



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.848 OF 2022

XYZ

Appellant

Versus

1. Walichand Chimaji Dhanwade
Age : 37 yrs, occ : service
R/o Hanumannagar, Wadarwadi,
Wambori, Taluka Rahuri,
District Ahmednagar
 2. The State of Maharashtra
- Respondents

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Mr. N.C. Garud, Advocate for the appellant.
Mr. A.D. Ostwal, Advocate for respondent No.1
Mr. S.J. Salgare, A.P.P. for respondent No.2 – State.

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CORAM : **SANDIPKUMAR C. MORE AND
MEHROZ K. PATHAN, JJ.**

Reserved on : 29.09.2025
Pronounced on: 01.10.2025

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

1. The appellant, who is the original complainant and victim in Sessions Case No.223 of 2017, has challenged the acquittal of present respondent No.1/original accused from the offence punishable under Sections 376, 323 and 506 of the Indian Penal Code recorded by the learned trial Judge i.e. Additional Sessions Judge, Ahmednagar vide judgment dated 05.09.2022 in the aforesaid sessions case.

2. As per the prosecution case, the appellant/victim resides with her husband, children and in-laws at Jawainagar, Kukkadvedhe, Wambori, Taluka Rahuri, District Ahmednagar. Her husband is engaged in catering work. On 19.06.2017 at about 12.30 p.m. the appellant had gone to nearby streamlet of Gadakh Vasti situated at Kukkadvedhe road, for collecting firewood. When she was cutting the fire wood at the said place with the help of axe, respondent No.1/accused, who is also a friend of her husband, came from backside at about 2.00 p.m. and told her that her husband had sent some amount to her. While the victim was taking the said amount from him, he caught her right hand and pulled her. Though the victim shouted, respondent No.1 gave 2/3 slaps and threatened her for not to shout. Respondent No.1 then made her to lie down and forcibly committed sexual intercourse with her. Though the prosecutrix tried to shout, but none came to help her. Thereafter respondent No.1 threatened not to disclose the incident to anybody, otherwise he would kill her husband. Due to such threatening the prosecutrix did not disclose the incident to anybody till 25.07.2017. However, on 25.07.2017 at about 6.30 p.m. when the prosecutrix had gone to floor mill, respondent No.1, on the way, asked her as to when she would be available for him.

Prosecutrix got frightened and after taking floor, went to the house. When her husband came home at about 7.30 p.m. she narrated the incident to her husband. Accordingly, on next day i.e. on 26.07.2017 prosecutrix alongwith her husband went to Rahuri police station and lodged report about the incident.

3. On the basis of report, C.R. No. 271/2017 was registered against respondent No.1 for the offence under Sections 376, 323 and 504 of I.P.C. Investigating Officer Savita Sadavarte (PW-6) carried out the investigation and on completion of investigation, respondent No.1 was charge-sheeted for the aforesaid offence. Learned trial Judge conducted the trial by examining in all six witnesses. However, ultimately learned trial Judge acquitted respondent No.1 of the aforesaid charges. Feeling dissatisfied with such acquittal, the prosecutrix has filed the present appeal.

4. Learned counsel for the appellant/victim vehemently argued that the learned trial Judge has acquitted the respondent No.1 mainly on the ground that there was delay of 37 days in lodging report by the prosecutrix. According to him, no lady would put her prestige at stake and

she will definitely think for considerable period before lodging report of such incident. He further added that though the injuries while making struggle were not found on the person of prosecutrix, but since there was delay of 37days, it was difficult to find such injuries. According to him, prosecutrix has given evidence as to how the incident had taken place and medical evidence on record has also supported her version. As such, he pointed out that even the sole testimony of victim in absence of any other eye witness in the case of rape, can be believed. He further pointed out that the delay in lodging report by the prosecutrix is justified, since respondent No.1 had given threat of killing her husband if she discloses the incident to anybody.

5. On the contrary, learned counsel for respondent No.1/accused strongly opposed the submissions made on behalf of the appellant and supported the impugned judgment of acquittal. According to him, the evidence of prosecutrix does not inspire confidence since there are material contradictions and omissions. He pointed out that PW-5 Dr. Rajendra Vairagar in his examination-in-chief itself has stated that though the victim had come to him with history of sexual assault dated 19.06.2017 at about 2.00 p.m.,

but on her examination, he did not find any symptoms of forcible intercourse. Further, he has opined in the cross-examination that after conducting semen test, blood group of the accused can be determined. Learned counsel for respondent No.1 further pointed out that the prosecutrix had not even disclosed the incident for about 37 days to her own husband or the close relative, which is definitely suspicious. According to him, respondent No.1 did not attempt to abscond even after disclosure of the alleged incident by the appellant victim. He pointed out that the defence has brought on record animosity between the husband of victim and respondent No.1, and therefore, there was possibility of implicating the respondent No.1 in false case at the hands of victim on the say of her husband. According to him, even after disclosure of incident by the victim to her husband on 25.07.2017, the F.I.R. was not lodged promptly, but it was lodged on the next day and statement of husband of victim was recorded even after that i.e. on 27.07.2017. Thus, he submitted that the entire case of prosecution is doubtful and there are two views possible and therefore the view favourable to the accused, as taken by the learned trial Judge for acquitting him of the charge levelled against him, is proper. He also relied on the judgments Apex Court in the cases of

Ghurey Lal vs State of Uttar Pradesh reported in (2008) 10 Supreme Court Cases 450 and *Murlidhar @ Gidda and another vs State of Karnataka* reported in (2014) 5 Supreme Court Cases 730.

