



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 423 OF 2024

Manohar @ Jibhau Ambarsingh Sonawane

Age : 35 years, Occupation Labour,

R/o : Rundawali, Taluka Shirpur,

District Dhule.

... Appellant

[Orig. Accused No.1]

Versus

1. The State of Maharashtra
Through the Police Station Officer,
The MIDC Police Station Jalgaon,
Taluka Jalgaon, District Jalgaon.

2. XYZ (Prosecutrix-Informant)

... Respondents

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Ms. Anagha V. Rotte, Advocate for the Appellant.

Mr. N. D. Batule, APP for Respondent No.1-State.

Mr. D. K. Dagadkhair, Advocate for Respondent No.2 (appointed through Legal Aid).

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 06.03.2025

Pronounced on : 08.04.2025

JUDGMENT :

1. Appellant, a convict for offence under Section 376(1) of IPC, hereby takes exception to the judgment and order dated 28.04.2023 passed by Additional Sessions Judge, Jalgaon in Sessions Case No. 327 of 2019.

2. Victim PW1 lodged report with M.I.D.C. Police Station, Jalgaon informing that, she was married to Vitthal Sanjay Patil and also had a one and half years daughter. Due to marital discord, she came to reside with her maternal uncle at Mhasavad and kept custody of her daughter with her husband at Shirsoli. During her stay with maternal uncle, she got acquainted with Latabai and Butabai and she confided to them her family history. They suggested her to go out of the village for work purpose and accordingly, on 12.06.2019, without informing anyone, on the pretext of answering call of nature, she left her uncle's place and joined above ladies. They forcibly took away her ear-rings and ornaments, covered her face with handkerchief, took her in a rickshaw and made her board a bus at Pachora bus stand, purchased ticket for her and asked her to travel and told her that appellant, who was known to both ladies, would come to receive her at Dhule ST Stand.

Accordingly she undertook the journey and after reaching Dhule Bus Stand, applicant contacted her and took her on the pretext of fixing job to Shirpur and from there, left on motorcycle to go to his village. There, she claims that, in the night, after dinner, he had forcible sexual relations with her against her wish.

3. On the next morning, her uncle came with police and she disclosed above incidence with her and joined her uncle to lodge report, on the strength of which police registered crime no. 461 of 2019 for offence under Sections 365, 366, 376, 406, 504, 506 r/w 34 of IPC.

4. After investigation and on gathering sufficient evidence, present appellant and two above named ladies were chargesheeted and tried vide Sessions Case No. 327 of 2019.

By judgment dated 28.04.2023, accused no. 1 appellant came to be held guilty for offence under Section 376(1) of IPC, however he was acquitted from charge of Sections 376(2)(n), 365 r/w 34, 366 r/w 34, 368 r/w 34, 504 and 506 of IPC. Accused no.2 Latabai and accused no. 3 Butabai were acquitted from offence under Sections 406, 365, 368 r/w 34 of IPC, but both ladies came to be convicted for offence under Section 366 r/w 34 of IPC.

Only accused/appellant Manohar hereby assails above judgment vide instant appeal on various grounds spelt out in the appeal.

SUBMISSIONS

On behalf of the appellant :

5. Learned counsel for appellant claimed innocence and false implication. She pointed out that, story narrated by victim is apparently false, afterthought and concocted. She pointed out that, victim is full grown married lady and also mother of a child. She had left company of her husband and surprisingly, even of her small child, and had come to stay with uncle and her evidence further suggests that, on her own accord, even without informing her uncle, she left his house alleging work being arranged for her by accused nos. 2 and 3. However, according to learned counsel, such story of victim has no foundation.

6. Taking this court through the FIR and comparing it by placing it in juxtaposition with her substantive evidence in witness box, learned counsel pointed out that, her evidence is full of material variances, inconsistencies, omissions and contradictions, and as such, the same needs to be discarded at the threshold.

