



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

**CRIMINAL APPEAL NO.605 OF 2020
WITH CRIMINAL APPLICATION NO. 38 OF 2025**

Amol s/o Madan Kaste
Age - 37 years, Occu - Labour / Agri.
R/o. Pachegaon, Tq. Georai, Dist. Beed Appellant

Versus

- 1] The State of Maharashtra
Through Police Station Georai,
Dist. Beed.
- 2] ABC
Age - 33 yrs., Occu: Household,
C/o Santosh Arvind Patil,
R/o Pachegaon, Tq. Georai,
Dist. Beed. Respondents

....

WITH

CRIMINAL APPEAL NO.630 OF 2020

Navnath S/o Baburao Jadhav
Age - 28 years, Occu. Service [Now in Jail]
R/o Vasantnagar Tanda, Pachegaon,
Tq. Gevrai, Dist. Beed. ... Appellants

Versus

- 1] The State of Maharashtra
Through Police Inspector,
Georai Police Station, Tq. Georai, Dist. Beed.
- 2] ABC
Age - 33, Occu: Household,
C/o Santosh Arvind Patil
R/o - Pachegaon, Tq. Georai, Dist. Beed. ... Respondents

....

WITH

**CRIMINAL APPEAL NO. 669 OF 2020
WITH CRIMINAL APPLICATION NO.37 OF 2025**

Jija s/o Lalsing Rathod,
Age - 35 years, Occu: Driver,
R/o - Jairam Tanda, Pachegaon,
Tq. Georai, Dist. Beed. ... Appellant

Versus

1] The State of Maharashtra

2] ABC

Age - 33, Occu: Household,

C/o Santosh Arvind Patil

R/o - Pachegaon, Tq. Georai, Dist. Beed. ... Respondents

....

WITH**CRIMINAL APPEAL NO.671 OF 2020**

Kundlik S/o Bansi Rathod,

Age - 29 years, Occu - Education,

R/o - Kharadi @ Aurangpur Tanda,

Now Nipani Jawalka Tq. Georai, Dist. Beed.

[At present the Appellant is in

Beed Dist. Prison, Division - 2,

Beed, Tq. & Dist. Beed]

... Appellant

Versus

1] The State of Maharashtra

Through the Police Station Officer,

Georai Police Station

Tq. Georai, Dist. Beed.

2] ABC

Age - 33, Occu: Housewife,

C/o Santosh Arvind Patil

R/o - Pachegaon, Tq. Georai,

Dist. Beed.

... Respondents

Appearance :-

Mr. Sudarshan J. Salunke, Advocate for the Appellants in Criminal Appeal No.605/2020 and Criminal Appeal No.669/2020

Mr. Pralhad C. Bagure holding for Mr. Vinod N. Rathod, Advocate for Appellant in Criminal Appeal No.630/2020

Mr. Sandip P. Rathod, Advocate for Appellant in Criminal Appeal No.671/2020

Mrs. S. N. Deshmukh, APP for the Respondents - State in All Appeals

Mr. Mahesh S. Bhosle, Advocate for Respondent No.2 in All Appeals

**CORAM : R. G. AVACHAT &
NEERAJ P. DHOTE, JJ.**

Reserved On : 05/02/2025

Pronounced On : 21/02/2025

JUDGMENT : [PER NEERAJ P. DHOTE, J.]

1. These Criminal Appeals filed under Section 374[2] of the Criminal Procedure Code, 1973 [hereinafter referred to as 'Cr.P.C.'] arise out of the Judgment and Order dated 22/10/2020, passed by the learned Sessions Judge, Beed, in Sessions Case No.54/2015, convicting and sentencing the Appellants as under :-

"1. The accused No. 1 to 4 are convicted for the offence punishable under 376(D) of the Indian Penal Code vide section 235(2) of the Code of Criminal Procedure and sentenced to suffer life imprisonment (however, not below the minimum sentence provided under Sec. 376-D of IPC) and fine of Rs.5,000/- (Rupees Five thousand) each in default to suffer rigorous imprisonment for fifteen days.

2. Accused are further convicted for the offence punishable under Sec. 366 r/w. 34 of the Indian penal Code vide section 235(2) of the Code of Criminal Procedure and sentenced to suffer rigorous imprisonment for Seven years and to pay a fine of Rs.2,000/- (Rupees Two thousand) each in default to suffer rigorous imprisonment for one month.

