



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

CRIMINAL APPEAL NO. 843 OF 2005

Dilip s/o Manohar Shejwal
Age: 25 yrs., Occ. : Agril.,
R/o. Kumbhari, Tq.Kopargaon,
Dist.Ahmednagar.

....Appellant /
Orig. Accused

Versus

The State of Maharashtra

....Respondent

.....
Advocate for Appellant : Mr. Shaikh Majit S.
APP for Respondent : Mr.N.B.Patil

.....

CORAM : ABHAY S. WAGHWASE, J.

**RESERVED ON : 16 DECEMBER, 2024
PRONOUNCED ON : 17 JANUARY, 2025**

JUDGMENT :-

1. In this appeal, there is challenge to judgment and order dated 21-07-2004 passed by learned Additional Sessions Judge, Kopargaon in Sessions Case No.29 of 2002 thereby convicting appellant for offence under Sections 376 and 341 of the Indian Penal Code (IPC).

PROSECUTION CASE IN BRIEF

2. PW1 father of victim approached Kopargaon Police Station

and lodged report that, his victim daughter studied in 5th standard and she used to attend school by using bicycle. On 30-03-2002, he reported that, as usual she left house at 10:00 a.m. to appear for science examination, but around 01.45 p.m., she returned home weeping, and on being questioned, she told that one person obstructed her on the way, took her in nearby forest and committed rape on her. On her further information about later on seeing PW2 Nitin taking lift from the said person on motorcycle, he visited the Institution, where PW2 Nitin was taking education and on learning from him about applicant, he took his victim daughter to the Police Station and lodged report, on the basis of which PW6 Padwal, who was posted as Police Officer, investigated crime bearing no.52 of 2002 and after completing investigation, he chargesheeted accused for offence of wrongful restraint and rape.

On committal, case was tried by learned Additional Sessions Judge, Kopergaon vide Sessions Case no.29 of 2002. On appreciating oral and documentary evidence, case of prosecution was held to be proved and after recording guilt, appellant was held guilty and sentenced for above offences. Said judgment is now subject matter of the appeal.

SUBMISSIONS

On behalf of appellant :

3. Learned Counsel for the appellant alleged false implication. He submitted that victim alleged rape by unknown person. That there was no T.I. parade. That on information of PW2 Nitin, appellant is involved in the present crime. That informant father lodged report on hearsay information.

4. Learned Counsel pointed out that, prosecution evidence is not convincing for several reasons. According to him, here though medical certificate is placed on record, prosecution did not examine the concerned Doctor and hence, according to him, allegation of rape cannot be said to be proved. He pointed out that there were no injuries on the person of victim and as such theory of prosecution about forceful rape cannot be accepted. According to him, unless there is supporting medical evidence, charge of Section 376 of the IPC cannot be said to be brought home.

5. Learned Counsel also raised the point that alleged occurrence is of around 01:00 p.m. but report is lodged in the evening i.e. after 05:00 p.m. Thus, there is delayed reporting. Therefore, according to

learned Counsel, learned trial court ought not to have held charge proved and further according to him, as there is erroneous appreciation of evidence, he seeks indulgence by allowing the appeal.

On behalf of State :

6. In answer to above, learned APP supported the impugned judgment by pointing out that there is prompt reporting of the incident to informant father. That informant father first went to school, met PW2 Nitin, who had seen accused with victim near forest, and thereafter, approached Police on the same day and hence, according to him, there is no delay as alleged. Further according to him, delay in cases of such nature is insignificant.

7. Learned APP also took this court through the evidence of informant father PW1 and victim PW3 and would submit that both are consistent. That evidence of victim has remained unshaken. That the core of prosecution case has remained intact inspite of extensive cross-examination. Learned APP pointed out that there is independent evidence of PW2 Nitin. He pointed out that there are medical papers issued by examining Doctor confirming occurrence of rape. According to learned APP, merely because such Doctor did not step into witness box, testimony of victim cannot be doubted. Lastly,

he submitted that there being convincing, cogent and reliable evidence, the impugned judgment cannot be faulted at.

EVIDENCE IN TRIAL COURT

8. In support of its case, prosecution has adduced evidence of in all six witnesses. Sum and substance of their evidence is as under :

PW1 is father of victim. At exh.24, he deposed as under:

"I have three daughters. Victim is my younger daughter. Her date of birth is 19-08-1991. At the time of incident she was studying in 5th std. At the time of incident she was taking education in a school at Kumbhari.