7. She further pointed out that, it is difficult to accept the version that she was lured with a job with accused, as there is nothing to indicate or demonstrate that accused was himself in a position to

provide any work for her livelihood. Learned counsel pointed out that, it is also difficult to accept her version that she was forced to go to appellant. It is pointed out that, since leaving the house, while undertaking journey in the rickshaw to reach bus stand, while her alleged ornaments were allegedly forcibly removed, she has not offered resistance, nor has raised any alarms in spite of it being broad day light. Learned counsel further pointed out that, her story itself suggests that she was all alone in the entire journey in the bus from Pachora to Dhule and she had made no efforts to escape or to return back, nor made any complaint to any of the passengers, including bus driver or conductor. Resultantly, learned counsel submits that, accusations raised later on, after being caught, about being forced, are not at all believable.

8. Learned counsel also pointed out that, victim had allegedly undertaken journey with appellant in rickshaw and on motorcycle from Dhule ST Stand to his place and even during their said journey, there was no alarm and, according to learned counsel, this story is rendered false as Investigating Officer has himself admitted that, investigation did not reveal that appellant was owner of a motorcycle or had any driving license, and as such, it is submitted that, entire story is concocted.

9. Learned counsel pointed out that, victim herself stated that after reaching the place of appellant, she had interacted with neighbours. Place of accused was in a residential locality, but she did not bother to inform anyone and rather chose to spend night in the house of appellant and later on alleged being raped. According to learned counsel, it has emerged in the investigation that, the doors and windows of the house had no latches or locks and therefore, if at all it was forceful detention, she could have easily raised alarm or made her escape good, but she chose not to do so for the best reasons known to her and only on being approached by uncle, at his instance, false story has been narrated. Learned counsel took this Court through the answers given by victim in cross wherein she has admitted that her uncle asked her to lodge report of rape to avoid getting defamed in the village.

Resultantly, with such answers in cross, learned counsel questions the affirmative findings of trial court about offence of Section 376(1) IPC.

10. Learned counsel took this Court through the evidence of PW4 uncle, answers given by him in cross, and would submit that even his version is of no avail to the prosecution as he has mere hearsay information.

11. It is further pointed out that, medical expert who had occasion to examine victim, deposed in witness box about only one sexual encounter, however, in report two sexual encounters were reported and moreover, it is pointed out that, to the medical expert, rape is reported to be committed by an unknown person. Pointing to such evidence and the answers given by Investigating Officer and panchas while under cross, learned counsel seriously doubts credibility and veracity of the prosecution version and thereby questions the conclusion drawn by learned trial Judge and prays to allow the appeal.

On behalf of the State :

12. Supporting the impugned judgment, learned APP pointed out that, there is convincing evidence of none other than victim. That, she has been exploited by accused nos. 2 and 3 and they had sent her to accused no.1. They had removed her ornaments, gave false assurance of work for earning and sent her to accused no.1, who ravished her. That, she has narrated the ordeal faced by her in the report to police as well as in the substantive evidence. Her evidence is consistent on material points of being forcibly raped under threat. She was rescued by her uncle and police from the custody of appellant. There is prompt reporting. There is history given to medical expert. Story

narrated by victim has been reproduced by her uncle and independent witness like husband of police patil. Therefore, according to learned APP, there was no possibility of false implication and therefore, learned APP canvasses in favour of the conviction to be right and correct in the eyes of law and prays to dismiss the appeal.

ANALYSIS AND CONCLUSION

13. The 11 witnesses examined by prosecution in support of its case can be categorized as follows :

First Set:	PW1 victim and PW4 uncle of victim
Second Set : [Panchas]	PW2 Ajay and PW3 Purushottam
Third Set : [Medical experts]	PW8 Dr. Suraj, who examined appellant and PW9 Dr. Ravindra, who examined victim.
Fourth Set : [Police officers]	PW7 Balkrushna who registered missing complaint at the instance of victim's uncle, PW10 PSI Rajkumar was the Investigating Officer and PW11 Asst. PI Nita Kayate, who registered FIR.
Fifth Set : [Villagers]	PW6 Pratibha, Police Patil and PW5 Prashant, husband of PW6.

14. Re-appreciated the entire oral evidence of above witnesses. Crucial evidence is of PW1 victim followed by that of her uncle PW4. Then, evidence of medical experts followed by panchas and ultimately, Investigating Officers.