3. Accused are further convicted for the offence punishable under Sec. 458 r/w. 34 of the Indian penal Code vide section 235(2) of the Code of Criminal Procedure and sentenced to suffer rigorous imprisonment for Seven years and to pay a fine of Rs.2,000/- (Rupees Two thousand) each in default to suffer rigorous imprisonment for one month.

4. Accused are further convicted for the offence punishable under Sec. 324 r/w. 34 of the Indian penal Code vide section 235(2) of the Code of Criminal Procedure and sentenced to suffer rigorous imprisonment for Two years and to pay a fine of Rs.1,000/- (Rupees One thousand) each in default to suffer rigorous imprisonment for fifteen days.

5. Accused are further convicted for the offence punishable under Sec.394 of the Indian penal Code vide section 235(2) of the

Code of Criminal Procedure and sentenced to suffer rigorous imprisonment for Ten years and to pay a fine of Rs.2,000/- (Rupees Two thousand) each in default to suffer rigorous imprisonment for one month.

6. Accused are further convicted for the offence punishable under Sec. 506 r/w. 34 of the Indian penal Code vide section 235(2) of the Code of Criminal Procedure and sentenced to suffer rigorous imprisonment for Two years and to pay a fine of Rs.1,000/- (Rupees One thousand) each in default to suffer rigorous imprisonment for one month.

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2. The Prosecution's case, as revealed from the Police Report, is as under : -

[I] The Victim, who was 28 years of age, was the resident of Beed. She was residing with her husband, who was working in a Bank at Beed. They were having three [3] daughters. Her parental house and ancestral property including agriculture land of her father was at Pachegaon, Taluka Georai, District Beed. For cultivating the land, she used to visit Pachegaon.

On 01/01/2015, she left Beed for Pachegaon around 2.00 p.m. She reached Pachegaon. While she was searching for engaging the services of labourers to pluck cotton bolls, she was informed by some of the women from the village that, due to rain in the night, plucking cotton bolls would not be feasible. As the woman at Pachegaon by name Godabai was not well, she visited her house. After

meeting another women, she started for going back to Beed around 6.00 p.m. and came on Pachegaon road, where she saw a Jeep bearing No.MH-22-7007 of the Appellant - Jija Lalsing Rathod, who was from Beed. When she asked him as to within what time he was proceeding towards Beed, he told her that, he was going till Padalsingi. The Victim requested him to allow her to come till Padalsingi and she boarded the Jeep. The Appellant - Jija Lalsing Rathod took the Jeep via Kurla Road. When she asked him about the said road, he told her that, it was the nearest road. He stopped the Jeep at some distance at a place near the cattle-shed from where the Appellant - Amol Madan Kaste boarded the Jeep. Thereafter, the Jeep was turned and taken towards Padalsingi. On the way, they called someone on the phone. At some distance, the Appellants - Kundlik Bansi Rathod and Navnath Baburao Jadhav were standing on a motorcycle. Both of them boarded the Jeep and on taking turn the Jeep proceeded further. When the Victim questioned them about the same and asked them to allow her to alight the Jeep, the Appellants - Kundlik Bansi Rathod and Navnath Baburao Jadhav asked her to keep mum and they gagged her mouth. Three of them outraged her modesty by touching inappropriately. She could not shout as her mouth was gagged. It was 08.00 to 08.30 p.m. The Jeep was taken to the Gairan land. The Appellants got down from the Jeep and made the Victim to alight. They all committed rape on her turn-by-turn by removing her clothes. In the incident, her bangles broke and hair pin fell down. In the meanwhile, her husband called on the mobile phone two to three times, however, her mobile was taken