Incident took place on 30-3-2002. At that time final examination of victim was going on. On 30-3-2002 she left the house at 10 a.m. On that day she had examination of science subject. At about 1.45 p.m. she returned to the house at that time she was weeping. I asked her as to why she was weeping. She told that while returning to the house after examination, she came near Kumbhari forest on bicycle. At that time one person restrained her by his motorcycle. That person shut her mouth and took her in nearby forest. She further told that, that person took out her nicker, he also removed his pant and committed rape on her and thereafter that person ran away from the spot on his motorcycle towards Kumbhari. She further told that she saw one more person on the motorcycle. The name of that other person is Khandu alias Nitin Sahebrao Pawar. Nitin is residing in our village. My daughter further told me that the colour of motorcycle was black and it was Hero Honda make. Some other students of her school took victim to our house.

2. *Immediately after the disclosure by my daughter I went to her school, to meet Nitin. I asked Nitin on whose motorcycle he came in the school. He has stated that he came in the school on the motorcycle of Dilip Manohar Shejwal. Thereafter I went to the Police Station. I lodged the complaint against the accused. It was recorded as per my say. I am now shown said complaint. It is same, contents therein are correct, it bears my signature, it is at exh.25.”*

PW2 Nitin Sahebrao Pawar is acquaintance of informant. At exh.26, he deposed as under :

“1. *I know complainant and his victim daughter. In the year 2002 I was taking education in Tukaram Baba Vidyalaya, Kumbhari. Victim was also taking education in the same school. I used to go to school on my bicycle. At the time of incident final examination was going on. On the day of incident my paper was from 3 to 6 p.m.*

2. *The incident is dt. 30-3-2002. On that day I left my house at about 1 p.m. as my cycle was punctured, I was proceeding on foot. When I reached near Katwan Forest, I saw accused and Victim standing by the side of the road. Accused asked me whether I want to come at Kumbhari. I replied yes. Therefore, accused took me to my school on his motorcycle. Thereafter he proceeded towards Dharngaon. It was Hero Hondo motorcycle of black colour.*

3. *Thereafter father of victim came to the school. He asked me as to on whose motorcycle I came to the school. I have stated the name of accused to him. Accused before the court is same. He is residing at Kumbhari.”*

PW3 Victim deposed at exh.30 as under :

“We are three sisters, I am the youngest. I was studied in school upto 4th std. at Hingani. When the incident took place I was 11 yrs. Old. I

have taken admission in the school at Kumbhari in 5th std. I used to go to school on bicycle.

2. At the time of incident my final examinations were going on. Incident took place on 30-3-2002. On that day it was the examination of subject science. During 11 a.m. to 2 p.m. After giving paper I was coming to my house on my bicycle at about 1 p.m. When I reached near Katwan jungle one boy obstructed my bicycle. He is the accused before the court. He was on his Hero Honda motorcycle of black colour. He asked me whether I am blind. He took me from my bicycle and took me at some distance in Katwan. He fell me down. He removed his pant and nicker. He also removed my cloths. He entered his male organ in my vagina. He committed rape on me. After the act was over he went towards his motorcycle. I also started going towards road, while I was coming towards road, I saw that one boy from our village by name Khandu alias Nitin Sahebrao Pawar was proceeding towards Kumbhari on the motorcycle of that person. Thereafter I started proceeding towards my house on bicycle. Some girls of my school meet me on the way. They were three in numbers. My sister was one of them. We all came to our house. My father was alone at the house. My sister went to another room for changing the cloths and other girls went to the shool. I narrated the entire incident to my father. Thereafter myself and my father started proceeding towards the police stn. at about 3.30 p.m. My father lodged the complaint at police station. I was referred to the hospital for examination. Doctor examined me. I gave history of incident to the doctor. At that time my father was out of the examination room. After examination we again came to police station. Thereafter my statement recorded by police. I handed over my cloths to the police. It were seized under panchanama. Art. No.1 blouse, No.2 skirt and Art. no.3 nicker before the court are the same.

3. Again on next day I was called by police for showing the spot of incident in the morning. Accordingly I have shown the spot of

incident. Accused before the court is the same who has committed rape on me. My date of birth is 19/8/1991.

PW4 Machindra Laxman Chandanshiv is pancha to spot panchanama exh.32. He deposed as under :

“Daughter of informant had shown the spot of incident. Girl who has given the evidence in the court today has shown the spot of incident. The spot of incident is the Forest area.”

PW5 Dnyandeo Baburao Fund is pancha to seizure of clothes of victim. Seizure panchanama is at exh.34. On 1-4-2002, he was pancha to seizure of clothes of accused. Said seizure panchanama is at exh.36.