15. For proper comprehension, substantive evidence of victim and her uncle, which is decisive, is required to be reproduced in its entirety. Translated version of the same, as provided by Senior Translator on the establishment of this Bench, is as under :

PW1 Victim

“1. At the time of incidence I was residing at maternal uncle’s house at Mhasawad. At that time, I was married and I had a daughter. Her name is Harshu. At the time of incidence she was residing at my in-laws at Shirsoli. I was living with my maternal uncle because I was driven out by my in-laws.

2. I am know Latabai and Butabai. What work Latabai was doing , I don’t know. The incident was 2 ½ to 3 years ago. On that day, in the morning approximately at 6.00 o’clock, I went for the defecation. At that place both the accused were present. Both of them had removed the chain(*pot*) and earrings from me. They took me away with a handkerchief tied around my mouth. They both dragged me away. They dragged me into the rickshaw. Latabai has called upon one rickshaw driver and

dropped me to that man's village. They made me sit at the S. T. and said that if you don't go, you will be beaten very badly. Latabai told me that you will meet Jibhau there. I can't tell the name of the village. Jibhau had come to pick me up at the S. T. stand. And he took me to his house. There was a woman there, I got scared and went to the neighbor's house. From that place Jibhau again took me to his house.

3. Jibhau put cloth in my mouth. He took off my clothes and raped me. And crowd gathered there by my voice. My relatives and the police were there. My uncle was also there. I called my uncle. My uncle asked me what happened. I told him the truth. I filed a complaint at the police station. Now I am shown the complaint. That is it. My thumb impression is on it. As a matter of fact, it is signed by uncle Deepak Shankar Patil. The contents written in it are true. It is marked as Exhibit 77. The printed news was shown to me. It has my thumb impression on it. The content in it is true. It is being given Exhibit No.78. I had shown the police both the places of the incident. I showed the police the place where I had gone for defecation. The police had also conducted a panchnama of the clothes I was wearing at the time of the incident.

PW4 Uncle of victim

"1. Victim is my niece. She was residing at my elder bother at Mhasawad. The incident is of 12.06.2019. On that day, while I had been for my work as usual, at that time I had a call from my mother that, victim went for defecation, but yet she was not returned at house. Hence I returned home. When I searched

her in the village, I got information from some people that, she was seen with Latabia and Butabai. When I went her home for enquiry she was not at home. I was continuously searching her in the village. After some time I got a call that, Butabai has returned home. Then I enquired her, where was my niece victim?. Then she said, my sister-in-law, Latabai has taken away her at village Tittur for marriage function. I went to Tittur. I met Latabai there. I asked Latabai that, whereabouts of my niece. Then she replied that your niece did not come with me. I was not sure about Latabai. I brought Latabai to Mhaswad Police Station. The police questioned her. She told the police that she had sent her to her acquaintance Manohar alias Jibhau in Rudawali, Tal Shirpur, District Dhule. After that, from Mhaswad, I came to M. I. D. C. Police Station. From there, two male police, a female police, Latabai and I all went to Shirpur. We went to the police station at Shirpur. We went to Rudawali and went to the house of Manohar alias Jibhau. The police knocked on the door of Jibhau's house. My niece came out of that house crying. I asked as to what had happened. She said that she was raped forcibly. She also told me that Latabai lied that she would put her to work. She took off the necklace and earrings from victim's person and snatched them away. And stopped a rickshaw from Ekvira Hotel near the railway station and took victim to Vavdada village with her sister in-law Butabai. They went from Vavdada village to Pachora village and from there they put victim in a Dhule bus, and they said that their acquaintance Manohar alias Jibhau Ambar Singh Sonawane will meet her there and to go with him and he will give her work. She then went to Dhule from

Pachora. There she met Jibhau @ Manohar. From there he took her to Rudavali, Tal. Shirpur, Dist. Dhule. At night he, removed her saree and blouse and raped her forcibly. He told her not to scream. He abused her by saying matherchod and had sex with her. He told her that he would kill her if she did. After an hour, he again had sex with her against her wish. Then the next day, my niece told the police the truth at the M. I. D. C. police station and filed a report.