by one of the Appellants. They removed Rs.2,000/- from her purse. When the Victim was weeping, they handed over the mobile phone to her. Thereafter, they made her to sit in the Jeep and brought her near her parental house at Pachegaon. It was midnight. The lock of door was broke open and all the Appellants took the Victim inside the house. When the Appellants started removing her clothes, she requested them to spare her. The Appellants - Navnath Baburao Jadhav and Jija Lalsing Rathod banged her head on the wall and she suffered injury. The Appellant - Kundlik Bansi Rathod removed the lime from his pocket and applied the same on her injury. Thereafter, the Appellants removed her clothes and committed rape on her turn-by-turn. Thereafter, the Appellants left the house by threatening her not to disclose about the rape to anyone or else she will again be subjected to rape. The Victim could not sleep for the whole night. In the morning, she saw the condoms lying over there. As her saree was smeared with mud, she went to the neighbouring house and brought the water in a bucket and washed her saree. As it was cloudy, her saree did not dry and she borrowed a saree from the neighbouring woman. She was in dual mind whether to lodge the report or not due to the threat. However, considering that she may be subjected to such act by the Appellants again, she went to the Police Station and lodged the First Information Report [F.I.R] against the Appellants and Crime No.2/2015 came to be registered for the offence punishable under Sections 363, 452, 354, 376[D], 324 and 506 of the Indian Penal Code, 1860 [hereinafter referred to as 'I.P.C.'].

[II] During the investigation, the Victim was referred for medical examination, the Spot Panchnama came to be drawn, the clothes of Victim came to be seized, the Appellants came to be arrested, the statements of the witnesses came to be recorded, the muddemal seized during the course of investigation was referred to the Chemical Analyzer, the relevant documents came to be collected and on completion of investigation, the Appellants came to be Charge-sheeted. The Test Identification Parade [T.I.P] was conducted for the two [2] unknown Appellants, wherein, the Victim identified them. One shirt and Rs.1,500/- came to be seized at the instance of Appellant - Navnath Baburao Jadhav.

[III] On committal, the learned Trial Court framed the Charge against the Appellants for the offence punishable under Sections 363, 366, 376[D], 376 [2][n], 452, 324, 394, 458, 201 and 506 read with Section 34 of I.P.C vide Exhibit - 55, to which, the Appellants did not plead guilty and claimed to be tried. To prove the Charge, Prosecution examined in all ten [10] witnesses and brought on record the relevant documents. After filing of evidence closure pursis by the Prosecution, the learned Trial Court recorded the statement of the Appellants under Section 313[1][b] of Cr.P.C. The Appellants denied the case and evidence of Prosecution. The Appellants stated that, they were falsely implicated on account of financial transactions. After hearing both the sides and appreciating the evidence available on record, the learned Trial Court passed the impugned Judgment and Order convicting the Appellants for the offences as referred above in Paragraph No.1.

3. Heard the learned Advocates for the Appellants, learned A.P.P. for Respondent No.1 – State and the learned Advocate for Respondent No.2 – Victim. Scrutinized the evidence available on record.

4. It is submitted by the learned Advocates for the Appellants that, the case largely rests on the testimony of Victim, who is examined as PW – 1. Her evidence shows that, the story put-forth by her was not truthful. Her evidence goes to show that, she was not the reliable witness. The date of incident given by the Victim was the weekly bazaar day. The Victim was not the witness of sterling quality. There are inherent improbabilities in her testimony. No conviction can be based on the unreliable testimony of Victim. The T.I.P was conducted after a period of one and half [1½] months from the arrest of the Appellants. The Prosecution examined the husband of Victim whose evidence was also improbable and unbelievable. The panchas did not support the case of Prosecution. The CA reports do not corroborate the testimony of Victim. The testimony of the Investigating Officer will not be sufficient to prove the Charge. The Judgment and Order of conviction and sentence be set aside and the Appeals be allowed. They relied on the Judgments in support of their submissions, which are considered in the later part of the Judgment.

4.1 The learned Advocate for the Appellant in Appeal No.630/2020 tendered the additional documents on record with the Application at the time of hearing. The documents

are the copy of Judgment passed by the learned Magistrate, Georai in R.C.C. No.135/2007 and the copy of F.I.R bearing Crime No.702/2018 registered with Shivajinagar Police Station, Beed.