PW6 Rajendra Narhari Padwal (API) is the Investigating Officer, who has carried out investigation and after gathering sufficient evidence, he has arrested accused.

ANALYSIS

9. The gist of allegations against appellant are that, PW3 victim, a minor of around 11 years of age, who was returning from school after answering her examination, was intercepted, dragged to the forest and raped.

10. Substantive evidence of PW3 victim as well as her father PW1 is already reproduced in above paragraphs. They both are also extensively cross-examined and on analyzing the same, it is emerging that, PW3 victim admitted that she was not knowing the accused, she did not report occurrence to her sister, who arrived shortly near the scene of occurrence. Even it has come in the cross-examination of PW1 father informant that inspite of PW3 daughter informing him, he did not report it to his wife and own brothers and that in his presence, medical expert, who examined her, did not ask her anything and he is unable to state whether his daughter had narrated the incident to the Doctor.

Another crucial witness here is PW2 Nitin and it is this boy, who has pointed finger to the present appellant for giving him lift and seeing victim and accused in each other's company on the road just outside the forest.

11. Therefore, on critical analysis of above material on record, it does emerge that, though medical expert examined victim, unfortunately, there is no concrete opinion as to whether sexual assault has been committed, however, prosecution is coming with a case that semen stains were detected on the clothes of victim.

12. The principal grounds of attack on the prosecution case here are that firstly, inspite of victim not knowing accused, there is no T.I. parade, secondly, medical expert who examined victim, is not a witness before the Court and thirdly, there are no internal or external injuries on the person of the victim.

13. It is settled legal position that in cases of such nature, medical evidence is merely looked upon as a corroborative piece of evidence and nothing beyond it and as such it is not a conclusive evidence and it is viewed as an opinion evidence. It is fairly settled position that sole testimony of prosecutrix, if found credible and convincing, is sufficient to record guilt. Even it is further settled position that, mere penetration attracts offence of Section 376 of the IPC and there need not be evidence of rape in the form of injuries or semen. Likewise, no benefit can be derived by accused on the ground of absence of injuries.

14. With such legal precedent, here it is emerging that, PW3 victim testified in the witness box that her way was intercepted by one person, who then took her near the forest and committed rape on her. She was a 11 years child at the time of incident. She has also testified that on coming on the road, she saw PW2 Nitin, who was of

her village and known to her, going in the company of said person on motorcycle. She immediately on reaching home has reported incident to her father. PW1 father of victim also testified that he immediately went to the Institution and approached PW2 Nitin and asked him as to on whose motorcycle he reached the Institution and PW2 Nitin named present appellant. Both these witnesses PW1 informant father and PW2 Nitin are cross-examined, but the core of their substantive evidence has not been rendered doubtful. Suggestion about affair with PW2 Nitin is only given to victim, but similar suggestion is not put to PW2 Nitin himself in support of defence of false implication. After knowing about culprit, PW1 informant father straightway took the victim girl to the Police Station and on the same day evening, report has been lodged and appellant is also apprehended on the same day.

15. It does emerge that though there are papers of medical examination, unfortunately it is not understood as to why said medical expert is not made to step in the witness box. Doctor seems to have issued medical papers on a plain paper and has not issued final opinion, but again law is fairly settled that absence of medical evidence is of no avail to the accused when story of victim is credible.

If the testimony of victim inspires confidence and does not create doubt in the mind of Court about false implication, then the Court can definitely rely and act on sole testimony of prosecutrix.

Here on complete re-appreciation of PW3 victim's evidence, it emerges that after the occurrence, she has spotted accused going in the company of PW2 Nitin and after she reported about it to her father PW1, he too has without losing time, confronted PW2 Nitin and has learnt about accused. PW2 Nitin, in clear terms, has testified that, when he was walking towards the Institution, he saw victim girl and accused in each others company. PW3 Victim has identified accused in the Court to be the said person. Resultantly, submission of no T.I. parade loses its significance. Infact, contrary to the submission that there was delay, report is lodged in the same evening. It is a rural part. PW3 victim first went home, then informed her father and he initially visited Institution to get fact reported to him verified and thereafter, has approached Police. Some time is thus spent, but again in cases of such nature, delay is inconsequential.

Resultantly, on the strength of evidence of PW3 victim, her father PW1, and independent witness PW2 Nitin, prosecution does discharge its burden in establishing the charges. Therefore, appeal

deserves to be dismissed. Accordingly, I proceed to pass following order :

ORDER

Criminal Appeal No.843 of 2005 is dismissed.

(ABHAY S. WAGHWASE)
JUDGE