ANALYSIS

16. PW1 victim, in her substantive evidence, attributed removal of her ornaments to both, accused nos. 2 and 3. She also claims that her mouth was covered by tying handkerchief, but she does not speak that her hands were kept in tied condition after both ladies dropped her at bus stand. As pointed out, she has not raised alarm. She claims that, she met them at the place where lady folks went to answer call of nature. Panchanama of that spot is not drawn. She deposed about being dragged by both accused nos. 2 and 3, but there are no marks on her person. Then she claims that, she was forcibly taken in a rickshaw, but she apparently did not seek help from the rickshaw driver. After this, she claims that she was dropped at the man's village. Her such deposition is non specific and unclear. She deposed

that, at bus stand, she was threatened that if she does not go, she would be badly beaten. She was in a public place like bus stand. She had ample opportunity to raise alarm or attract attention of other passengers, which she apparently has not done. She is unable to give name of the village where she was to reach. In chief itself, she stated that after meeting appellant at bus stand, he took her to his house and she got scared and went to neighbour's house. However, she has not interacted with the neighbour, nor given their details. She claims that, appellant gagged her, disrobed her and raped her. That, crowd gathered and heard her voice. Relatives, uncle and police were there and when her uncle asked, she told the truth and then lodged report.

While under cross para 10 and 11, she admitted that she, on her own, had asked accused nos. 2 and 3 to send her to people they knew for work, as persons at her maternal uncle's house would send her back to her husband's place. She is unable to state how portion marked "A" is appearing in her complaint Exhibit 77 regarding *"yesterday on 12.06.2019 at 8.30 as decided by us, without telling anybody, I went for defecation out of the village at Bornar road "*. Her such statement suggests that she, on her own accord, decided to leave the house without informing anyone. She admitted that, in her statement before court on 26.06.2019, she did not state about Latabai

sending her, nor she gave names of places like Pachora, Vavadda, Dhule. She admitted about not making complaint to anyone at bus stand regarding accused nos. 2 and 3 forcibly sending her to another village and even admitted about not making complaint to her uncle by using anybody's phone. She answered that, during the journey, she was crying but no one asked her reason for the same and she, on her own, also did not inform anyone. She admitted that, she did not tell anyone at the bus stand that she has been forcibly sent.

In para 12 of her cross, she admitted about several houses adjoining to the house of appellant/accused no.1 and people residing therein. She answered that it took one hour to go with appellant to his house and during such hour, she made no complaint to anyone. She also admitted that, after reaching the house of accused, many men and women had gathered, but answered that, she just tried to convince them that she was not his wife.

Para 13 carries material omission, i.e. appearing in the complaint, about going for defecation at 6.00, both accused present, her ornaments being removed, she being dragged and put in rickshaw, Latabai reaching her at village, they making her sit in the bus after threatening to badly beat her if she does not board the bus,

about accused taking her to his house, about a lady to be present there, she getting scared and going to the house of neighbour, about appellant putting cloth in her mouth, removing her clothes and raping her. After complaint was confronted to her, she has answered that she cannot tell why above material is not reflected and noted therein.

In para 14 of the cross, she denied suggestion that while registering complaint, her maternal uncle told that if she does not report rape, their village would disgrace them as she had run away. Rest is all denial.

17. Now let us advert to the evidence of maternal uncle PW4 and re-appreciate the same. His evidence is at Exhibit 101. Substance of his substantive evidence is that PW1 is his niece. That, on 12.06.2019, while he was at work, he learnt from his mother that his niece went for defecation but did not return and was therefore searched. He claims to have learnt about niece to be in the company of accused nos. 2 and 3. He approached both, accused nos. 2 and 3, and from Latabai it was learnt that victim was sent by Latabai to her acquaintance i.e. appellant at Rudawali, Taluka Shirpur and so, they all went there and after reaching the house of appellant, police knocked the door, his niece came out crying and narrated about she

being raped forcibly. That, Latabai lied that she would give work, took away her ornaments and she being sent to appellant by making her board a bus and in the night, appellant forcibly raping her, and therefore report being lodged.