5. It is submitted by the learned A.P.P. and learned Advocate for Respondent No.2 - Victim that, looking to the background of Victim, it requires lot of courage to come forward to lodge the report and step into the witness box. There is detailed evidence of the Victim, which went unchallenged on most vital aspect. She lodged prompt report with the concerned Police Station after the incident. Her testimony is fully corroborated by her report. She had no reason to lodge false report against the Appellants. On arrival of her husband at the Police Station, she gathered courage and lodged the report. There is medical evidence on record, which corroborate the testimony of the Victim. The pieces of bangles were found in the four wheeler of the Appellants, which was used in the Crime. The cross-examination of the Investigating Officer was general and nothing has come to discard the case of Prosecution. In 313 statement of Cr.P.C., the Appellants only denied the evidence. The Judgments cited by the learned Advocates for the Appellants are not applicable to the case at hand. The learned Trial Court rightly passed the impugned Judgment and Order, hence the Appeals be dismissed. The learned A.P.P and learned Advocate for Respondent No.2 - Victim relied on the Judgments, which would be considered at later point of time.

6. Before adverting to the appreciation of evidence on record, the Judgments relied upon by both the sides are considered.

Judgments relied upon by the learned Advocate for the Appellant

- [i] Paramjeet Singh @ Pamma Vs. State of Uttarakhand; 2010 [7] Supreme 26 ;
- [ii] Rai Sandeep @ Deepu & Another Vs. State of NCT of Delhi; 2012 [5] Supreme 402 ;
- [iii] Lalliram and Another Vs. State of M.P; 2008 [6] Supreme 501 ;
- [iv] S. D. Soni Vs. State of Gujarat; 1991 2 Crimes [SC] 4 ;
- [v] State of Maharashtra Vs. Sanjay S/o Digambarrao Rajhans; 2004 [8] Supreme 138 ;

Judgment relied upon by the learned A.P.P. for Respondent No.1 – State

- [i] State of Punjab Vs. Gurmit Singh and Others; [1996] 2 SCC 384;

Judgments relied upon by the learned Advocate for Respondent No.2 - Victim

- [i] Phool Singh Vs. The State of Madhya Pradesh in Criminal Appeal No.1520/2021 of Supreme Court of India ;
- [ii] Selvamani Vs. The State Represented by the Inspector of Police in Criminal Appeal No.906 of 2023 of the Supreme Court of India ;

7. From the above referred decisions of the Hon'ble Apex Court, the following principles can be culled out ;

- [a] To hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.*
- [b] The injury is not a sine qua non for deciding whether rape has been committed. But it has to be decided on the factual matrix of each case.*
- [c] The 'sterling witness' should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation.*
- [d] The evidence of the Victim of sexual assault, need not necessarily have corroboration, unless there are compelling reasons for seeking corroboration.*
- [e] The evidence of a Victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable.*
- [f] Every case, in the final analysis, would depend upon its own facts.*
- [g] Though an offence may be gruesome and revolt the human conscience, an accused can be convicted only on legal evidence and not on surmises and conjecture.*
- [h] The law does not permit the court to punish the accused on the basis of a moral conviction or suspicion alone.*
- [i] The burden of proof in a criminal trial never shifts and it is always the burden of the prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence.*
- [j] More serious offence, the stricter degree of proof is required, since a higher degree of assurance is required to convict the accused.*
- [k] Between 'may be true' and 'must be true' there is inevitably a long distance to travel and the whole of this distance must be covered by legal, reliable and unimpeachable evidence.*

[l] The prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence and that it is not the law where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a Court.

[m] Fouler the crime, higher the proof.

[n] Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty."

8. Heard both the sides. Scrutinized the evidence on record. It is the Prosecution's case that, the Victim was abducted, was raped by all the Appellants twice in the evening of 01/01/2015, was robbed of Rs.2000/-, caused house trespass of the Victim's house, voluntarily caused hurt to her, threatened the Victim with similar consequences and caused disappearance of the evidence to save themselves. The Prosecution examined the Victim as PW - 1, husband of the Victim as PW - 2, the panch for Spot Panchnama as PW - 3, the panch for seizure of clothes of Victim as PW - 4, the panch for disclosure and recovery as PW - 5, the Medical Officer, who examined the Victim as PW - 6, the panch for seizure of the four wheeler as PW - 7, the Nayab Tahsildar, who conducted the Test Identification Parade [TIP] as PW - 8, the Investigating Officer as PW - 9 and the Police Officer who took the report of the Victim and registered the Crime as PW - 10.

