



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.240 OF 2004

The State of Maharashtra
Through Chakalamba Police
Station, Tal. Georai, Dist. Beed

Appellant

Versus

Udhav Sahebrao Roman
Age : 25 yrs, occ : Anandwadi,
R/o Shirur, District Beed.

Respondent

...

Mr. N.B. Patil, A.P.P. for appellant/State.
Mr. B.A. Dhengle, Advocate for the respondent.

...

CORAM : **SANDIPKUMAR C. MORE AND
Y.G. KHOBRADE, JJ.**

DATED : 12 NOVEMBER 2025

Judgment (Per Sandipkumar C. More, J.) :

1. The appellant/State has challenged the judgment and order dated 29.11.2003 passed by learned 3rd Adhoc Assistant Sessions Judge, Beed i.e. the learned trial Judge in Sessions Case No.168 of 2002, thereby acquitting the present respondent/accused from the offence punishable under Sections 376, 323 and 506 (2) of the Indian Penal Code (for short, "I.P.C.").

2. As per the prosecution case, the informant prosecutrix on 17.09.2022 in the early morning lodged

complaint in Chakklamba police station, Taluka Georai, District Beed by making allegations against the respondent that on 06.09.2002 at about 8.00 a.m. her husband Bapurao went to the field for harvesting Bajra crop. Her son Shriram had gone to school and she was at home with her mother in law who was blind. Her neighbours were also in their respective fields for agricultural work. At about 1'O clock she went in the house for bringing Nirma powder and at that time she was having her daughter of tender age. When she came out of the house with Nirma powder and daughter, the respondent/accused, who was also her nephew, came there and insisted her to commit sexual intercourse with him on payment of Rs. 10/-. He then caught her hand and forcibly dragged her. At that time daughter of prosecutrix fell down. The respondent/accused threatened her for not to shout and then dragged her in his house. He then removed his underwear and pant and petticoat of prosecutrix. Thereafter pressing her neck, he forcibly committed sexual intercourse with her. Though she tried to shout, but could not, because her throat was pressed by the accused. She sustained neck injuries and abrasion on both the elbows during the incident. When her blind mother in law reached there after hearing her shouts, by that time the respondent/accused had already

completed the alleged act of rape. The respondent/accused even kicked mother in law of the prosecutrix and fled from the spot. Thereafter villagers came there alongwith Police Patil to whom she narrated the incident. Thereafter when her husband reached there, the prosecutrix told him about the act of respondent/accused and then the incident was reported to concerned police station wherein Crime No. 76/2002 under Sections 376, 323 and 506 (2) of I.P.C. was registered on the report lodged by the prosecutrix.

3. After completion of investigation, the respondent/accused was charge-sheeted for the aforesaid offence. Learned trial Judge conducted the trial by examining in all ten witnesses. But ultimately he acquitted the respondent/accused of the aforesaid charges. Feeling dissatisfied with such acquittal, the State has filed the present appeal.

4. Learned A.P.P. for the appellant/State submits that the prosecution has given true account of the criminal act performed by the accused. Moreover, mother in law of the victim has also stated against the accused. The Medical Officer had in fact opined after examination of prosecutrix that there was act of sexual intercourse with her. Thus, the learned A.P.P. submits that despite such evidence from the

prosecutrix, the learned trial Judge erroneously disbelieved the same. Thus, he prayed for reversal of acquittal of respondent/accused into conviction under the aforesaid offence.

5. On the contrary, learned counsel for respondent /accused strongly opposed the submissions made on behalf of the appellant and supported the impugned judgment of acquittal. According to him, though the prosecutrix deposed according to prosecution story, but in her cross-examination she has given vital admissions suggestive of consensual sex. He pointed out that there were no injuries found on her wrist and back, specially when it was her contention that the accused dragged her to his house by holding her wrist when she was lying on the floor on her back. Accordingly, he prayed for dismissal of appeal.

6. Heard rival submissions. Also perused the documents on record alongwith record and proceeding of Sessions Case No. 168 of 2002.

7. Admittedly, the prosecution has examined in all ten witnesses. However, to seek conviction of the respondent/accused, the evidence of prosecutrix i.e. PW-4 and the alleged eye witnesses i.e. PW-5, mother in law of the

prosecutrix, is of utmost importance. Rest of the evidence is either on procedural aspect or hearsay in nature. Though the learned trial Judge has discussed so many aspects as to how the story of prosecution is unbelievable and not supported by the evidence of other witnesses since they were having grudge against the accused and his father, but the evidence of extreme importance is of the prosecutrix herself.

8. Admittedly, prosecutrix is aunt of respondent/accused and they resided in same locality at the time of incident. On going through the chief examination of the prosecutrix, it is evident that she has narrated as to how respondent/accused dragged her under the influence of liquor and committed forcible sexual intercourse with her and that too by giving her inducement of payment of money. However, it is extremely important to note that she herself admitted in the cross-examination that she her on own removed saree from her person and when accused asked her to lay down, she laid and then he committed sexual intercourse with her for about half an hour. Not only this, but she deposed that accused was kissing her during the act and his hands were on her chest. On giving such admission, the prosecutrix herself has completely washed out the case of prosecution. She did not stop there, but further submitted

that after the incident respondent/accused worn his clothes and came out of the room and she also came out after wearing her saree. As such, in the light of such admissions her case of committing forcible sexual intercourse with her by the respondent/accused is completely shattered. It even rendered the evidence of PW-5 i.e. her mother in law who had stated that she told her about the alleged criminal act of accused who also kicked her. Admittedly, PW-5 mother in law is blind with both the eyes and therefore in the light of admissions given by the prosecutrix herself the evidence of her mother in law has become highly suspicious and doubtful.

9. Apart from that, though the Medical Officer i.e. PW-8 Dr. Prakash Shivnikar has opined that there was sexual intercourse with the prosecutrix when he examined her and also there were injuries on her person specially on neck and both the elbows, but he has not given final certificate in respect of those injuries. He has specifically opined that he did not found injuries on the wrist or back of the patient. It is the case of prosecutrix that by holding her wrist the accused dragged her when she was lying on the ground on her back to his house for committing forcible sexual intercourse. However, the absence of injuries on her back and wrist clearly demonstrates that she has deposed falsely.

Therefore, from the evidence of prosecutrix (PW-4), her mother in law (PW-5) and Medical Officer (PW-8), it is established that the incident had not taken place as per the prosecution story and it can safely be inferred that it was the case of consensual sexual intercourse.

10. Apart from that, even the scientific evidence is not supporting to the prosecution since in the C.A. reports no semen was deducted either on the clothes of respondent/accused or the prosecutrix and even in her vaginal swab. Thus, it clearly reflects that the learned trial Judge, by discussing all the aforesaid aspects, has taken a possible view and by considering the scope of appeal against acquittal that cannot be disturbed. The findings of learned trial Judge are based on proper appreciation of evidence and therefore, we do not find any reason to interfere with the same. In the result, appeal stands dismissed.

(Y.G. KHOBRADE)
JUDGE

(SANDIPKUMAR C. MORE)
JUDGE