While under cross, he has admitted that his niece was residing separately from her husband since one year. He also admitted that currently she is married and living with her husband. He admitted about not lodging complaint against Latabai and Butabai. He was unable to state whether Shirpur police recorded statement of his niece. While under cross at the hands of accused nos. 2 and 3, he has merely expressed his inability to give answers to all questions.

18. Therefore, on critical analysis of evidence of PW1 and PW4, and taking into account the answers given by PW1 in cross, as submitted by learned counsel for appellant, it is noticed that PW1 is not only a married lady, but also mother of a child. She has come in contact with accused nos. 2 and 3 and in para 10 of her cross, she has admitted that it was she who had asked these two ladies to send her to people they knew for work, as her relatives at uncle's place would send her back to her husband's place. Therefore, her version in FIR and before the court that, she was lured and robbed off her

ornaments, is apparently false. As stated above, on minutely going through the answers given by her in cross, it is emerging that, whatever she deposed in substantive evidence, about going for defecation at 6.00 a.m., both lady accused removing her ornaments, dragging her, forcibly taking her in a rickshaw, threatening her to undertake journey to accused appellant, he taking her to his place, he gagging her and then forcibly raping her, are all material omissions which go to the very root of prosecution. Resultantly, it is unsafe to accept her testimony .

19. Even testimony of maternal uncle, as pointed out, is mere hearsay. He has admitted that PW1 left company of her husband at her own accord and has been living separately since one year and is not currently married also. He has admitted that, in spite of knowing from accused nos. 2 and 3 that his niece has been sent by them, and in spite of hearing from his niece about robbing her and sending her to appellant, he has not lodged any report against these two ladies.

20. Two medical experts are examined, i.e. the one who examined victim and the other who examined accused. Crucial evidence is of medical expert PW9 who examined victim. He testified about victim being examined and she giving history of being raped by unknown

person, that too, only once. But in FIR, she has reported twice being forcibly raped. In FIR she has stated that, in the house of appellant, there were two daughters and he had lost his wife, and she also had dinner with both the daughters. However, she has not reported them also, nor they are examined.

21. As pointed out, Investigating Officer has admitted in cross para 15 that he did not obtain documents of ownership of appellant's house and that investigation did not reveal about accused nos. 2 and 3 accompanying PW1 from Pachora to Dhule and from Dhule to Rudawali. He also admitted that, accused did not have a two wheeler. Therefore, informant's version that she traveled with him on two wheeler from Shirpur to his village Rudawali comes under shadow of doubt. Investigating Officer's admission that there were no locks to the front door and window of house of accused and rather, there were mere frames, also creates considerable doubt about victim being detained and raped. She could have fled, had it been forcible attempt, and could have raised alarm as she had herself stated that there were houses in the neighbourhood. Her such conduct creates doubt about she being forced upon.

22. Therefore, with above discussed material, in the considered opinion of this Court, testimony of PW1 does not inspire confidence about accused nos. 2 and 3, forcibly and under threat, sending her to accused appellant and he further, under threat, having forceful sexual intercourse. For above reasons, case of prosecution does not inspire confidence and does not deserve to be accepted.

23. Learned trial court has failed to consider and appreciate evidence of victim in proper perspective. Answers given in cross by victim, and more particularly para 14 and 15 of her cross, seem to have been overlooked and kept out of consideration while drawing conclusion. Finding this case to be fit for interference, following order is passed.

ORDER

- I. The appeal is allowed.
- II. The conviction awarded to the appellant by Additional Sessions Judge, Jalgaon in Sessions Case No. 327 of 2019 under Section 376(1) of IPC on 28.04.2023 stands quashed and set aside.
- III. The appellant stands acquitted of the offence punishable under Section 376(1) of IPC.

- IV. The appellant be set at liberty, if not required in any other case.
- V. Fine amount deposited, if any, be refunded to the appellant after the statutory period.
- VI. It is clarified that there is no change as regards the order regarding disposal of *muddemal*.

[ABHAY S. WAGHWASE, J.]

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