9. The Prosecution's case largely rests upon the testimony of the Victim, who is examined as PW - 1. She was married to PW - 2 [15] fifteen to [16] sixteen years

prior to the date of incident. PW - 2 was working as a Cashier in the Multi State Credit Co-operative Society at Neknoor. The Victim and her husband were residing at Beed with their three [3] daughters. The Victim's maternal place was Pachegaon. As the Victim's parents were no more and she had no brother, she was looking after the property of her father at Pachegaon comprising house and agricultural land. The Victim used to visit Pachegaon intermittently to look after the said property. On 01/01/2015, she started from Beed at 2.00 p.m. and reached Pachegaon at 3.00 p.m. As she wanted to pluck cotton bolls, she interacted with the women by name Godabai and Tarabai. The Victim was informed that, it rained in the last night and so it was not advisable to pluck cotton bolls. The Victim cancelled the work of plucking cotton bolls. She visited the house of said Godabai and Tarabai.

10. At 6.00 p.m., the Victim came to the Pachegaon Phata for going to Beed. She saw the Jeep of Appellant - Jija Lalsing Rathod [Accused No.1], who was known to her, at the said place. The Victim asked Appellant - Jija Lalsing Rathod whether he was going to Padalsingi and the Appellant - Jija Lalsing Rathod replied in the affirmative. The Victim asked him to allow her to travel till Padalsingi and she boarded the Jeep. Appellant - Jija Lalsing Rathod started the Jeep and took it via village Kurla by telling the Victim that, it was the nearer way. The Jeep was stopped by the Appellant - Jija Lalsing Rathod on Dhangar Kotha where Appellant - Amol Madan Kaste [Accused No.2]

boarded the Jeep. The Jeep was taken in reverse direction by Appellant - Jija Lalsing Rathod and thereafter proceeded towards Padalsingi via Wahegaon Pati. The Appellant - Amol Madan Kaste made a phone call to someone. When the Jeep reached Wahegaon Phata, two [2] unknown persons [Accused No.3 - Kundlik Bansi Rathod and Accused No.4 - Navnath Baburao Jadhav] boarded the Jeep. The Jeep was taken reverse by the Appellant - Jija Lalsing Rathod. The Victim asked them as to why the Jeep was being taken in reverse direction and asked them to allow her to get down from the Jeep, however the Accused gagged her mouth and started misbehaving with her. The Appellants started touching her inappropriately. When the Victim tried to shout, the Appellants did not allow her to shout. The Jeep was taken via Kurla to Gairan land. The Appellants were talking with each other that, they will commit rape on the Victim. On reaching the Gairan land, the Victim was pulled out of the Jeep, the Victim was undressed and the Appellants committed rape on her one by one. Due to the previous night rain, her saree got muddy. There was phone call of her husband, however, one of the Appellants took the mobile phone from her. The Appellants took Rs.2000/- from her or the money fell down. Her hair pin also fell down and her green colour bangles broke into pieces. She suffered injury to her right elbow. Thereafter, the Victim put on her clothes and the Appellants took her in the Jeep. The phone was returned to her by the Appellants and its battery was discharged.

11. Thereafter, the Victim was taken by the Appellants to the house of her father. The Appellants gagged her mouth and Appellant – Kundlik Bansi Rathod broke open the lock of her father's house. It was between 11.00 p.m. and 11.30 p.m. The Victim was taken inside the house and the Appellants started sexually assaulting her. When the Victim told the Appellants not to do as she was suffering, the Appellant – Navnath Baburao Jadhav banged her head against the wall due to which she suffered bleeding injury on her head. The shirts of all the Appellants got stained with her blood. The Appellant – Kundlik Bansi Rathod put lime on her injury. Thereafter, all the Appellants committed rape on her one by one on the Bed having rug. The Appellants – Jija Lalsing Rathod, Kundlik Bansi Rathod and Amol Madan Kaste used condoms while committing rape on her. After the rape, the Victim was threatened by the Appellants not to disclose the incident to any one, or else she would be raped by ten [10] persons. The Victim stayed in the house till the next day morning.