6. Heard rival submissions. Also perused the documents on record alongwith record and proceeding of Sessions Case No. 223 of 2017.

7. Admittedly, the prosecution has examined in all six witnesses out of which PW-1 is the victim herself. Though she narrated the incident in her evidence as per the prosecution story, but as per her cross-examination the spot of incident was situated 4 kms away from her house and there were houses of other persons while going there. It is extremely important to note that though she stated about the incriminating act of respondent No.1, but the delay of 37 days in lodging the report of incident has remained unexplained. Though she stated that respondent No.1 had threatened her to kill her husband and therefore she remained silent, but she could have narrated the incident to her husband or any of her close relative. It is not the case of prosecution that her husband was out of station for all these 37 days. Moreover, it

has also come in her cross-examination that Police Patil was residing at a distance of only 2 kms from her house and there was police outpost of Wambori where police constables were available overnight. Thus, it seems strange that the prosecutrix neither disclosed the incident for about 37 days to anybody nor she tried to get help from the police machinery. This is highly unnatural on the part of the prosecutrix. Further, the victim has also improvised her version while deposing before the Court by adding new allegations, such as, she was given threat to kill, she was dragged 15 ft and raised hue and cry. These the facts were not stated by her at the time of recording her statement. Under such circumstances, such addition definitely proved fatal to her story.

8. The evidence on record led by PW-5 Dr. Rajendra Vairagar clearly indicates that there was no positive sign of forcible intercourse. Though the learned counsel for the appellant pointed out the opinion of medical officer that possibility of sexual intercourse could not be ruled out, but it is to be noted that the appellant is married and habituated to sexual intercourse. What is required in this case, is the evidence of forcible intercourse, which is certainly missing. Scientific evidence in form of C.A. reports which are at

Exhs.45 to 47, is also not supporting to the case of prosecution, since no blood was found on the clothes of victim as per C.A. report Exh.45. Moreover, no blood or semen was detected on the samples of victim, such as, nail clippings, swab from labia majora or labia minora, vaginal swab, cervical swab, vaginal smear, etc., suggestive of forcible sexual intercourse. Only a spot of semen was found on her petticoat, but that also cannot be identified as that of respondent No.1. Therefore, mere presence of semen spot on the petticoat of prosecutrix cannot be considered as incriminating circumstance against respondent No.1. Moreover, neither semen nor vaginal fluid was detected on the samples of respondent No.1, such as, pubic hair, scalp hair, etc. Thus, there is no supporting material on record to show that the testimony of appellant/victim inspires confidence.

9. It is to be noted that the evidence of husband of victim is in the category of hearsay evidence and that too there was no immediate disclosure of the incident by the appellant to him. Admittedly, conviction in rape cases can be based on the sole testimony of victim if it inspires confidence. However, in the instant case, the delay of 37 days in lodging report is definitely fatal to the prosecution case. Moreover,

the victim has also improvised facts while deposing before the Court by adding certain things which are not stated by her before the police or Magistrate.

10. The Hon'ble Apex Court in the case of ***Ghurey Lal vs State of U.P.*** (supra) has laid down certain guidelines by discussing various earlier judgments, as to how the evidence in rape cases is to be appreciated and in what circumstances acquittal recorded by trial court can be disturbed. We would like to reproduce the same as below.

“70. In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has “very substantial and compelling reasons” for doing so. A number of instances arise in which the appellate court would have “very substantial and compelling reasons” to discard the trial court's decision. “Very substantial and compelling reasons” exist when:

i) The trial court's conclusion with regard to the facts is palpably wrong;

ii) The trial court's decision was based on an erroneous view of law;

iii) The trial court's judgment is likely to result in “grave miscarriage of justice”;

iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

v) The trial court's judgment was manifestly unjust and unreasonable;

vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the Ballistic expert, etc.

vii) This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

71. Had the well settled principles been followed by the High Court, the accused would have been set free long ago. Though the appellate court's power is wide and extensive, it must be used with great care and caution".

Further, the Hon'ble Apex Court in the case of ***Murlidhar vs State of Karnataka*** (supra) has also observed in para 12 as follows :

"12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu, Madan Mohan Singh⁴, Atley, Aher Raja Khima, Balbir Singh, M.G. Agarwa, Noor Khan, Khedu Mohton, Shivaji Sahabrao Bobade, Lekha Yadav, Khem Karan, Bishan Singh, Umedbhai

Jadavbhai, K. Gopal Reddy, Tota Singh, Ram Kumar, Madan Lal, Sambasivan, Bhagwan Singh, Harijana Thirupala, C. Antony, K. Gopalakrishna, Sanjay Thakran and Chandrappa. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:

(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court,

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal,

(iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and

(iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court”.

11. On going through the aforesaid observations, it appears that the Hon'ble Apex Court has consistently held that if two views are possible, then the one favouring acquittal of accused, must be chosen. In the instant case, it appears that evidence of prosecutrix does not inspire confidence. It is not supported by medical opinion and what is material to uphold the acquittal, is the delay of 37days in lodging F.I.R. which remained unexplained. The defence raised by respondent No.1/accused is also a probable one, supported by legal principles. Therefore, we are of the opinion that the learned trial Judge, after proper appreciation of the evidence on record, has rightly chosen possible view which does not require any interference. There is no merit in the appeal. Hence, the appeal stands dismissed.

(MEHROZ K. PATHAN)
JUDGE

(SANDIPKUMAR C. MORE)
JUDGE