The inherent bashfulness of females and tendency to conceal outrage of sexual aggression are the factors, which the Court cannot overlook. The testimony of the victim in such cases is vital. Unless and until it is shown that there are compelling reasons, which necessitate corroboration of testimony, the testimony of the victim can be relied upon to base the conviction.

10] In this case, the prosecutrix was staying alone. She was helpless. One can visualize the pain, agony, and trauma suffered by her after this incident. She must have suffered a shock of her life on account of such an outrageous act committed by the appellant. The appellant was known to her. It was night time. In such a state of mind, a woman is not expected to travel alone in the night to the police station, which is 15 kms. away from her residence, for lodging the report. The prosecutrix on the very next morning, accompanied by PW-2, went to the police station and lodged the

report at 6:00 a.m. In my opinion, this is a very important circumstance consistent with her conduct. It has come on record that, on the next day in the morning, the prosecutrix did not go to the police station alone. This fact would show that the prosecutrix needed the support of someone in this crisis situation. In view of this, the delay *per se* would not go against the case of prosecution.

11] In this backdrop, it is necessary to consider the evidence of the prosecutrix. The prosecutrix, in her evidence, has placed on record the first-hand account of the incident. She has stated that while she was sitting in the courtyard, the appellant came there and embraced her. He told her that he wanted to tell something to her and called her inside the house. She did not budge. The appellant thereafter embraced her and pushed her down. He removed her knickers and committed sexual intercourse with her. She has stated that she kicked him and therefore he fell down. She has stated that thereafter she raised shouts, but it could not be heard by the neighbours, as the evening prayer chanting was going on in the Bajrangbali Temple. She has stated that thereafter she ran in the house. The appellant followed her. Again, he pushed her down and committed sexual intercourse with her. She has stated that, after entering the house, she made a phone call to PW-2. The appellant

threw her mobile. He extended the threat to kill her. She has stated that at that time PW-2 came there, and he saw that the appellant was lying on her body. She has stated that thereafter the appellant ran away. She was subjected to cross-examination.

12] Perusal of her cross-examination would show that she has not suppressed any fact. She has stated that there was a dispute between her and the owner of the house, Mr. Khasbage, for the last 15 years. She was residing there as a tenant, and she was not ready to vacate the said premises. She has stated that the appellant was doing service with Khasbage for many years. She has stated that there are 22 to 25 houses around the house of Khasbage. She has stated that similar complaint was made by her against one Yewale of the village. Further part of the cross-examination forms the suggestions. On minute scrutiny and appreciation of the evidence, I do not see any reason to discard and disbelieve her evidence. No dent has been caused to the core of her evidence in the searching cross-examination. The informant had no reason to falsely implicate the appellant. The informant, in order to settle some score, which obviously has not been established in this case, would have suffered such humiliation. The appellant took disadvantage of her loneliness. There was nobody in the house to help her. It is not

the case of the appellant that the prosecutrix had enmity with him for one reason or the other. The defence of the appellant put to the prosecutrix does not inspire confidence.

13] The evidence of PW-1 prosecutrix has been corroborated on material aspects by the evidence of PW-2. PW-2 has deposed that the prosecutrix is residing in the house of Khasbage. He has stated that he is running a grocery shop and knows the prosecutrix. He has stated that at about 8:00 p.m. on 25th March, 2017, he had received a phone call of the prosecutrix and she had called him for two minutes to her house. He has stated that he went there. The door was open. After going near to the door, he saw that the appellant was lying on the person of the prosecutrix. He questioned the appellant. The appellant, therefore, fled from the spot. He has stated that, therefore, he called the maternal uncle of the appellant and his mother. He took them to the house of the prosecutrix. He has stated that, in the night at about 10:00 p.m., he again went to her house to make enquiry. He has stated that the prosecutrix told him that the appellant had committed rape on her and therefore he should accompany her to the police station. He has stated that, therefore, he went to Shirkhed Police Station with the prosecutrix. It is seen on perusal of his cross-examination that

few minor omissions have surfaced in his cross-examination. He has admitted that similar kind of report was lodged by the prosecutrix against Mr. Yewale. He has denied the suggestion that he has love relations with the prosecutrix. Perusal of his evidence would show that he had no reason to falsely implicate the appellant. It was not suggested to this witness that for one reason or the other, he was deposing against the appellant. Perusal of his cross-examination would show that the admission of any significance has not been brought on record in his evidence. I do not see any reason to discard and disbelieve his evidence.

14] The evidence of the prosecutrix on material aspects has been corroborated by the evidence of PW-2. PW-2 had no enmity with the appellant. Similarly, he had no reason to support a concocted case of the prosecutrix. The evidence of the prosecutrix is cogent, concrete, and reliable. The evidence is consistent. The evidence of the prosecutrix inspires confidence. The prosecutrix, a helpless woman, would not have dared to lodge a false report against the appellant. I do not see any reason to discard and disbelieve the evidence of PW-1 and PW-2. The learned Judge has properly considered the evidence on record. In the facts and circumstances, the absence of injury on the person of the

prosecutrix would not be fatal to the case of prosecution. The medical report shows that her hymen was torn. The learned Judge has thoroughly appreciated the evidence. The learned Judge has recorded cogent and concrete reasons in support of his findings. It is further seen that the statement of the victim was recorded under Section 164 of the Cr.PC. The victim before the Magistrate on 13th April, 2017 narrated the incident in detail. The learned Judge has considered this statement.

15] On going through the record and evidence, I do not see any reason to discard and disbelieve the evidence adduced by the prosecution. There is no substance in this appeal. The appeal, therefore, deserves to be dismissed. The appeal is **dismissed**.

16] The High Court Legal Services Sub-Committee, Nagpur, shall pay the fees to the learned advocate appointed to represent the appellant, as per Rules.

(G. A. SANAP, J.)