12. On the next day morning, she saw the condom packets in the house, which she threw outside. She noticed two condom packets on the wall. The used condoms, which were lying on the floor, were thrown outside by her. As there was mud on her saree, she brought the water from woman called Malin Mawashi, in one bucket and washed her saree and put it for drying. As her saree did not dry, she brought a saree from her neighbourer – Kantabai Gulve [this name she deposed in her cross-examination]. Thereafter, the Victim went to the medical store and

purchased one lock for her house. She was thinking whether to lodge the report or not. At 3.00 p.m., she went to the Georai Police Station and lodged the report with the Police, which was at Exhibit - 79.

13. On the next day, she went to the Police Station and from there to the Court of Magistrate, where her statement under Section 164 of Cr.P.C. was recorded, which is at Exhibit - 80. Thereafter, she was referred to the Civil Hospital, Beed for medical examination. She pointed the spot of incident to the Police, which was the house and informed the Police that, the first incident occurred at Gairan land. The Police seized the condom packets, broken lock, bed-sheet and blood stain handkerchief from the spot of incident which was the house of Victim's father. The Police seized the clothes, which she was wearing at the time of incident, which were at Articles - 8 - red colour saree, 9 - black colour blouse, 10 - brown colour petticoat and 11 - red colour nicker. On 18/02/2015, she went to the Jail at Beed for T.I.P, in which, she identified the Appellants - Navnath Baburao Jadhav and Kundlik Bansi Rathod. She identified the Appellants as the Accused persons, who committed rape on her, at the time of her evidence.

14. The above is the evidence of Victim in support of the Prosecution. Her further evidence in the nature of cross-examination shows that, the day of incident i.e. 01/01/2015, was a weekly market day at Pachegaon being Thursday. There used to be passenger vehicles on the Pachegaon

Phata. According to her, on that day, there was no vehicle except the Jeep of Appellant - Jija Lalsing Rathod. When the passenger vehicles used to be available on the said spot i.e. Pachegaon Phata, from where, the Victim boarded the Jeep of Appellant - Jija Lalsing Rathod, it is strange that, though it was a market day, there was no vehicle except that of the Appellant - Jija Lalsing Rathod. Her evidence that, she received a phone call from her husband at the time of incident at Gairan land, is contrary to the evidence of her husband - PW - 2 that, when he called the Victim on her phone, her phone was switched off. His evidence shows that, he called Victim in the evening of 01/01/2015 and also in the morning of next day, however her phone was switched off. From the evidence of Victim's husband, it has come on record that, whenever the Victim used to get late, she used to stay at Pachegaon and come on the next day. This shows that, the Victim was an independent woman and used to stay at Pachegaon at her father's house whenever she used to get late.

15. The Victim attributes the role of gagging her mouth to all the Appellants. Her evidence is not specific in that regard. She gave a general statement that, they all gagged her mouth. It is out of imagination that, how come all the four [4] accused persons would gag her mouth at the same time. If the Victim is to be believed that, she was raped by four [4] accused persons on the Gairan land, there would have been injuries on her back side due to mud and stones etc. However, the medical evidence on record shows that, only two injuries i.e. CLW on right parietal region

admeasuring 2 x 1 c.m. and abrasion on right fore-arm and right elbow joint admeasuring 2 x 1 c.m. were noticed on the Victim. It has clearly come in the evidence of PW - 6 [Dr. Prakash Madhukarrao Shivanikar], who examined the Victim that, except the aforesaid injuries, there were no injuries on the Victim. His evidence shows that, there was no mention of the age of aforesaid injuries in the medical examination report. In absence of evidence in respect of the age of aforesaid injuries, the testimony of Victim in respect of banging her head against the wall by Appellant - Navnath Baburao Jadhav fall short of full corroboration by the medical evidence. The Victim was an agriculturist and in absence of the age of aforesaid injuries on her person, it cannot be conclusively held that, the aforesaid injuries were suffered by her due to sexual assault. Further, the evidence of Medical Officer shows that, he examined the gait of the Victim and he found it to be normal.

16. According to the Victim, she was raped by four [4] accused persons, twice within a very short span of time in the night of 01/01/2015, however, she does not utter a single word to Malin Mawashi and Kantabai Gulve, from whom, she brought the bucket and saree, respectively in the morning of 02/01/2015. Not telling about such a ghastly incident to those women, who were residing nearby her father's house is unnatural and strange. Moreover, the said two women are not examined by the Prosecution. Not only this, the Victim goes to the shop in the same village and purchases new lock for the door. Her evidence shows that, on the back side of her father's house, there was

Muslim locality, towards north side there were houses of Musale and Barbade and on the other side of road towards east side, there was house of Shivling Gulave. Her evidence goes to show that, in the village, there were houses on both the sides of road and there were electricity poles besides the road. Her evidence nowhere shows that, when she was brought to the village, she did not raise any alarm though, it was the village with which she was acquainted and knew the neighbours. It was not a foreign place for her. Again she deposed that, after she was taken in front of her father's house, the accused persons gagged her mouth. She again attributes the role of gagging her mouth to all the accused persons. This is the general statement against all the accused persons. Her evidence nowhere shows that, her mouth was gagged while she was being raped by the accused persons. When she was being raped in the house of her father, which was situated in the village surrounded by the residential houses, her shouts would have facilitated the neighbours to wake up and come to her rescue. However, nothing of that sort was done by her.

17. Though, in her evidence, the Victim deposed that, her phone was discharged, it is strange that, after she goes to the Police Station in the afternoon of next day, the Police used her mobile phone to call her husband. This is clear from the evidence of her husband - PW - 2, wherein, he deposed of receiving the phone call from the phone of his wife [Victim]. Her evidence shows that, while committing rape on her in the house of her father, the condoms were

used by the accused persons. When she was raped by four [4] accused persons by using the condoms, her conduct of throwing the condoms out of the house in the morning is strange. The said conduct is required to be taken note of. This indicates that, she was facilitating disappearance of evidence. Though during the investigation, PW - 9 [Gauravsingh Shyam Avadhsing], who investigated the Crime, visited the spot of incident and seized one blanket, two stones, broken lock, three [3] used condoms, [2] two unused condoms and one [1] handkerchief, CA report at Exhibit - 113 do not show Semen and blood on the condoms. The blood detected on the handkerchief was human. The letter by which the Articles were referred to the Chemical Analyzer at Exhibit - 133 shows that, three [3] condoms, which are referred in the said CA report, were the used condoms. The scientific evidence do not corroborate the testimony of Victim.

18. The evidence of Victim goes to show that, on the next day, she went to the Police Station at 03.00 p.m. According to PW - 10 [Raju Asaram Talekar], who was posted at the Georai Police Station, shows that, the Victim came to the Police Station on 02/01/2015 at about 04.00 to 04.15 p.m. Though the Victim was being raped twice in the night, she neither calls her husband nor goes to the Police Station immediately. Her evidence shows that, she was thinking whether the incident was to be reported or not. If the Victim is to be believed in respect of rape by four [4] accused persons, her evidence shows that, the Appellants left her house in the night, there is nothing to show that,

she was prevented from immediately going to the house of her neighbourers whom she very well knew. However, she remains silent and goes to the Police Station after a period of twelve [12] hours from the second incident of rape. This indicates that, the Victim had sufficient time to think before lodging the report. Under such circumstances, merely because there is no inconsistency in her testimony, can be no ground to accept her evidence.

18.1 True it is that, the CA report [Exhibit-113] shows the Semen having blood group 'B' which was similar to that of blood group of Appellant - Amol Madan Kaste, was found on the petticoat of the Victim, that cannot be the conclusive proof to prove the Charge of rape. The evidence of the Medical Officer shows that, when he carried the local examination, he noticed external organs were normal, hymen ruptured with old tears and he noticed tenderness on internal examination on finger test and he gave final opinion suggestive of sexual assault. In light of the above improbabilities in the testimony of the Victim, the medical and scientific evidence would not be sufficient to come to the conclusion that, the Victim was subjected to rape. The suggestion is given to the Victim in her cross-examination that, she knew all the accused persons before the incident and she met them at Padalsingi and they had food together and the accused did nothing against her wish. On re-appreciating the evidence of the Victim as discussed above, the said defence cannot be said to be improbable. The pieces of bangles in the Jeep show that, she boarded or traveled in the Jeep. That cannot be the conclusive proof to

prove the Charge. As regards the Charge of robbery, the Victim herself was not sure whether the money was robbed from her or they fell down.

19. The learned Advocate for the Appellant tendered the Application No.464/2025 for placing on record the additional documents, which were the copy of Judgment passed in R.C.C. No.135/2007 dated 06/03/2012 passed by the learned Judicial Magistrate, First Class, Georai and the copy of F.I.R. No.702/2018 registered with Shivajinagar Police Station, Beed for offence punishable under Sections 376[2][i] of I.P.C. and Sections 4 and 8 of the Protection of Children from Sexual Offences (POCSO) Act, 2012. The said Application was allowed by the order dated 05/02/2025 after issuance of the notice and waiving the notice by the learned A.P.P. on behalf of State. We need not consider the copy of said F.I.R No.702/2018, since it was in respect of the daughter of Victim speaking of some other incident with the Victim's daughter.

20. The copy of said Judgment shows that, the report was lodged by the Victim with the Georai Police Station for an incident dated 13/01/2007 for the offence punishable under Sections 452, 323, 354 and 504 read with Section 34 of I.P.C. against Shaikh Isaq Shaikh Shaukat, Shaikh Ijaj Shaikh Shaukat and Shaikh Chand Shaikh Shaukat. The said Judgment shows that, neither the Victim nor her mother went to depose before the said learned Magistrate despite issuance of summons and warrants. The accused persons therein were acquitted by the said Judgment. The

evidence of the Victim in Paragraph No.11 of her cross-examination shows that, she knew the said accused persons i.e. Shaikh Isaq Shaikh Shaukat, Shaikh Ijaj Shaikh Shaukat, who were the accused in the said case bearing No.135/2007. She accepted that, she filed report against them. In her evidence, she deposed that, it was out of land dispute. The said version of the Victim that, the said report was in respect of the land dispute, gets falsified by the said decision dated 06/03/2012 delivered by the learned Magistrate in R.C.C. No.135/2007. This material on record gives a serious blow to the veracity of Victim. This evidence and material on record makes the Victim an unbelievable witness.

21. As discussed above, the testimony of the Victim does not inspire confidence. The Victim's testimony suffers from inherent improbabilities. The other evidence, does not take the case of Prosecution any further. The panch witnesses have not supported the case of Prosecution. The evidence of Police Officers is in respect of investigation done by them. The medical evidence and the CA reports are already discussed. The medical examination report at Exhibit - 154 of Appellant - Jija Lalsing Rathod, though admitted by the defence, wherein alleged history of rape by him on the Victim is mentioned, is inadmissible pursuant to the provisions of Section 26 of the Indian Evidence Act, 1872, as during the medical examination, the Appellant - Jija Lalsing Rathod was in the custody of Police. The Appellants were Charged and convicted for a very serious offence. As per the settled position under the law, graver the offence,

stricter the requirement of proof. The Prosecution's evidence do not satisfy the said parameters. The testimony of Victim is shrouded with doubts. It is true that, for the offence of rape, the testimony of Victim can be accepted without corroboration, provided it should inspire the confidence. The evidence of the Victim do not inspire confidence and is full of doubts. The Victim cannot be called a witness of sterling quality. In this view of the matter, it is not possible to maintain the conviction and sentence awarded by the learned Trial Court against the Appellants. The Appeals succeed. Hence, the following order :-

ORDER

- [I] The Appeals are allowed.
- [II] The conviction and sentence awarded by the learned Trial Court against the Appellants for the offence punishable under Sections 376[D], 366 read with Section 34, 458 read with Section 34, 324 read with Section 34, 394 and Section 506 read with Section 34 of I.P.C., is quashed and set aside.
- [III] The Appellants are acquitted for the offence punishable under Sections 376[D], 366 read with Section 34, 458 read with Section 34, 324 read with Section 34, 394 and Section 506 read with Section 34 of I.P.C.
- [IV] The Appellant - Navnath Baburao Jadhav is on bail. His Bail Bond stands cancelled and he is set at liberty.
- [V] The Appellants - Jija Lalsing Rathod, Amol Madan Kaste and Kundlik Bansi Rathod are behind bars. They be released forthwith, if not required in any other offence.

[VI] The fine amount, if paid by the Appellants pursuant to the Judgment and Order of learned Trial Court, be refunded to them.

[VII] The Record and Proceedings be sent back to the learned Trial Court.

[VIII] In view of the disposal of Appeals, the Criminal Applications are also disposed of.

[NEERAJ P. DHOTE, J.]

[R. G. AVACHAT, J.]

Sameer